REDACTED – FOR PUBLIC INSPECTION

Gregory R. Capobianco
Tel +1 202 639 6016
GCapobianco@jenner.com

August 7, 2026

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62; *Rules for Interstate Inmate Calling Services*, WC Docket No. 12-375

Dear Ms. Dortch:

The Wright Petitioners herein submit a REDACTED version of an opposition in the above-captioned proceedings. The Wright Petitioners are also submitting a CONFIDENTIAL version of this opposition pursuant to the Protective Orders adopted in the same dockets.[1]

Please contact me if you have any questions or require any additional information.

Sincerely,

/s/ Gregory R. Capobianco
Gregory R. Capobianco
Counsel for The Wright Petitioners

Attachment

[1] *In re Rates for Interstate Inmate Calling Services*, Protective Order, WC Docket No. 12-375, 28 FCC Rcd 16954 (WCB 2013) ("2013 Protective Order"); *In re Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, Protective Order, WC Docket Nos. 23-62, 12-375, 38 FCC Rcd 2498 (WCB 2023) ("2023 Protective Order"); *In re Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, Supplemental Protective Order, WC Docket Nos. 23-62, 12-375, 40 FCC Rcd 2049 (WCB 2025). The 2023 Protective Order incorporates by reference into WC Docket No. 23-62 all acknowledgements filed pursuant to the 2013 Protective Order. 2023 Protective Order ¶ 6.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

OPPOSITION OF THE WRIGHT PETITIONERS, BENTON INSTITUTE FOR BROADBAND & SOCIETY, THE PENNSYLVANIA PRISON SOCIETY, PUBLIC KNOWLEDGE, UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY, THE UTILITY REFORM NETWORK, AND WORTH RISES

Andrew Jay Schwartzman
Senior Counselor
Benton Institute for Broadband & Society
1341 G Street, NW
Washington, DC 20005
(202) 241-2408

Pennsylvania Prison Society
230 South Broad Street, Suite 605
Philadelphia, PA 19102
(215) 564-4775

Counsel for the Benton Institute for Broadband & Society and Pennsylvania Prison Society

Bianca Tylek
Executive Director
Worth Rises
85 Delancey Street, 2nd Fl.
New York, NY 10002

Kori Cordero
Telecom Managing Attorney
The Utility Reform Network (TURN)
360 Grand Avenue, #150
Oakland, CA 94610
(415) 954-8091

Rebekah P. Goodheart
Madeleine V. Findley
Gregory R. Capobianco
Kimberly L. Cook
Xinyue (Dagny) Lu
Christian J. Hatten
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

Counsel for the Wright Petitioners

John Bergmayer
Legal Director
Public Knowledge
1818 N Street, NW, Suite 410
Washington, DC 20036
(202) 861-0020

Cheryl A. Leanza
Policy Advisor
United Church of Christ Media Justice Ministry
100 Maryland Avenue, NE
Suite 330
Washington, DC 20002
(202) 904-2168

August 7, 2026

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

OPPOSITION OF THE WRIGHT PETITIONERS, BENTON INSTITUTE FOR BROADBAND & SOCIETY, THE PENNSYLVANIA PRISON SOCIETY, PUBLIC KNOWLEDGE, UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY, THE UTILITY REFORM NETWORK, AND WORTH RISES

The Wright Petitioners,[1] Benton Institute for Broadband & Society, the Pennsylvania Prison Society, Public Knowledge, United Church of Christ Media Justice Ministry, The Utility Reform Network, and Worth Rises[2] (collectively, the "Public Interest Parties") respectfully oppose the petition filed by Network Communications International Corp., d/b/a NCIC Correctional Services ("NCIC") seeking waiver of the Federal Communications Commission's ("FCC" or "Commission") rules regarding incarcerated people's communications services ("IPCS").[3]

[1] The Wright Petitioners—the late Martha Wright, Ulandis Forte, Ethel Peoples, Laurie Lamancusa, Dedra Emmons, Charles Wade, Earl Peoples, Darrell Nelson, and Jackie Lucas—brought suit in the United States District Court for the District of Columbia against Corrections Corporation of America in 2000, seeking to set aside exclusive telephone contracts among the private prisons and certain telephone companies. The matter was subsequently referred to the Commission in August 2001. Since 2003, these petitioners have actively petitioned the Commission for regulation of incarcerated people's calling services through The D.C. Prisoners' Legal Services Project, Inc. at the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

[2] Parties that did not sign the protective order have not received access to the confidential data contained herein. *See In re Rates for Interstate Inmate Calling Services*, Protective Order, 28 FCC Rcd 16954 (WCB 2013) ("*2013 Protective Order*"); *see also In re Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, Protective Order, 38 FCC Rcd 2498 (WCB 2023) ("*2023 Protective Order*"). The 2023 Protective Order incorporates by reference into WC Docket No. 23-62 all acknowledgements filed pursuant to the *2013 Protective Order*. *2023 Protective Order*, 38 FCC Rcd at 2500-01 ¶ 6.

[3] *See* Request for Waiver of Network Communications International Corp., d/b/a NCIC Correctional Services, WC Docket Nos. 23-62 and 12-375 (filed June 17, 2026) ("NCIC Petition" or "Petition").

I. INTRODUCTION AND SUMMARY

The Commission should dismiss as procedurally defective and otherwise deny NCIC's request to waive the interim audio and video IPCS rate caps[4] for a majority of the correctional facilities it serves.[5] First, the Petition should be dismissed because it lacks the documentation required by the Commission's rules. Second, the variability in cost recovery that NCIC points to at individual facilities is an expected consequence of Congress's mandate to move away from the "each and every" call framework to average costs and the Commission's setting rates on an industry-average basis, not itself grounds for relief. Allowing a waiver because certain facilities are higher cost would invite a flood of waiver requests and undermine the very core of the Martha Wright-Reed Act ("MWRA") and its focus on average industry costs. Moreover, the cost data that NCIC does supply is insufficient to justify a waiver. Third, there is no basis to preempt lower intrastate rates and depart from the Commission's longstanding balance between federal and state authority to regulate IPCS. Finally, the Commission should not allow higher rate caps where it appears that IPCS revenues are being broadly diverted to cover expenses unrelated to IPCS, in contravention of the Commission's prohibition on site commissions. Because the Petition fails to satisfy the Commission's basic requirements, much less meet its demanding standard for relief, the Commission should dismiss or deny the Petition.

II. NCIC FAILS TO PROVE GOOD CAUSE OR OTHERWISE BEAR THE BURDEN OF PROOF FOR A WAIVER.

The Commission's waiver standard requires a petitioner to show that "special circumstances warrant a deviation from the general rule and such deviation will serve the public

[4] 47 C.F.R. § 64.6030 (establishing interim audio and video Incarcerated People's Communications Services (IPCS) rate caps).

[5] *See* NCIC Petition at 1.

interest."[6] The Commission has made clear that this is a demanding, fact-intensive burden that a petitioner must carry.[7] Any IPCS provider seeking a waiver "must clearly demonstrate that good cause exists for waiving [the] rate caps or other rules at a given facility or group of facilities, or under a particular contract, and that strict compliance with these caps would be inconsistent with the public interest."[8] Where a waiver is sought on a facility or contract basis, providers must show that the costs of the entirety of the underlying contract are not recoverable under the applicable rate caps—not merely that costs at an individual facility or subset of facilities are unrecoverable while the contract as a whole remains profitable.[9] All waiver petitions must include an affirmative showing that granting relief "will not result in unjust and unreasonable IPCS rates and charges."[10] The Commission has cautioned that "waivers will not be routinely granted"[11] and emphasized that instances warranting a waiver "should be exceptional."[12] The Commission has previously explained that conclusory assertions that rate reductions will harm a provider or impede its ability to expand service are insufficient to meet this standard.[13] Moreover, consistent with the Commission's explanation in the *2024 IPCS Order* that its waiver process "reflect[s] the Act's direction that the Commission may use a provider's average costs in determining just and

[6] *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.
[7] 47 C.F.R. § 64.6120.
[8] *In re Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Report and Order, Order on Reconsideration, Clarification, and Waiver, and Further Notice of Proposed Rulemaking, 39 FCC Rcd 7647, 7898-99 ¶ 480 (2024) ("*2024 IPCS Order*").
[9] *2024 IPCS Order*, 39 FCC Rcd at 7898-99 ¶ 480.
[10] *2024 IPCS Order*, 39 FCC Rcd at 7898-99 ¶ 480.
[11] *2024 IPCS Order*, 39 FCC Rcd at 7899 ¶ 481.
[12] *2024 IPCS Order*, 39 FCC Rcd at 7898 ¶ 479.
[13] *See 2024 IPCS Order*, 39 FCC Rcd at 7898-99 ¶ 480 (citing *2021 ICS Order*, 36 FCC Rcd 9590, 9593-96 ¶¶ 169-175).

reasonable IPCS rates,"[14] the waiver must be read in the context of the MWRA and the Commission's actions since the waiver rule was adopted in 2021.

A. NCIC's Petition Should Be Dismissed as Procedurally Deficient.

The Commission should dismiss the NCIC Petition as procedurally defective because it omits several categories of information that Section 64.6120 of the Commission's rules requires a petitioner to submit. NCIC asserts that the rate caps adopted in the *2025 ICPS Order* prevent the company from recovering its costs of providing audio and video calling services at more than 500 correctional facilities. The Petition attaches a list of the facilities for which NCIC seeks relief, a modified version of the 2023 Mandatory Data Collection cost template, and a facility-by-facility cost and revenue analysis, along with a supporting declaration. This is insufficient to support a waiver request.

NCIC fails to include certain information that is required under the rule, including: (1) a complete explanation of the methods used to identify direct costs, allocate indirect costs between IPCS and other operations, and assign/allocate those costs among its IPCS contracts and facilities; (2) a complete and unredacted copy of the contract and any amendments; (3) copies of the initial RFP and any amendments, its bid, and responses to amendments (or a statement that such documents are unavailable because they predate the rule's effective date); and (4) a written explanation of how and why the circumstances at that facility or contract differ from those at similar facilities NCIC serves, and from other facilities covered by the same contract.[15]

[14] *2024 IPCS Order*, 39 FCC Rcd at 7896-97 ¶ 475.

[15] *See* 47 C.F.R. § 64.6120(b)(2), (5)-(7). With respect to the methodology for identifying direct costs, allocating indirect costs, and assigning or allocating costs among contracts and facilities, NCIC does not fully explain its allocation methodology. *See infra* Section II.B.2.

As the Commission has explained, "[f]ailure to provide such information will prevent [the Commission] from making a determination regarding the waiver request and will be grounds for dismissal without prejudice."[16] Because the Petition lacks much of the information required to evaluate the waiver request, the Commission should dismiss the Petition.

B. NCIC's Petition Both Seeks Relief from a Scenario Anticipated by the Commission and Lacks Sufficient Evidence to Justify Waiver.

NCIC also fails to demonstrate good cause for a waiver because (1) the Martha Wright-Reed Act's average-cost ratemaking framework does not guarantee a provider profitability at every individual facility; and (2) the cost analysis NCIC offers contains deficiencies and inconsistencies that render it unpersuasive and unreliable.

1. The MWRA and FCC's Average Cost Methodology Do Not Guarantee Facility-Level Profitability.

As a preliminary matter, the Public Interest Parties note that the Commission's waiver rules were adopted before the MWRA was enacted.[17] The MWRA removed the requirement that providers be compensated for "each and every call," and instead changed the standard to balance providers' "fair[] compensation" with "just and reasonable rates" for consumers, and allowed the Commission to use industry average costs to set its rate caps.[18] As such, the waiver rule must be

[16] *2024 IPCS Order*, 39 FCC Rcd 7698-99 ¶ 480; *see also In re Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9595 ¶ 173 (2021) ("In addition, waiver petitions must include all required financial data and other information needed to verify the carrier's assertions. Failure to provide the information listed below will be grounds for dismissal without prejudice".).

[17] *See generally* 47 C.F.R. § 64.6120.

[18] Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2023) ("MWRA").

read in the context of the MWRA and use of average costs, as the Commission made clear in the *2024 IPCS Order*.[19]

Because the Commission set rate caps based on average industry costs,[20] this necessarily means that some facility costs will be higher and others will be lower than the rate caps. On average, the resulting rates are just and reasonable. Thus, the outcome that some of NCIC's facilities do not fully recover their costs is a predictable and foreseeable result of the MWRA, not a basis for a waiver. Indeed, the Commission has explained that the "standard does not require every carrier to be profitable, but rather for rates to be set at a level where carriers receive compensation that would allow a well-run and prudent IPCS carrier to realize a fair rate of return."[21]

The Petition rests on facility-level cost data purporting to demonstrate that, at particular individual facilities, NCIC's cost of providing audio and video IPCS exceeds the revenue the interim rate caps allow it to collect.[22] Such a showing is precisely what the *2024 IPCS Order* held insufficient. That certain facility-level revenues could be below the facility's used and useful IPCS costs was an anticipated consequence of the rate caps. NCIC has not provided information that would allow the Commission to determine that revenues below used and useful IPCS costs for these identified facilities is anything other than the natural outcome of the average-cost ratemaking adopted by the Commission, which NCIC, itself, has told the Commission is not a flaw in its

---

[19] Moreover, in the *2024 IPCS Order*, the Commission explained that its modifications to the waiver process "reflect the [MWRA's] direction that the Commission may use a provider's average costs in determining just and reasonable IPCS rates." *2024 IPCS Order*, 39 FCC Rcd at 7896-97 ¶ 475.
[20] MWRA § 3(b)(1).
[21] *2024 IPCS Order*, 39 FCC Rcd at 7768 ¶ 219 & n.778 ("To the extent certain providers are inefficient, the Commission is not obligated to set rates to cover an inefficient business model—as the Commission correctly notes, it has no burden 'to set rate caps that support inefficient business models, even if a provider is inefficient due to its scale.'" (quoting *2024 IPCS Order*, 39 FCC Rcd at 8059 Appendix H)).
[22] NCIC Petition at 6-7 & Exhibits A-C.

methodology.[23] NCIC's assertion that, if it is required to operate under the current rates, it will need to reduce certain non-IPCS services and reduce its footprint at smaller facilities[24] is also insufficient to support waiver.

Even assuming a given facility has costs that exceed its revenue, this alone does not constitute the good cause, exceptional circumstance, or contract-level showing of unrecoverability of used and useful costs necessary for a waiver. In fact, granting a waiver on the basis that revenues at individual facilities are below used and useful IPCS costs would permit—and incentivize providers to cherry-pick certain facilities that may have higher costs and seek waivers for those facilities, while retaining higher revenues and profitability at lower-cost facilities. This would not only open the flood gates for waivers but also eviscerate the "exceptional" standard the Commission intended for the waiver process.[25] It would also invite IPCS providers to enjoy an enormous windfall and would effectively turn the average-cost methodology into an above-cost methodology.

NCIC cannot manipulate the narrow waiver process to mount what is functionally a challenge to average-cost ratemaking. The variability NCIC identifies is a contemplated and lawful feature of the Commission's rules, not a signal of unreasonably low rates.

---

[23] *In re Incarcerated People's Communications Services*; *Implementation of the Martha Wright-Reed Act*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 40 FCC Rcd 9365, 9371 ¶ 16 (2025) ("*2025 IPCS Order*") (stating "as NCIC observes, that reasoning reflects the inherent variability of rate caps based on average industry data and therefore does not constitute a flaw in the Commission's rate cap setting methodology, only an inherent attribute of average cost-based ratemaking.").

[24] NCIC Petition at 9.

[25] *2024 IPCS Order*, 39 FCC Rcd at 7898 ¶ 479 ("The IPCS rate cap methodology we adopt herein comprehensively accounts for providers' reported costs of providing IPCS as contemplated by the Act, and we therefore anticipate that instances where providers cannot recover their cost of service should be exceptional.").

2. NCIC's Economic Analysis Based on the Cost Data Supplied Does Not Support a Waiver.

Even the limited data NCIC chooses to provide contains oddities, anomalies, and inconsistences that further call into question whether any relief is warranted, as explained in the attached Brattle NCIC Report.[26]

First, Brattle's analysis shows that NCIC has not provided a facility-specific basis for the requested waivers. NCIC seeks audio waivers for hundreds of facilities even though **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**[27] Brattle identifies similar flaws in NCIC's video waiver request, including facilities with **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**[28] NCIC has not shown why the selected facilities warrant waiver relief or why any alleged above-cap costs could not be avoided through more efficient operations.[29]

As a baseline, the Commission's rules allow providers to request a waiver only if the rate caps "prevent the Provider from recovering the costs of providing [IPCS] at a Correctional Facility

[26] *See* Attachment A, Coleman Bazelon et al., *Response to NCIC Correctional Services' Request for Waiver*, The Brattle Group (Aug. 7, 2026) ("Brattle NCIC Report").
[27] Brattle NCIC Report ¶ 4.
[28] Brattle NCIC Report ¶ 6.
[29] *See* Brattle NCIC Report ¶¶ 4, 9.

or at the Correctional Facilities covered by a contract."[30] For the facilities that **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** there is no legal basis for a waiver to be granted and the Commission should not even consider waiver relief for these facilities.

Any increased rate at facilities that are already profitable under the Commission's just and reasonable rate caps would be unjust and unreasonable. Brattle notes several instances where the requested waiver relief would be especially unjust and unreasonable, including a facility **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**[31] Brattle highlights an additional facility that is **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** under NCIC's requested rates.[32] Another facility's **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]** under the requested caps.[33] There can be no justification for allowing NCIC to **[BEGIN CONFIDENTIAL INFORMATION]** [redacted] **[END CONFIDENTIAL INFORMATION]**

[30] 47 C.F.R. § 64.6120(a).
[31] Brattle NCIC Report ¶ 7.
[32] Brattle NCIC Report ¶ 7.
[33] Brattle NCIC Report ¶ 8.

The Brattle NCIC Report further demonstrates that NCIC's facility-level profit and loss figures are largely the result of its cost allocation methodology rather than actual costs incurred at individual facilities. As the report explains, NCIC shows that costs were not measured directly at the facility level but were instead calculated as a fixed percentage of company-wide revenue and then applied uniformly across facilities based on each facility's revenue.[34] This approach distorts the analysis because a facility charging higher rates is automatically assigned higher costs regardless of whether that facility actually required greater expenditures in that category.[35] The report demonstrates that facilities with comparable average daily population and usage levels are nonetheless assigned significantly different costs and resulting profits or losses simply because they generate different revenue.[36] The Commission should not rely on those figures as evidence that the generally applicable rate caps are insufficient.

The Brattle NCIC Report also explains that NCIC's analysis likely understates expected revenues and overstates expected losses because it assumes no increase in demand under lower rate caps.[37] NCIC estimates revenue by multiplying historical 2025 minutes by the current FCC rate caps and by NCIC's proposed waiver rates, holding minutes constant across both scenarios.[38] But lower rates would generally be expected to increase usage, which would generate additional revenue and spread fixed costs over more minutes, reducing average cost per minute.[39]

Finally, the Brattle NCIC Report questions whether substantial portions of the costs NCIC includes in its analysis are recoverable or directly attributable to providing IPCS.[40] Brattle notes

---

[34] Brattle NCIC Report ¶ 10.
[35] Brattle NCIC Report ¶ 10.
[36] Brattle NCIC Report ¶¶ 11-12, Tables 1 & 2.
[37] Brattle NCIC Report ¶ 13.
[38] Brattle NCIC Report ¶ 13.
[39] Brattle NCIC Report ¶ 14.
[40] Brattle NCIC Report ¶ 15.

that NCIC's analysis fails to distinguish costs that are simply reported in its cost submission and those that are used and useful—and thus, recoverable—leading to a potential overstatement of costs.[41]

C. There Is No Basis for Preempting Intrastate IPCS Rates.

Both NCIC's request for the Commission to preempt California and Missouri laws that establish lower rate caps than NCIC's preferred rates, and its request for the Commission to offer broad relief to *all providers* by striking state laws when no other provider has attempted to make any demonstration that it is merited should be rejected.[42]

In the *2015 ICS Order*, the Commission held that its rate caps "constitute a ceiling, not a floor," expressly concluding that "[s]tate rates below our rate caps or ancillary fee caps will not be preempted."[43] The Commission reaffirmed this principle in the *2021 ICS Order*, determining that "[t]o the extent state law allows or requires providers to impose rates or fees lower than those in our rules, that state law or requirement is specifically not preempted by our actions."[44] Most recently, the *2024 IPCS Order* again declined to preempt state and local laws requiring rates below the Commission's caps, explaining that those rates are not inconsistent with the Commission's regulations because the rate caps were designed to "appropriately balance the need to ensure just and reasonable rates and charges for IPCS consumers based on industry averages and fair compensation for IPCS providers," not to establish a rate floor protecting any particular provider's costs.[45] The Commission further found that state rate caps below federal levels are consistent with

[41] Brattle NCIC Report ¶ 15.
[42] NCIC Petition at 9-10.
[43] *In re Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12864 ¶ 204 (2015).
[44] *In re Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9617 ¶ 217 & n.683 (2021).
[45] *2024 IPCS Order*, 39 FCC Rcd at 7776 ¶¶ 237-238.

the "underlying purpose of the [Martha Wright-Reed Act] to fundamentally reform the IPCS marketplace and eliminate, to the greatest extent possible, decades of exorbitant rates."[46]

The record supports encouraging and permitting states to set rates that best reflect their unique circumstances, as the Commission found in its *2024 IPCS Order*.[47] In the 2024 proceeding, for example, California explained that "[s]tates and local governments should be given the flexibility to achieve the most affordable rates for incarcerated persons within their facilities," and that "the FCC should work collaboratively with states and local governments rather than preempt local efforts to achieve lower and more affordable rates for incarcerated persons and their families."[48] Another commenter in the 2024 proceeding likewise urged the Commission to continue its policy of cooperative federalism "out of comity to state lawmakers and regulators who may be able to identify ways in which IPCS can be profitably delivered in certain jurisdictions under lower price caps than those prescribed by the Commission."[49]

NCIC now argues that the Commission should preempt California's $0.025 per-minute cap and Missouri's $0.12 per-minute cap if the Commission grants the underlying waiver request. But this argument amounts to the same "question-begging" logic that the Commission considered and rejected in the *2024 IPCS Order*, only worse: instead of assuming any state rate below the federal cap is necessarily inconsistent with the Commission's regulatory scheme,[50] NCIC asks the Commission to invalidate the state rate caps in favor of rates *higher* than the Commission's

[46] *2024 IPCS Order*, 39 FCC Rcd at 7776 ¶ 238 (internal quotation marks omitted).
[47] *2024 IPCS Order*, 39 FCC Rcd at 7775-76 ¶ 236.
[48] Reply Comments of the California Public Utilities Commission and the People of the State of California on the Federal Communications Commission's Notice of Proposed Rulemaking and Order at 2, WC Docket Nos. 23-62 and 12-375 (June 6, 2023).
[49] Opening Comments of Stephen A. Raher on Notice of Proposed Rulemaking at 13, WC Docket Nos. 23-62 and 12-375 (May 8, 2023).
[50] *2024 IPCS Order*, 39 FCC Rcd at 7776 ¶ 237.

regulatory scheme.[51] That is not the law, and no party has argued or proffered evidence that California's or Missouri's rate caps do not allow *any* IPCS providers to recover their costs. Because lower state rates are not inherently inconsistent with the Commission's rules and because NCIC requests rates above those the Commission has adopted, there is no basis for NCIC's preemption request.[52] Finally, the Commission should deny NCIC's preemption request because it is procedurally defective: the appropriate method for providers to seek preemption of a state's conflicting requirement is in petition for preemption, not through a waiver request.

NCIC implies that the Commission must allow the company to raise its rates or it may stop serving some facilities or reduce benefits at others.[53] In reality, NCIC has chosen to market its services and operate in California and Missouri, as well as other states.[54] As the Commission has recognized, it is not the Commission's duty to prop up inefficient carriers.[55] It is certainly not the obligation of the Commission to ensure every IPCS provider can compete in every correctional facility across the United States. Any potential reduction in the "benefits" that NCIC offers, such as its educational programming,[56] must be balanced against the obvious and immediate financial harm that would be suffered by not only NCIC's customers, but *all* California and Missouri IPCS customers if the lower state rates caps were preempted and subject consumers to higher prices.

---

[51] *See* NCIC Petition at 9-10.
[52] *See* 47 U.S.C. § 276(c) (only allowing preemption for state requirements that are "inconsistent with the Commission's regulations.").
[53] NCIC Petition at 9.
[54] NCIC Petition at Exhibit A.
[55] *2024 IPCS Order*, 39 FCC Rcd at 8058-59, Appx. H ¶ 10.
[56] NCIC Petition at 4; Declaration of William L. Pope in Support of Request for Waiver of NCIC Correctional Services ¶¶ 7-8 (June 15, 2026) attached to NCIC Petition.

D. The Commission Should Not Grant a Waiver to Support Compensating Facilities for Non-IPCS-Related Costs.

Finally, as the Wright Petitioners noted in comments on the 2026 Mandatory Data Collection,[57] correctional facilities have submitted evidence to the record that indicates the Commission's prohibition on site commissions is being widely ignored, which further suggests that IPCS providers continue to make payments funding facility initiatives that are unrelated to the provision of IPCS.[58] The Commission has made clear that IPCS providers are prohibited from

[57] Comments of the Wright Petitioners at 10 & n.43, WC Docket Nos. 23-62 and 12-375 (July 17, 2026).

[58] *See, e.g.*, Letter from Sheriff Gordon Smith, Bradford County (FL) Sheriff's Office, to M. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375 (July 24, 2026) (cost recovery said to fund "Detention Staffing & Supervision" and the free NSA IGNITE and Schoolhouse educational programs, along with general inmate housing supplies and sanitation); Letter from Chief Jason Teague, Sheridan (AR) Police Department, WC Docket Nos. 23-62 and 12-375 (June 24, 2026) (cost recovery funds "additional staffing and programs," including law library access, religious materials, and "entertainment"); Comments in Support of NCIC's Waiver Request, Logan County (OK) Sheriff's Office (Capt. Bryce Brown), WC Docket Nos. 23-62 and 12-375 (June 25, 2026) (cost recovery funds an "85-hour re-entry lesson plan," GED preparation, general health and wellness education, and substance-use recovery courses, as well as "additional Detention staff"); Letter from Sheriff Frankie McClendon & Jail Administrator Jeff Daniels, Pittsburg County (OK) Sheriff's Office, to FCC, WC Docket Nos. 23-62 and 12-375 (July 23, 2026) (cost recovery previously funded the facility's Inmate Welfare Fund, now discontinued, and supports free Schoolhouse and IGNITE programming); Letter from Sheriff Ray Cross, Dade County (GA) Sheriff's Office, WC Docket No. 23-62 (July 9, 2026) (cost recovery funds "additional inmate programs" and the free IGNITE learning system); Letter from Major K. Carter, Jail Administrator, Canadian County (OK) Sheriff's Office, WC Docket No. 23-62 (July 6, 2026) (funds "reinvested into detention operations and inmate programming"); Letter from Sheriff Randy Starkey, Niobrara County (WY) Sheriff's Office, WC Docket Nos. 23-62 and 12-375 (June 18, 2026) (Inmate Welfare Fund purchases "mattresses, blankets, towels," and funds weekly "popcorn" as a "morale-boosting activit[y]"); Letter from Chief Travis Koltiska, President, Wyoming Association of Sheriffs and Chiefs of Police, to FCC, WC Docket Nos. 23-62 and 12-375 (June 29, 2026) (warning that rate reductions could force sheriffs' offices to "eliminate Inmate Welfare Funds" currently supported by communications revenue); Letter from Sheriff Matthew Lindemann, Williamson County (TX) Sheriff's Office, to M. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375 (July 24, 2026) (reduction of Inmate Welfare Fund); Letter from Jail Administrator Billy Churchman, Jail Administrator, Cass County (TX) Sheriff's Office, WC Docket Nos. 23-62 and 12-375 (July 28, 2026) (Inmate Welfare Fund "previously supported indigent communications and indigent supplies"); Letter from Capt./Jail Administrator Brian Harlow, Labette County (KS) Sheriff's Office (June 29, 2026) (cost-recovery model funds a comprehensive learning management system, a digital legal library, and an electronic grievance system); Comments in Support of NCIC's Waiver Request, Butler County (KS) Sheriff's Office (Larry Reynolds, Detention Administrator), WC Docket No. 12-375 (July 22, 2026) (describing "free educational and self-improvement classes" funded through the IPCS relationship); Comment in Support of NCIC (J. Vandiver Sr.), WC Docket No. 12-375 (June 26, 2026) ("J. Vandiver Sr. Comments") (cost recovery funds "physical fitness equipment, recreational opportunities, educational resources, and other items"); Comments in Support of NCIC's Waiver Request, Cambell County Sheriff's Office (Sheriff Scott Matheny), WC Docket Nos. 23-62 and 12-375 (July 31, 2026) (describing using cost recovery funds for items including "increased food portions; improved mattresses and bedding; exercise equipment; inmate work program tools and opportunities; … holiday programs and food; and volunteer and counseling programs."); Comments in Support of NCIC's Waiver Request, Lowndes County Sheriffs [sic] Office (Jason M. Clifton, Jail Administrator), WC Docket Nos. 23-62 and 12-375 (Aug. 5, 2026) ("Lowndes County Letter") ("bedding, clothing, and hygiene supplies").

making payments to carceral facilities except to reimburse facilities' used and useful costs incurred *in the provision of IPCS*.[59]

Historically, IPCS provider payments to correctional facilities have gone to a variety of purposes, including staff salary subsidies, core incarcerated person necessities, and other costs of operating facilities.[60] The misuse of so-called "Inmate Welfare Funds" to constitute "shadow budgets" to "subsidize essential facility operations" is precisely one of the reasons the Commission prohibited site commissions.[61] The Commission also found that even the costs of such welfare programs that directly benefit incarcerated persons, "while worthy, are unrelated to the provision of IPCS," and should not be borne by IPCS consumers.[62]

Letters recently submitted to the record describe facilities receiving exactly the types of prohibited items and services that are not appropriate for "cost recovery" from IPCS providers, directly invoking "Inmate Welfare Funds," and including "detention staffing & supervision," libraries and other educational programs, "mattresses, blankets, and towels," "physical fitness equipment," "clothing and hygiene supplies" and more.[63] One commenter stated it plainly: "The

---

[59] 47 C.F.R. § 64.6015. *2025 IPCS Order*, 40 FCC Rcd at 9384-85 ¶¶ 37-38; *2024 IPCS Order*, 39 FCC Rcd at 7791-92 ¶ 267, 7811 ¶ 308; FCC, *Incarcerated People's Communication Services (formerly Inmate Calling Services)*, https://www.fcc.gov/general/ipcs (last updated Jan. 14, 2026) ("[T]he Commission found that site commissions—defined as payments from IPCS providers to correctional facilities that are not used and useful in the provision of IPCS—are not part of the cost of providing IPCS. The Commission therefore excluded site commission payments from the cost data it used in setting rate caps, prohibited IPCS providers from making site commission payments for IPCS, and preempted state and local laws and regulations requiring such commissions.").

[60] *See, e.g.*, *In re Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14125 ¶ 34 & n.132 (2013) (citing Wright Petitioners et al. 2013 Reply Comments at 26-27 & Exh. G (Apr. 22, 2013) (noting jurisdictions where the majority of Inmate Welfare Funds went to operational costs, salaries and benefits for correctional facility employees, and some states where the entire amount was deposited in the state's general revenue fund).

[61] Brian Nam-Sonenstein, *Shadow Budgets: How mass incarceration steals from the poor to give to the prison* (May 6, 2024). *See also 2024 IPCS Order*, 39 FCC Rcd at 7782-83 ¶ 251, 7804-05 ¶ 297 (noting provider payments to facilities captured in the rate caps force IPCS consumers to "subsidize everything from inmate welfare programs, to salaries and benefits of correctional facilities, states' general revenue funds, and personnel training." (quotation marks omitted)).

[62] *2024 IPCS Order*, 39 FCC Rcd at 7800-01 ¶ 287.

[63] *See supra* n.58.

reduction or elimination of cost recovery will require the cost of inmate supplies to be shifted to the taxpayers of Lowndes County. That fund previously supported inmate clothing and facility sanitation supplies for incarcerated individuals."[64] This is forbidden under the Commission's rules. The Commission should remain vigilant because IPCS providers and their facility partners have every incentive to cast prohibited payments as facility "reimbursements" and argue that they are appropriate to be considered as valid costs under the rate caps. If allowed, this would improperly shift the burden of funding facility operations and programming from facilities to IPCS consumers, harming incarcerated persons and their loved ones.[65]

The Commission should not waive the rules and allow NCIC to charge IPCS consumers higher rates where there is significant evidence that facilities are using "facility payments" for non-used and useful purposes. Permitting higher rates creates a significant risk that the resulting rates would be unjust and unreasonable,[66] and it would not be in the public interest for the Commission to waive its rate caps to allow NCIC to charge higher IPCS rates while the revenue generated under those rates appears to be used for impermissible site commissions. The Commission should reject NCIC's waiver request and issue an enforcement advisory reminding IPCS providers that payments to correctional facilities may be for only used and useful costs.[67]

---

[64] *See* Lowndes County Letter; *see also* J. Vandiver Sr. Comments ("these funds are an important resource that allows us to enhance inmate programming without placing additional financial burdens on local taxpayers.").

[65] *See 2024 IPCS Order*, 39 FCC Rcd at 7781-82 ¶ 250 n.864 (citing Brian Nam-Sonenstein, *Shadow Budgets: How mass incarceration steals from the poor to give to the prison* (May 6, 2024) ("explaining that the IPCS market operates 'by charging fees to service users (incarcerated people and their communities), which enriches both the telecom company (in the form of profit) and the prison system (in the form of kickbacks).'" (quoting parenthetical in original)); *Id.* at 7804-05 ¶ 297 (noting that passing non-IPCS-related costs "onto inmates and their families … results in rates … that are not just and reasonable." (ellipsis in original) (internal quotation marks omitted)).

[66] *2024 IPCS Order*, 39 FCC Rcd 7898-99 ¶ 480.

[67] Moreover, to the extent NCIC—even unknowingly—pays facilities for prohibited services, as it appears may be the case from the record, simply coming into compliance may reduce NCIC's need for a waiver. While NCIC states that its costs exceed its revenues at facilities "even before … its obligations to reimburse correctional facilities for their allowable expenses," NCIC Petition at 8, if some of those obligations are for non-used and useful costs, the Petition should account for the cost savings that the prohibition on site commissions would bring.

III. CONCLUSION

The Commission should dismiss as procedurally defective and otherwise deny the NCIC Petition.

Respectfully submitted,

/s/ Rebekah P. Goodheart

Rebekah P. Goodheart
Madeleine V. Findley
Gregory R. Capobianco
Kimberly L. Cook
Xinyue (Dagny) Lu
Christian J. Hatten
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

Counsel for the Wright Petitioners

Andrew Jay Schwartzman
Senior Counselor
Benton Institute for Broadband & Society
1341 G Street, NW
Washington, DC 20005
(202) 241-2408

Pennsylvania Prison Society
230 South Broad Street, Suite 605
Philadelphia, PA 19102
(215) 564-4775

Counsel for the Benton Institute for Broadband & Society and Pennsylvania Prison Society

Bianca Tylek
Executive Director
Worth Rises
85 Delancey Street, 2nd Fl.
New York, NY 10002

Kori Cordero
Telecom Managing Attorney
The Utility Reform Network (TURN)
360 Grand Avenue, #150
Oakland, CA 94610
(415) 954-8091

John Bergmayer
Legal Director
Public Knowledge
1818 N Street, NW, Suite 410
Washington, DC 20036
(202) 861-0020

Cheryl A. Leanza
Policy Advisor
United Church of Christ Media
Justice Ministry
100 Maryland Avenue, NE
Suite 330
Washington, DC 20002
(202) 904-2168

August 7, 2026

ATTACHMENT A

"REDACTED – FOR PUBLIC INSPECTION"

Response to NCIC Correctional Services' Request for Waiver

PREPARED BY

Coleman Bazelon

Paroma Sanyal

L. Shea Peretz

Preetul Sen

Ece Yegane

Aneri Patel

August 7, 2026

Brattle

CONTENTS

I. Introduction

1. In October 2025, the Federal Communications Commission ("FCC" or the "Commission") adopted revised rate caps for incarcerated people's communications services ("IPCS").[1] The rate caps are intended to permit recovery of the used and useful costs of providing regulated services while ensuring just and reasonable rates for consumers and fair compensation for providers.[2] The caps are based on industry-wide cost data, and apply across different categories of facilities, and are not intended to guarantee that every provider will recover every reported cost at every individual facility.

2. Network Communications International Corp., d/b/a NCIC Correctional Services ("NCIC") claims that the October 2025 rate caps "prevent NCIC from recovering its costs of providing IPCS services" at a specified group of facilities.[3] It therefore asks the Commission to waive the applicable rate caps for those facilities and permit NCIC to charge the per minute rates reported in its Exhibit A submission.[4] NCIC supports its request with facility level profit and loss calculations that compare hypothetical revenue under the FCC rate caps and NCIC's proposed waiver rate caps with the costs allocated to each facility.[5]

3. This report evaluates whether NCIC's submission provides sufficient economic support for the requested waivers. As discussed in the accompanying Opposition, the applicable rate caps do not guarantee profitability at every individual facility. Where relief is sought on a facility or contract basis, losses at an individual facility or subset of facilities are not sufficient if the underlying contract as a whole remains profitable. From an economic perspective, relief may be justified if a provider will not recover its costs without it. This is only true if the provider demonstrates that after excluding any avoidable costs and accounting for expected demand, conditions specific to

---

1 "Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking," Federal Communications Commission, WC Docket Nos. 23-62, 12-375, https://docs.fcc.gov/public/attachments/FCC-25-75A1.pdf ("2025 FNPRM").

2 2025 FNPRM, ¶ 1.

3 "Request for Waiver," Proceeding Nos. WC 23-62, WC 12-375, NCIC, June 16, 2026 ("NCIC Request for Waiver").

4 NCIC Request for Waiver, Exhibit A.

5 NCIC, "Exhibit C – Confidential Version – Submission Copy," Proceeding Nos. WC 23-62, WC 12-375, June 24, 2026, ("NCIC Exhibit C"); NCIC, Exhibit B – Confidential Version – Submission Copy, Proceeding Nos. WC 23-62, WC 12-375, June 24, 2026 ("NCIC Exhibit B").

the facility prevent an efficient provider from recovering used and useful costs.[6] We find several irregularities in the facilities included in NCIC's request that make its selection process difficult to assess. NCIC also does not provide sufficient evidence that the costs assigned to these facilities are unavoidable or arise from conditions specific to the facilities, nor does it explain why the facilities cannot operate at cost levels consistent with the broader industry. In addition, NCIC holds call volumes constant when estimating revenue under lower rates and, therefore, does not account for the expected demand response or the reduction in average cost that results when fixed costs are spread across more minutes. Finally, NCIC appears to include a broad range of reported expenses without establishing that each expense is used and useful in providing IPCS and is therefore recoverable through regulated rates. These limitations undermine NCIC's claim that the generally applicable rate caps are insufficient for the facilities covered by its request.

II. The Basis for NCIC's Selection of Waiver Facilities Is Unclear

4. NCIC seeks waivers from the applicable audio rate caps for [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL].[7] It is unclear how these facilities were chosen for inclusion in the request for waiver.

   a. Of these, [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL].

---

6 [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]

7 [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]

8 *See*, NCIC Request for Waiver, Exhibit A; NCIC Exhibit C, tab "NCIC Audio Waiver Facilities."

b. NCIC's own analysis further indicates that [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] are profitable under the existing rate caps.[9] If these facilities are profitable given NCIC's reported data, it is unclear what the basis for the waiver is.

c. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] of these facilities would remain unprofitable even under NCIC's proposed waiver rates. This raises questions of how the requested level of relief was determined. Further, the fact that approximately [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] of NCIC's facilities would remain unprofitable highlights a reality that NCIC appears to accept: not every facility will be profitable on a stand-alone basis.

d. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL], the requested waiver rate cap is identical to the applicable FCC audio rate cap. This suggests that for these facilities, NCIC is not actually requesting relief.

5. Taken together, these results suggest that NCIC's analysis was not conducted at the facility level. A requested waiver for a particular facility should be supported by evidence showing that conditions specific to that facility cause it to incur costs above those reflected in the rate caps. Consequently, the rationale for the relief presented is unclear and does not provide a basis for evaluating the request for relief.

6. NCIC's request for waivers for video rates raises the same concern. NCIC seeks a video rate waiver for [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] in Exhibit A.[10] One third of the [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] leaving no evidence on which to base a waiver.[11] NCIC's own analysis also shows that [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] are profitable under the existing FCC video rate caps, while [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] remain unprofitable even under NCIC's proposed waiver rates. For [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] facilities, the requested waiver rate is lower than the applicable FCC video rate cap, meaning that no waiver is required to charge the requested rate.

---

9 Data for the California and Missouri Facilities is taken from the "Preemption" tab in Exhibit C to account for the rate caps applicable to intrastate audio IPCS calls. *See,* NCIC Request for Waiver, Exhibit A; NCIC Exhibit C, tabs "NCIC Audio Waiver Facilities" and "Preemption".

10 *See*, NCIC Request for Waiver, Exhibit A; NCIC Exhibit C, tab "NCIC Video Waiver Facilities."

11 *See*, NCIC Exhibit C, tab "NCIC Video Waiver Facilities."

7. NCIC seeks waivers for several facilities that are already substantially profitable, including cases in which the proposed waiver rates would increase profits by several times. These examples are especially difficult to reconcile with NCIC's claim that the existing rate caps prevent it from recovering its costs. For example, NCIC's analysis of audio IPCS data shows that [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] is already generating a profit of approximately [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] under the existing rate cap.[12] Under NCIC's proposed waiver rate, that profit would increase nearly [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. Similarly, [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. Because both facilities are already profitable by NCIC's own analysis, NCIC has not shown an economic basis for granting waivers that would increase their profits so substantially.

8. The same issue appears in NCIC's video IPCS analysis. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] is already generating a profit of approximately [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] under the existing video rate cap.[13] Under NCIC's proposed waiver rate, that profit would increase by roughly [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. Here too, the facility is already profitable, and NCIC has not explained why a waiver is necessary.

9. NCIC does not provide any analysis to show why the facilities included in its waiver request are different from other facilities that are not included or what causes them to incur their supposedly higher costs. Not every facility is expected to be profitable and as noted, NCIC appears to acknowledge this as some of the facilities for which it seeks a waiver would remain unprofitable even under the proposed rate caps. More fundamentally, from an economic perspective, a waiver cannot be evaluated without understanding what distinguishes these facilities from the rest.

---

[12] *See*, NCIC Exhibit C, tab "NCIC Audio Waiver Facilities."

[13] *See*, NCIC Exhibit C, tab "NCIC Video Waiver Facilities."

III. NCIC's Profitability Analysis is Driven by Its Cost Allocation Methodology

10. NCIC's facility level profit and loss analysis in its Exhibit C appears to be driven largely by its cost allocation methodology.[14] A review of Exhibit B indicates that [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL].[15] Instead, it calculated each cost category as a percentage of [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] and then applied the same percentage to each facility's [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. For example, [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] of total audio revenue.[16] As a result, for every individual facility, audio [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL].[17] Under this approach, a facility that [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] was automatically assigned more [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] regardless of whether serving that facility actually required greater expenditures in that category.

11. For example, [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. The resulting facility level profit or loss therefore reflects, to a substantial degree, how NCIC distributed company-wide costs rather than costs incurred at the individual facilities.

12. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. As discussed, these figures do not

---

[14] *See,* NCIC Exhibit C, tabs "NCIC Audio Waiver Facilities" and "NCIC Video Waiver Facilities."

[15] *See*, NCIC Exhibit B, tabs "C1-C2. Company-Wide Information", "D1. Facility Demand and Revenue", "D1. Facility Video IPCS Costs" and "D1. Facility Audio IPCS Costs."

[16] *See*, NCIC Exhibit B, tab "C1-C2. Company-Wide Information."

[17] *See*, NCIC Exhibit B, tabs "D1. Facility Demand and Revenue" and "D1. Facility Audio IPCS Costs."

reflect *recorded* facility level profits and losses but rather are a product of NCIC's allocation methodology. This creates the *appearance* of facility level profitability by distributing company-wide costs across individual facilities.

TABLE 1: PROFIT AND LOSS ANALYSIS FOR SIMILAR FACILITY PAIRS (AUDIO)

[BEGIN HIGHLY CONFIDENTIAL]

[redacted]

[END HIGHLY CONFIDENTIAL]

TABLE 2: PROFIT AND LOSS ANALYSIS FOR SIMILAR FACILITY PAIRS (VIDEO)

[BEGIN HIGHLY CONFIDENTIAL]

[redacted]

[END HIGHLY CONFIDENTIAL]

13. Taking NCIC's analysis at face value [BEGIN HIGHLY CONFIDENTIAL], [redacted] [END HIGHLY CONFIDENTIAL].[18] NCIC does not explain how it selected rates that would generate this level of profit or why that profit is necessary. A waiver based on an

[18] NCIC Exhibit C, tab "NCIC Audio Waiver Facilities" and tab "NCIC Video Waiver Facilities".

inability to recover costs should be tied to the amount needed to address the claimed shortfall. Yet, NCIC does not identify the rates required to break even, compare its requested rates with the minimum rates needed to recover its reported costs, or explain why rates producing millions of dollars in profit are warranted.

IV. NCIC's Waiver Analysis Assumes No Demand Response to Lower Rate Caps

14. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. This approach assumes that call volumes would remain unchanged under either rate. For facilities that charged rates above the current caps during the period reflected in the 2025 data, the lower capped rates would generally be expected to increase call volume.

15. Any increase in calling would affect both sides of the calculation. It would generate additional revenue, while also spreading fixed costs across a larger number of minutes and thereby reducing the average cost per minute.[19] This is consistent with the Commission's finding that larger facilities tend to have lower costs per minute as fixed costs are distributed across more minutes of use.[20] By holding minutes constant, NCIC does not account for this demand response or the resulting economies of scale. Its projected profits under the lower rate scenarios are likely understated and its projected losses are overstated.

V. NCIC's Analysis Appears to Include All Reported Cost Categories Without Establishing Which Costs Are Recoverable

16. NCIC's waiver analysis [BEGIN HIGHLY CONFIDENTIAL] [redacted]

[19] This, of course, assumes that marginal or incremental costs are not increasing. Such incremental cost would, if anything, likely decrease with call volumes. For example, a larger data connection to a facility would typically cost less per byte. This would only further reinforce or accelerate the expected decrease in costs.

[20] 2025 FNPRM, ¶ 22.

[redacted] [END HIGHLY CONFIDENTIAL].[21] It is unclear whether, and to what extent, all of these costs are recoverable or directly attributable to providing IPCS. For example, [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] is a broadly defined category that may include expenses that should not be borne by end users of IPCS. In the 2025 Order, the Commission states that the rate structure should be "limited to the recovery of used and useful expenses."[22] NCIC's analysis does not appear to distinguish between costs that satisfy this standard and costs that are merely reported in its data. As a result, its waiver analysis may overstate costs that are then compared with revenue under the applicable rate caps.

VI. Conclusion

17. NCIC's submission does not provide sufficient economic support for the requested waivers. The company does not explain how it selected the facilities included in its request or what distinguishes them from its other facilities. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. These irregularities make it difficult to determine the basis for the requested waivers or how the amount of relief was determined. In addition, the facility level profitability results appear to be driven largely by NCIC's cost-allocation methodology rather than by costs measured directly at each facility. [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL]. The resulting profit-and-loss calculations therefore do not reliably reflect the actual costs of serving the facilities for which relief is sought.

18. The analysis also likely overstates losses under the FCC rate caps because it assumes that usage would remain unchanged after rates decline. This assumption does not account for the expected increase in calling volumes at lower prices, which would generate additional revenue and spread fixed costs over more minutes and likely drive down variable costs, reducing average cost per minute. NCIC also appears to compare [BEGIN HIGHLY CONFIDENTIAL] [redacted]

---

[21] *See*, NCIC Exhibit C.

[22] 2025 FNPRM, ¶ 38.

[redacted] [END HIGHLY CONFIDENTIAL]. These limitations prevent the Commission from determining whether the identified facilities face unusual or facility-specific circumstances requiring relief, whether the claimed losses reflect actual facility level costs, whether the proposed waiver rates are necessary, or whether those rates would recover only appropriately recoverable costs. From an economic perspective, the current record therefore does not provide a sufficient basis for granting the requested waivers.