requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposed to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation to part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.1200 by revising paragraphs (e) and (f)(9) to read as follows:

§ 64.1200 Delivery Restrictions.

* * * * *

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls or texts to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02–278, FCC 03–153, ''Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.''

(f) * * *

(9) The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. Prior express written consent for a call or text may be to a single entity, or to multiple entities logically and topically associated. If the prior express written consent is to multiple entities, the entire list of entities to which the consumer is giving consent must be clearly and conspicuously displayed to the consumer at the time consent is requested. To be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same web page where the consumer gives consent.

* * * * *

[FR Doc. 2023–07069 Filed 4–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; FCC 23–19; FR ID 134047]

Incarcerated People's Communication Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment from the public on the scope and implementation of the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or the Act). Through the Martha Wright-Reed Act, Congress expanded the Commission's jurisdiction over incarcerated people's communications services and expressly directs that the Commission adopt just and reasonable rates and charges for incarcerated people's audio and video communications services in correctional institutions. Specifically, the Commission seeks comment on how to interpret the Act's language to effectively implement the statute consistent with Congress's intent. The Commission seeks comment on how Congress's amendments to sections 2(b), 3(1), and 276 of the Communications Act of 1934 (Communications Act) affect the Commission's regulatory authority over incarcerated people's communications services and how to draft regulations to implement such authority. The Commission also seeks comment on how the Martha Wright-Reed Act affects its ability to ensure that incarcerated people's communications services and associated equipment are accessible to and usable by incarcerated people with disabilities.

DATES: Comments are due on or before May 8, 2023; and reply comments are due on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 12–375 and 23–62, by either of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Electronic Comment Filing System (ECFS): *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Peter Bean, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–0786 or via email at *peter.bean@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in WC Docket Nos. 12–375 and 23–62; FCC 23–19, adopted on March 16, 2023 and released on March 17, 2023. The full text of this document is available on the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-19A1.pdf.*

Synopsis

1. Nearly twenty years have passed since Martha Wright-Reed and her fellow petitioners first sought Commission relief from the exorbitant telephone rates they had to pay to talk to their incarcerated family members. More than a decade has passed since the Commission began to respond to those

petitioners' request and embarked on a process to pursue just and reasonable rates for telephone calls between incarcerated people and their loved ones. The Commission's ability to achieve that objective, however, was limited by statutory provisions, as explained by the United States Court of Appeals for the District of Columbia Circuit in *Global Tel*Link* v. *FCC* (*GTL* v. *FCC*). Recently, Congress, through the Martha Wright-Reed Act, addressed these limitations and significantly expanded the Commission's jurisdiction over incarcerated people's communications services. In response to the D.C. Circuit's decision, and recognizing the increasing role of advanced communications, including video, in connecting incarcerated people with their families and friends, Congress now expressly directs that the Commission ''ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.''

2. In this item, the Commission builds on its efforts to date, bolstered by the new tools Congress has bestowed, and begins the process of implementing the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services. This item continues ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services. At the same time, this item initiates a new docket, WC Docket No. 23–62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act. The Commission seeks comment on how it should interpret the Act's language to ensure that it implements the statute in a manner that fulfills Congress's intent. The Commission also seeks comment on how the Act affects the Commission's ability to ensure that such services and associated equipment are accessible to and usable by incarcerated people with disabilities.

Statutory Authority

3. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act. Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156. The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the principal statutory limitations that have prevented the Commission from setting comprehensive and effective just and reasonable rates for incarcerated people's communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act to explicitly enable the Commission to require that rates for incarcerated people's communications services be just and reasonable, irrespective of the ''calling device'' used. It also expands the definition of payphone service in correctional institutions to encompass all advanced communications services (other than electronic messaging), including ''any audio or video communications service used by inmates . . . regardless of technology used.'' In addition, the new statute amends section 2(b) of the Communications Act to make clear that the Commission's jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people. And, in direct response to the *GTL* v. *FCC* decision, the Act expressly allows the Commission to ''use industry-wide average costs,'' as well as the ''average costs of service of a communications service provider'' in setting just and reasonable rates. The Martha Wright-Reed Act also requires that the Commission ''shall consider,'' as part of its ratemaking, ''costs associated with any safety and security measures necessary to provide'' telephone service and advanced communications services. Finally, the statute directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.

Background

5. In 2003, Martha Wright and her fellow petitioners, then-current and former incarcerated people and their relatives and legal counsel (collectively, the Wright Petitioners) filed petitions seeking a rulemaking to address ''excessive'' rates for incarcerated people's telephone services. The Wright Petitioners filed an alternative petition in 2007, in which they emphasized the urgent need for the Commission to act on ''exorbitant'' rates for calling services for incarcerated people. In 2012, the Commission commenced a rulemaking proceeding, releasing the *2012 ICS Notice,* 78 FR 4369, January 22, 2013, seeking comment on the Wright Petitioners' petitions and on establishing rate caps for interstate calling services for incarcerated people. Unless specifically noted, references herein to ''interstate'' include both interstate and international communications services.

6. In the *2013 ICS Order,* 78 FR 67956, November 13, 2013, that followed, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services (ICS), requiring all providers of those services to submit data on their underlying costs of service. It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.

7. In *2015 ICS Order,* 80 FR 79135, December 18, 2015, in light of record evidence of continued ''egregiously high'' rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps, and extending them to intrastate calls. The Commission used industry-wide average costs based on data from the First Mandatory Data Collection, explaining that this approach would allow providers to ''recover average costs at each and every tier.'' The Commission readopted the interim interstate rate caps it had adopted in 2013 and extended them to intrastate calls, pending the effectiveness of the new rate caps. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms.

8. As part of that framework, the Commission concluded that site commissions—payments made by inmate calling providers to correctional facilities or state authorities—were not costs reasonably related to the provision of inmate calling services and thus excluded those payments from the cost data used to set the rate caps. The Commission's rules define ''Site Commissions'' to mean ''any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility.''

9. In 2016, the Commission continued its reform of the inmate calling services marketplace by, among other things,

amending its rate caps to better allow inmate calling service providers to recover costs incurred as a result of providing such services, including certain correctional facility costs that the Commission found, based on the record then before it, were reasonably and directly related to the provision of inmate calling services.

10. Several parties appealed the Commission's *2015 ICS Order,* as well as a subsequent Commission Order on Reconsideration. The D.C. Circuit addressed the appeal of the *2015 ICS Order* in its 2017 decision in *GTL* v. *FCC,* holding that the Commission lacked statutory authority to regulate intrastate rates and vacating the intrastate rate caps adopted in the *2015 ICS Order.* The Court also ruled that the Commission's use of industry-wide average costs to set its interstate rate caps ''lack[ed] justification in the record and [was] not supported by reasoned decisionmaking'' in the *Order,* and it vacated a reporting requirement related to video visitation services, finding the requirement was ''too attenuated to the Commission's statutory authority.''

11. Finally, the Court concluded that the ''Commission's categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers.'' The Court directed the Commission to ''assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.''

12. Subsequently, in its *2020 ICS Notice,* 85 FR 67480, October 23, 2020, the Commission sought comment on, among other things: (1) its proposal to lower the interstate rate caps on an interim basis and cap international rates; (2) the steps necessary to address unreasonable rates; and (3) the methodology to be employed in setting permanent interstate and international rate caps. Subsequently, the Commission released the comprehensive *2021 ICS Order,* 86 FR 40340, July 28, 2021, in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time.

13. In the *2021 ICS Order,* the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It delegated authority to the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers' costs of providing service at correctional facilities. After seeking public comment, in January 2022, WCB and OEA released an Order adopting the data collection. Parties' responses to the Third Mandatory Data Collection were due June 30, 2022, and the Commission affirmatively incorporated those responses into the record in this proceeding.

14. Finally, in September 2022, while analyzing the data from the Third Mandatory Data Collection, the Commission issued the *2022 ICS Order,* 87 FR 75496, December 9, 2022, which adopted requirements to improve access to communications services for incarcerated people with communication disabilities and targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services. The Commission also issued the *2022 ICS Notice,* 87 FR 68416, November 15, 2022, seeking additional stakeholder input and evidence relating to additional reforms concerning incarcerated people with communication disabilities and providers' rates, charges, and practices in connection with interstate and international calling services. Among other things, the *2022 ICS Notice* sought comment on how to use inmate calling services providers' responses to the Mandatory Data Collections to establish ''reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people.''

Notice of Proposed Rulemaking

15. The ability to communicate through affordable audio and video communications is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. Studies consistently show that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. The Commission interprets the Martha Wright-Reed Act as providing it with the authority it needs to ensure that the charges associated with communications services for incarcerated people are just and reasonable and do not create an unnecessary deterrent to their ability to stay connected with the world outside their correctional facilities. The Commission invites comment on this interpretation.

16. Historically, the Commission used the term ''inmate calling services'' or ''ICS'' when referencing payphone service in the incarceration context. The Commission will now use the term ''incarcerated people's communications services'' or ''IPCS'' instead of ''inmate calling services'' or ''ICS'' to refer to the broader range of communications services subject to the Commission's jurisdiction as a result of the Act. In connection with this change in terminology, the Commission is also changing references to ''inmates'' to ''incarcerated people'' at the request of public interest advocates. The Commission seeks comment on codifying this updated terminology.

17. As a threshold matter, the Commission interprets the Martha Wright-Reed Act, taken as a whole, as enhancing and supplementing its existing jurisdiction, and effectively addressing the constraints imposed by the D.C. Circuit's interpretation of the Commission's jurisdiction in *GTL* v. *FCC,* and seeks comment on this interpretation. Specifically, the Commission interprets the statute as expanding its existing jurisdiction over communications services for incarcerated people as specified in the technical amendments and implementation sections of the law. The Martha Wright-Reed Act does not contain language limiting the Commission's pre-existing authority over international services. As a result, the Commission's authority over international services remains intact and will now include all incarcerated people's international communications services covered by the statute. In the Commission's view, through this Act, Congress effectively granted the Commission broad, plenary authority over the rates and charges for ''any [inmate] audio or video communications service.'' The Commission proposes to read the Act, in the context of the *GTL* decision and its aftermath, as removing any limitations on the Commission's authority over incarcerated people's audio and video communications services and empowering the Commission to prohibit unreasonably high rates and charges for, and in connection with, all such services, including intrastate services. The Commission seeks comment on this interpretation. To the extent that parties have a more limited view of the Commission's authority or suggest that the Commission must make additional jurisdictional findings, the Commission asks that the parties describe in detail those limits and additional findings.

The Commission further seeks comment on the ultimate goal of Congress in passing the Martha Wright-Reed Act, described in the legislative history as legislation that ''will help reduce financial burdens that prevent [incarcerated] people from being able to communicate with loved ones and friends.''

18. The Commission encourages all parties to comment on the issues raised in the *NPRM,* and specifically invites previous participants in the proceeding to update their prior submissions to reflect changed circumstances stemming from the passage of the Martha Wright-Reed Act. The Commission thus seeks renewed comment on all the issues raised in its prior Notice of Proposed Rulemakings in light of the statutory amendments contained in the Martha Wright-Reed Act. The Commission emphasizes that unresolved issues previously raised in WC Docket No. 12–375 remain pending and are now incorporated in this dual-captioned proceeding to be addressed in forthcoming Commission orders considering the record developed in response to the *NPRM* to the extent applicable. As part of their responses, parties are welcome to update filings previously submitted regarding these pending matters in light of the enactment of the Martha Wright-Reed Act.

19. *Purpose and Scope of Martha Wright-Reed Act Amendments.* As part of the commission's effort to fulfill Congress's directives in the Martha Wright-Reed Act, the Commission seeks comment on the effect of the amendments Congress made to the authority granted to the Commission in section 276(b)(1)(A) of the Communications Act. Do commenters agree that, taken as a whole, these amendments fundamentally expand the scope of the Commission's authority pursuant to sections 2(b) and 276 and effectively moot the concerns the D.C. Circuit raised about the Commission's jurisdiction in *GTL* v. *FCC*?

20. Prior to the enactment of the Martha Wright-Reed Act, section 276(b)(1)(A) focused on requiring that service providers be ''fairly compensated'' for ''each and every'' completed call. Congress has now eliminated the ''each and every'' call language and added a new dimension to section 276 of the Communications Act by requiring the Commission to ''establish a compensation plan to ensure that . . . all rates and charges'' for incarcerated people's communications services ''are just and reasonable.'' The Commission seeks comment on whether the amendments to section 276(b)(1)(A) change the central focus of the section from ensuring that payphone service providers are ''fairly compensated'' for voice calls with little, if any, ''considerations of fairness to the consumer,'' to a more balanced approach emphasizing consumers' (particularly incarcerated people's) and providers' right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of ''payphone service.'' How should the Commission balance these interests going forward? Does the addition of ''just and reasonable'' inform the meaning of ''fair compensation?'' If not, how should the Commission interpret Congress's apparent emphasis on affordability for consumers? Conversely, does the requirement that providers be ''fairly compensated'' for completed calls inform the meaning of ''just and reasonable?'' In this regard, the Commission seeks comment, generally, on the relationship between the requirement that providers be ''fairly compensated'' and the requirement that their rates and charges be ''just and reasonable.''

21. Relatedly, the Commission seeks comment on Congress's intent in striking the ''per call'' and ''each and every [call]'' language from section 276(b)(1)(A), particularly the effect of these changes to the ''fairly compensated'' requirement in the context of communications services for incarcerated people under this new Act. As originally conceived, the ''fairly compensated'' requirement of section 276(b)(1)(A) was designed to fix the specific problem of uncompensated payphone calls at that time. But the situation is quite different in the context of communications services for incarcerated people. Providers generally receive compensation for the calls they carry through the per-minute rates charged to consumers of calling services for incarcerated people. No other entity receives compensation for calls other than through a contractual arrangement with the provider. It is therefore difficult to discern what the ''fairly compensated'' requirement adds to the ''just and reasonable'' requirement in the context of communications services for incarcerated people, especially given the historical backdrop underlying this provision. Prior to the enactment of the Martha Wright-Reed Act, the Commission reasoned that ''fair compensation'' in the context of audio calling services for incarcerated people ''does not mean that each and every completed call must make the same contribution to a provider's indirect costs. Nor does it mean a provider is entitled to recover the total 'cost' it claims it incurs in connection with each and every separate inmate calling services call.'' Instead, the Commission found compensation to be fair ''if the price for each service or group of services 'recovers at least its incremental costs, and no one service . . . recovers more than its stand-alone cost.' ''

22. The Commission interprets the elimination of the ''per call'' and ''each and every [call]'' language from section 276 as a signal of Congress's intent to restrict the application of the ''fairly compensated'' requirement with respect to communications services for incarcerated people by no longer requiring the Commission to ensure that its compensation plan allows for ''fair'' compensation for ''each and every'' completed call. The Commission seeks comment on this interpretation. This interpretation appears to be consistent with Congress's decision to allow the Commission to set rates based on average costs. Do commenters agree that the Commission is no longer required to ensure that providers are ''fairly compensated'' for *every* call they carry or facilitate? Does elimination of the ''per call'' language give the Commission additional flexibility to consider rates or rate caps that apply to units others than minutes? What independent meaning does the ''fairly compensated'' requirement have for communications services for incarcerated people in light of the other provisions of the Martha Wright-Reed Act, including the newly-added requirement to ensure ''just and reasonable'' rates and charges? For example, does the ''fairly compensated'' requirement circumscribe the Commission's analysis of ''just and reasonable'' rates? Does it require the Commission to ensure that providers are able to recover their costs of providing incarcerated people's communications services, at least on average, even if not on a per-call basis? Does the fair compensation requirement affect the Commission's analysis of other issues related to incarcerated people's communications services, such as the payment of site commissions or the imposition of ancillary service charges? The Commission seeks comment on these questions.

23. *Other Calling Devices.* The Martha Wright-Reed Act extends the Commission's authority over communications services to include not just incarcerated people's audio and video communications using traditional payphones, but also their

communications using ''other calling device[s].'' Given the absence of additional qualifying language in the new statute, the Commission proposes to interpret ''other calling device[s]'' broadly to encompass all devices that incarcerated people either use presently or may use in the future to communicate with individuals not confined within the incarcerated person's correctional institution. Under this proposed interpretation, ''other calling device[s]'' would encompass all wireline and wireless phones, computers, tablets, and other communications equipment capable of sending or receiving the audio or video communications described in section 276(d), regardless of transmission format.

24. That interpretation also would encompass all wireline and wireless equipment, whether audio, video, or both, that incarcerated people with disabilities presently use to communicate, through any payphone service, with the non-incarcerated, including but not limited to videophones, captioned telephones, and peripheral devices for accessibility, such as braille display readers, screen readers, and TTYs. Where a person with a disability must use a peripheral device to access an advanced communications service or device, that service or device is required to be compatible with such peripheral devices, unless that is not achievable. The Commission's interpretation would also encompass other potential devices, not yet in use, to the extent incarcerated people use them in the future to communicate with people not confined within the incarcerated person's correctional institution. The Commission seeks comment on this proposal. Are there any additional devices that should be included within ''other calling device[s]''? Conversely, are there any devices that are excluded from the Commission's jurisdiction? If so, what is the statutory basis for concluding that Congress intended to exclude audio or video communications using those devices from the Commission's jurisdiction?

25. *Just and Reasonable.* The Commission next seeks comment on the Martha Wright-Reed Act's addition to section 276(b)(1)(A) requiring that the Commission ''establish a compensation plan to ensure that . . . all rates and charges'' for incarcerated people's communications services be ''just and reasonable.'' This language mirrors the ''just and reasonable'' language in section 201(b) of the Communications Act and other federal statutes, which has a long interpretive history.

26. The ''traditional regulatory notion of the 'just and reasonable' rate was aimed at navigating the straits between gouging utility customers and confiscating utility property.'' Setting ''just and reasonable'' rates therefore ''involves a balancing of the investor and the consumer interests.'' Given the parallel between the ''just and reasonable'' language in section 276(b)(1)(A) and the same language in section 201(b) and other federal statutes, the Commission proposes to interpret ''just and reasonable'' in section 276(b)(1)(A) to have the same meaning given to that term in section 201(b) and relevant precedent interpreting that standard in the ratemaking context. The Commission seeks comment on this proposal. To the extent commenters disagree, how should the Commission understand the ''just and reasonable'' requirement in section 276(b)(1)(A) and how would the Commission distinguish between the ''just and reasonable'' requirement in section 276(b)(1)(A) and the ''just and reasonable'' requirement in section 201(b) if they are not the same?

27. The Commission also seeks comment on how the ''just and reasonable'' standard in section 276(b)(1)(A) relates to the issue of site commission payments. How should section 276(b)(1)(A)'s requirement that rates for communications services for incarcerated people be ''just and reasonable'' affect the Commission's treatment of site commission payments? In implementing the ''just and reasonable'' requirement in section 201(b), the Commission traditionally relies on the ''used and useful'' framework to separate costs and expenses that may be recovered through rates from those that may not.

28. Under the ''used and useful'' framework, the determination of ''just and reasonable'' rates focuses on affording the regulated entity an opportunity to ''recover[] prudently incurred investments and expenses that are 'used and useful' in the provision of the regulated service for which rates are being set.'' That framework, which ''is rooted in American legal theory and particularly in the constitutional limitations on the taking of private property for public use,'' balances the ''equitable principle that public utilities must be compensated for the use of their property in providing service to the public'' with the ''[e]qually central . . . equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.'' In applying these principles, ''the Commission considers whether the investment or expense 'promotes customer benefits, or is primarily for the benefit of the carrier.' '' Should the Commission apply the ''used and useful'' ratemaking concept as a limiting factor in considering the costs and expenses allowable in the rates for communications services for incarcerated people? Why or why not? If not, what principle or framework should the Commission use in evaluating ''just and reasonable'' rates and charges under section 276(b)(1)(A) and why would any such principle or framework be preferable to the well-established framework the Commission routinely uses when implementing identical language in section 201(b)?

29. The Commission invites comment on how it should apply the ''used and useful'' concept, or any alternative principle or framework commenters suggest, to providers' site commission payments. The Commission has previously sought broad comment on the ratemaking treatment of those payments, including on whether it is appropriate to permit providers to recover any portion of their site commission payments from end users through calling services rates and on whether it ''should preempt state and local laws that impose these payments on interstate and international'' inmate calling services. The Commission incorporates its prior questions on site commissions into the *NPRM,* and requests that commenters address each of them in relation to each incarcerated people's communications service now subject to the Commission's ratemaking authority. Should the Commission's ratemaking calculations include providers' site commission payments only to the extent, if any, that they compensate facilities for used and useful costs that the facilities themselves incur? Why or why not? And if the Commission takes that approach, how should it determine the facilities' used and useful costs? Should the Commission make generalized findings as to what used and useful costs facilities typically incur and allow each facility to show through the waiver process that its costs exceed the typical amount? Or should the Commission instead allow those costs only to the extent an individual facility establishes the extent to which it incurs used and useful costs?

30. *Fairly Compensated.* The Commission also invites comment on how the requirement that providers be ''fairly compensated . . . for completed intrastate and interstate communications'' should affect the Commission's ratemaking decisions, including its treatment of site

commissions. What factors should the Commission consider in determining whether a provider is fairly compensated for completed communications? Does the ''fairly compensated'' requirement mean that the Commission must include all or part of providers' site commission payments in its ratemaking calculus irrespective of their utility in the completion of incarcerated people's communications? Why or why not? How should the answers to these questions affect the Commission's policies regarding site commissions and, in particular, the Commission's decision on whether it should preempt state and local laws that impose site commission payments on incarcerated people's communications services providers?

31. *Rates and Charges.* The Commission next seeks comment on what constitutes the ''rates and charges'' mentioned in the amendments to section 276(b)(1)(A). The Commission proposes to interpret ''rates'' to refer to the amounts paid by consumers of incarcerated people's communications services for calls or other audio or video communications covered by the statute or the Commission's rules. And the Commission proposes to interpret ''charges'' to refer to all other amounts assessed on consumers of incarcerated people's communications services in connection with those services. These would include ancillary service charges, authorized fees, mandatory taxes and fees, and any other charges a provider may seek to impose on consumers of communications services for incarcerated people. These interpretations are consistent with the Commission's rules, which currently carve out ancillary service charges, authorized fees, and mandatory taxes and fees as separate from rate caps. Do commenters agree with the Commission's proposed interpretations of these terms? If not, what alternative interpretations do commenters propose and what is the justification for these alternative interpretations?

32. *Compensation Plan.* The Commission also proposes finding that setting industry-wide rate caps or rate caps applying to groups of providers, grouped by categories such as facility size or other characteristics, as opposed to separate rates for individual providers, would be sufficient to ''establish a compensation plan,'' as required by the Act. The Commission notes that setting industry-wide rate caps for incarcerated people's communications services would be consistent with the Commission's previous rules regulating rates for these services. Do commenters agree that mandatory rate caps would constitute a ''compensation plan'' within the meaning of section 276(b)(1)(A)? Are there other rate regimes that the Commission should consider that are consistent with—or required by—section 276(b)(1)(A)? If so, what are they and how do they square with the statutory language and Congress's intent?

33. The Commission's current rate caps for inmate calling services limit the amount providers may charge any individual consumer for any particular call. Other forms of rate cap regulation allow providers to charge different amounts for particular services as long as the total charges (weighted by demand) for all services do not exceed an overall cap, or specify that the providers' total revenues must not exceed a specified revenue cap. The Commission seeks comment on whether a regime that constrains rates and ancillary service charges collectively across all service categories (*e.g.,* audio communications services and video communications services) and allows providers to set different rates and charges for the various different services (*e.g.,* lower rates and charges for audio communications services and higher rates and charges for video communications services or vice versa) would constitute a ''compensation plan'' sufficient to ensure just and reasonable rates and that providers are fairly compensated for completed communications, as required by the Act. Commenters should address how such a regime would protect individual consumers against unreasonably high rates. Would sub-caps on rates and charges for different services within each service category be needed and, if so, how should they be structured?

34. The Commission seeks comment on whether section 276(b)(1)(A)'s mandate that the Commission ''establish a compensation plan to ensure that . . . all rates and charges'' for incarcerated people's communications services be ''just and reasonable'' extends to ensuring that the providers' practices, classifications, and regulations for or in connection with those services are just and reasonable. Specifically, does Congress's reference to a ''compensation plan'' in section 276(b)(1)(A) allow—or require—that the Commission go beyond simply ''determining just and reasonable rates,'' as set forth in section 3(b) of the Martha Wright-Reed Act, and ensure that providers implement those rates justly and reasonably? The Commission asks for detailed comment on this area, including on the extent of its section 276(b)(1)(A) authority, if any, to address providers' practices, classifications, and regulations, as well as any limitations on that authority. What other authority, if any, does the Commission have to address the practices, classifications, and regulations for or in connection incarcerated people's communications services?

35. The Commission also asks how its authority to address unjust and unreasonable ''practices, classifications, and regulations'' under section 201(b) of the Communications Act should affect the Commission's treatment of practices, classifications, and regulations for or in connection with incarcerated people's communications services. The Commission has previously recognized that where it ''has jurisdiction under section 201(b) . . . to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.'' Given the provisions of the Martha Wright-Reed Act granting the Commission authority over intrastate communications services and advanced communications services generally in the incarceration context, the Commission asks whether it may similarly extend its section 201(b) authority to regulate practices, classifications, and regulations for or in connection with incarcerated people's intrastate communications services that were previously subject to state regulation and video services that were unregulated prior to the enactment of the Act. Can providers practicably separate incarcerated people's communications services into interstate and intrastate, or regulated and nonregulated, components?

36. *Advanced Communications Services.* Prior to the enactment of the Martha Wright-Reed Act, the Commission's authority under section 276 was limited to ''payphone service,'' a term then defined as ''the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.'' The new Act expands the Commission's authority over services in correctional institutions under section 276 to include ''advanced communications services,'' as defined in sections 3(1)(A), (B), (D), and new (E) of the Communications Act.

37. Those provisions of section 3(1), in turn, define ''advanced communications services'' as including

(1) ''interconnected VoIP service,'' (2) ''non-interconnected VoIP service,'' (3) ''interoperable video conferencing service,'' and (4) ''any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.'' Apart from the restriction to communications with individuals ''outside the correctional institution'' in section 3(1)(E), and the exclusion of ''electronic messaging service'' from the revised definition of ''payphone service,'' the language in the new statute appears to confer on the Commission broad jurisdiction to develop a compensation plan for the categories of audio and video communications now included in the definition of ''payphone services'' and includes no other limitation except for a limitation to communications ''by wire and radio'' arising from sections 1 and 2(a) of the Communications Act. The Commission seeks comment on this unequivocal expansion of its statutory authority under section 276, including how each of the first three types of ''advanced communications services'' provides additional statutory authority under section 276 beyond what is added by new subsection 3(1)(E) and how each type applies to communications services for incarcerated people.

38. The Martha Wright-Reed Act extends the Commission's ratemaking authority to ''interoperable video conferencing service'' by including sub-paragraph 3(1)(D) of the Communications Act in the definition of ''payphone service'' in section 276(d) of that Act. The Communications Act defines ''interoperable video conferencing service'' as ''a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.'' The Commission has a pending proceeding seeking further comment on the kinds of other services that should be encompassed by the term ''interoperable video conferencing services.'' The Commission seeks comment on which video services used, or potentially used, by incarcerated people are included within this definition and whether any are excluded. Are video visitation services used by incarcerated people ''interoperable video conferencing service[s]'' under this statutory definition? How should the Commission interpret the phrases ''real-time video communications'' and ''enable users to share information of the user's choosing'' in the context of incarcerated people's communications services? Are there types of video communications services for incarcerated people that are not real-time? If so, what are they? Would it include real-time video that is based in applications or other technologies? Additionally, given the statutory phrase ''any audio or video communications . . . regardless of technology used'' in new section 3(1)(E), the Commission seeks comment on how to address non-traditional audio and video communications technologies or applications that could effectively enable providers of communications services to incarcerated people to circumvent the Commission's rate-making authority. Consistent with Congressional intent, the Commission will be vigilant in overseeing the provision of all forms of audio and video communications, and invite comment on the steps the Commission should take to ensure that its rules adequately address all forms of audio and video communications subject to its authority.

39. The Commission seeks comment on the proper scope of the limiting phrase ''used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held'' as used in new section 3(1)(E) of the Communications Act. The Commission notes that phrase appears only in section 3(1)(E) and there is no language within section 3(1)(E), or elsewhere in the Communications Act or the Martha Wright-Reed Act, extending this limitation to the other categories of advanced communications services identified in section 2(a)(2) of the Martha Wright-Reed Act. More specifically, the Commission interprets the use of the limiting phrase of new subsection 3(1)(E) as not applying to the other subsections of section 3(1) that are now referenced in section 276(d). In addition, this limiting phrase has no application to any other aspect of section (3)(1) outside the context of section 276. The Commission invites comment on the proper scope of the limitation included in section 3(1)(E).

40. The Commission proposes to interpret the phrase ''any audio or video communications service'' in subsection 3(1)(E) as encompassing every method that incarcerated people may presently, or in the future, use to communicate, by wire or radio, by voice, sign language, or other audio or visual media. The Commission seeks comment on this proposal. The Commission also seeks comment on how to interpret the phrase ''used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.'' Does this phrase include all types of audio or video communications services—regardless of whether the communication is interstate, intrastate, or international—that an incarcerated person uses to communicate with a person not confined within the incarcerated person's correctional institution, regardless of that person's physical location at the time of the communication? In other words, if a calling service is typically used for communicating with family, friends, or loved ones, is that person's physical location at the time of the call determinative, so that, for example, the Commission's authority over an incarcerated person's calls to family members' cell phones might cease when the family members enter the incarcerated person's correctional institution as opposed to when they are at their homes?

41. The Commission seeks comment on the meaning of the phrase ''outside the correctional institution where the inmate is held'' with reference to the audio and video communications services covered by section 2(b)(3) of the Martha Wright-Reed Act. Does it refer to any physical location not subject to involuntary confinement restrictions? As discussed in the *NPRM,* a chief defining characteristic of correctional institutions is that they are places where people are involuntarily confined. Could physical locations ''outside'' the correctional institution include any location not used for confinement purposes, including rooms designated for communicating with, or visitation by, persons not subject to confinement, including family, friends, and members of the general public not subject to confinement? Similarly, could ''individuals outside the correctional institution'' refer to people who are neither confined in nor employed by the institution, even if they are temporarily located on the premises of the institution for purposes of communicating with incarcerated individuals through some form of audio or video communications service? The Commission invites comment on these potential interpretations. Are there additional types of communications encompassed within these statutory phrases? Conversely, are there other types of communications that fall outside those phrases? For example, should the Commission interpret the statutory language as excluding all audio and video communications between employees of the correctional institution and incarcerated people from

the definition of ''payphone service'' as revised by the Act?

42. Under certain of the interpretations suggested above, the Commission's newly expanded authority under section 276(b)(1)(A) could extend to onsite video visitation services (*i.e.,* services in which video communication between persons located within the same building or site substitute for traditional in-person visitation), either because: (1) they are interoperable video conferencing services within the meaning of section 3(1)(D) or because (2) they are video services within the meaning of section 3(1)(E). In the latter case, incarcerated people would use onsite video visitation services to communicate with persons not confined in or employed by a correctional institution—and with whom the incarcerated person is only allowed to communicate via an audio or video communications service and only when they are at a location where the incarcerated person is unable to be. The Commission seeks comment on whether these interpretations of the Martha Wright-Reed Act are consistent with the language of the statute and would further the purposes of the Act. The Commission notes that on-site video visitation services are typically operated by providers of inmate calling services as currently defined in the Commission's rules, and the same services and equipment may be used by an incarcerated person regardless of whether the ''visitor'' is on-site, at home, or at another remote location.

43. The Commission also seeks comment on whether the phrase ''regardless of technology used'' in section 3(1)(E) of the Communications Act encompasses the technology used for video visitation, now and in the future. The record shows that some institutions are restricting or prohibiting in-person visits in favor of video visitation and a visitor may lack sufficient broadband service or equipment to enable video visitation from their home or elsewhere. To the extent a service provider charges for video visitation at the facility, should those charges be subject to the Commission's ratemaking authority?

44. In light of these concerns, the Commission seeks comment on interpreting the Act broadly to achieve its stated goal of ensuring ''just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.'' Further, the Commission seeks comment on whether a broad interpretation will advance the goal of section 716 of the Communications Act to ensure that services and equipment used for advanced communications services are accessible to and usable by people with disabilities. The Commission invites comment on whether a broad interpretation would be a correct reading of section 2(b)(3) of the Martha Wright-Reed Act. Are there other onsite audio and video services that the Commission should consider within its authority under this interpretation of the statutory language? Finally, if the Commission interprets video communications services as including onsite video visitation, the Commission seeks comment on how it can ensure that all forms of onsite video visitation services within the scope of its authority that are used to communicate with non-incarcerated people are subject to the rules the Commission adopts to implement the Act. Are there instances where correctional institutions impose charges on video visitation or predicate its use on charges for other related or unrelated services?

45. *The Commission's Authority Over Intrastate Services.* The Martha Wright-Reed Act amends section 2(b) of the Communications Act, which generally acts as a limitation on the Commission's jurisdiction over intrastate communications, as well as a rule for interpreting other provisions of the Communications Act. Section 2(b) enumerates certain statutory provisions that are not subject to the generally applicable limitation on the Commission's jurisdiction. When Congress enacted the Martha Wright-Reed Act, it added section 276 of the Communications Act to section 2(b)'s list of exceptions to the general limitation on the Commission's authority over intrastate communications. This change, when coupled with the broad language in the amended section 276, suggests that Congress intended to grant the Commission authority over all intrastate communications services between incarcerated people and non-incarcerated people with whom they wish to communicate. Do commenters agree?

46. The Commission proposes finding that, in combination, the amendments to section 276 and the addition of section 276 to the exceptions contained in section 2(b) of the Communications Act grant the Commission plenary authority over intrastate communications services provided to incarcerated people. Specifically, the Commission's authority to adopt rules for intrastate incarcerated people's communications service is further supported by section 276(b)(1)'s directive that the Commission adopt regulations to implement, among other things, section 276(b)(1)(A), along with the broad authority in provisions such as section 201(b) of the Communications Act, which authorizes the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.''

47. In addition, the Commission proposes finding that its expanded jurisdiction over intrastate communications extends to any communications service now covered by section 276, including the ''advanced communications services'' added to the definition of ''payphone service.'' The revised definition of advanced communications services includes ''any audio or video communications service used by inmates . . . regardless of technology used,'' which was added to the definition of ''payphone service'' for purposes of section 276 of the Communications Act. The Commission seeks comment on these proposed findings and on whether the inclusion of section 276 in the section 2(b) exemption list now provides the Commission with definitive authority to regulate all audio and video communications services covered by section 276.

48. *The Commission's Approach to Ratemaking.* Section 3(a) of the Martha Wright-Reed Act directs the Commission to ''promulgate any regulations necessary to implement'' that Act, including its mandate that ''all rates and charges'' for completed payphone communications be ''just and reasonable.'' Below, the Commission seeks comment on how it can best discharge this statutory mandate.

49. The Commission's prior efforts to ensure just and reasonable rates for inmate calling services focused on capping, on an industry-wide basis, the rates and ancillary services charges providers could assess for, or in connection with, voice calls, based on providers' costs. The Commission seeks comment on whether it should follow this approach with regard to all communications services provided to incarcerated people. Should the Commission instead set separate caps on rates and charges for different types of providers or, alternatively, for each individual provider? The Commission asks that commenters address the relative benefits and burdens of each approach, including the potential impact on consumers, providers, and Commission resources.

50. The Commission also seeks comment on whether it should set separate rate and ancillary services rate caps for audio and video services. Do the costs of providing audio and video

services vary significantly? Do the costs of ancillary services depend on whether these services are ancillary to audio or video services? Would separate caps for different services benefit incarcerated people and their families, and other consumers? Would providers incur additional costs if separate rate caps were implemented, and if so, how would these costs compare to any benefits consumers might receive from separate caps? Is there a risk that separate caps for different services could be exploited in a way that would harm consumers? What burdens, if any, would separate rates and charges impose on providers? Would it be difficult for providers to separate their costs in a meaningful way for different services for purposes of submitting the data the Commission would need to set separate rate caps? Are there any voice and video services that are, or could be, combined such that it would be burdensome to assess separate rates and charges for them? If so, what are they? Should the Commission allow voice and video services to be offered as bundles? If so, should the Commission require that all rates, charges, and terms and conditions of service be included in the same contract, and the rates and charges for each type of service and bundle be separately listed so as to be easily identifiable?

51. In the event the Commission decides to set separate caps for audio and video services, should the Commission subdivide either category into different types of services for ratemaking purposes? If so, what should those subcategories be? What types of audio and video services do providers offer? Do providers offer different audio and video services as part of a package? Do different types of audio and video services make different demands on provider resources and, if so, how should the Commission reflect those differences in its ratemaking? If the Commission were to set separate caps for different services, how would the Commission decide what caps to apply to any new covered services providers may introduce in the future?

52. Assuming that the Martha Wright-Reed Act expands the Commission's existing jurisdiction over ratemaking to include all communications services for incarcerated people, including intrastate services, the Commission must ensure that intrastate rates are also just and reasonable. In the past, the Commission did not distinguish between costs for interstate and intrastate voice services in setting rate caps for interstate inmate calling services. Rather it adopted a total industry cost approach, explaining that: ''Our calculations use total industry costs, both interstate and intrastate, because the available data do not suggest that there are any differences between the costs of providing interstate and intrastate inmate calling services. Nor do such data suggest a method for separating reported costs between the intrastate and interstate jurisdictions that might capture such differences, if any. Finally, providers do not assert any such differences.''

53. The Commission followed this total cost approach in the *2021 ICS Order,* as detailed in the Appendices to that *Order.* The Commission proposes to take a similar approach in implementing the Martha Wright-Reed Act and to continue to treat costs for interstate voice services and intrastate voice services as having identical per-unit costs. Do commenters agree with this approach? If not, they should address in detail how costs differ between interstate and intrastate voice services and how to measure these differences. Commenters should also address whether such differences are substantial enough to warrant different rate caps based on the jurisdiction of a voice call, taking into account the burden associated with such a separation. In the time since the *2020 ICS Notice,* have providers developed ways to separate intrastate voice costs from interstate voice costs? What burdens would be associated with such a separation process?

54. The Commission also seeks comment on whether it should take a total cost approach to video services and assume that the average costs for intrastate video communications services are identical to the average costs for interstate video communications. If parties disagree with that assumption, they should explain how costs differ based on the jurisdictional nature of video communications. Can the jurisdictional nature of video communications services even be determined or are such services inherently interstate? Parties should also address whether such differences are substantial enough to warrant different rate caps for interstate and intrastate video communications services. Is there a way for providers to separate the costs associated with interstate video services in a meaningful way from the costs associated with intrastate video services? What burdens would be associated with such a separation?

55. The Commission invites comment on the types of pricing plans it should allow for the audio and video communications services subject to its section 276 ratemaking authority. The Commission's rules currently prohibit providers from charging incarcerated people or their loved ones for calls on a per-call or per-connection basis and require providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps. This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis. In the *2022 ICS Notice,* the Commission sought comment on whether it should authorize pilot programs under which providers of incarcerated people's calling services could offer alternative pricing structures for voice calls, including structures under which an incarcerated person would receive a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge. Do commenters agree that nothing in the Act precludes the Commission from adopting alternative pricing structures for audio or video communications, should the record support this action?

56. The Commission seeks comment on whether it should require a specific pricing structure for incarcerated people's video communications services. If so, what should that structure be? Should the Commission require that providers offer such video communications services at per-minute rates? If not, what alternative structure do commenters support, and what would the benefits and burdens be of any alternative structure? How can the Commission best ensure that the rates for video communications services are just and reasonable? The Commission seeks broad comment on the pricing structures under which providers presently offer video services to incarcerated people and whether those structures can harm consumers or lead to unreasonably high rates. What would be the benefits or burdens of allowing providers to continue to use their current pricing structures for video communications services, either under pilot programs or on a permanent basis? Should the Commission allow providers to use these alternative structures for audio services? If so, what conditions should the Commission impose on providers to ensure just and reasonable rates for both incarcerated people's audio and video communications services?

57. *The Commission's Use of Data in Ratemaking.* Section 3(b)(1) of the Martha Wright-Reed Act specifies that the Commission ''may use industry-wide average costs of telephone service and advanced communications services'' in promulgating implementing

regulations and determining just and reasonable rates. That section also specifies that the Commission may use ''the average costs of service of a communications service provider'' for such purposes. In the Commission's view, these authorizations, when read in conjunction with the elimination of the requirement that providers be ''fairly compensated for each and every'' completed call, respond directly to the D.C. Circuit's holding that, in the *2015 ICS Order,* the Commission had improperly used industry-wide average costs in setting interstate rate caps. The Commission invites comment on its view that the language of the new statutory provisions allows, but does not require, the Commission to rely on average costs—either on an industry-wide, or provider-specific basis—to set rate caps for all forms of incarcerated people's communications services.

58. The Commission also seeks comment on the meaning of ''industry-wide,'' as used in section 3(b)(1) of the Act. Should the Commission interpret ''industry-wide'' as referring exclusively to entities that provide ''any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used''? Or should the Commission read ''industry-wide'' as referring collectively to all providers of ''telephone service and advanced communications services?'' Alternatively, should the Commission interpret ''industry-wide'' to refer only to some subset of providers of incarcerated people's communications services? Similarly, does the phrase ''average costs of service of a communications service provider'' refer to all communications service providers? Or only to providers of incarcerated people's communications service or even an individual provider of communications services for incarcerated people? The Commission asks that parties explain the basis for their preferred interpretation of these statutory phrases.

59. The Commission seeks comment on the best approach to using industry-wide average costs to determine just and reasonable rates for both traditional telephone service and advanced communications services provided to incarcerated people. Are there any circumstances under which setting rates based on industry-wide average costs would result in unreasonably high or unreasonably low rates for any particular group of providers or consumers? If so, does the statutory language permit the Commission to divide the relevant industry into groups based on their average costs per unit of service or specific cost-related characteristics, such as whether the provider serves facilities primarily located in rural or urban areas; and, if so, which specific cost-related characteristics should the Commission consider? If the Commission takes that step, what additional steps should it take to discharge its obligation, under section 3(b)(2) of the Martha Wright-Reed Act, to ''consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities''?

60. The Commission also seeks comment on how it might use ''the average costs of service of a communications service provider'' to set just and reasonable rates. Would this statutory language allow the Commission to use the average costs of an efficient (*i.e.,* least cost) provider holding quality and provided services constant, or a group of efficient providers, to set industry-wide rates or to set rates for a subset of the industry? Does any commenter view the statutory language as allowing—or even requiring—the Commission to set rates for each provider based on that provider's average costs of service? Assuming the Commission has the flexibility to adopt rate caps on an industry-wide or individual-provider basis, which approach would best allow it to ensure that rates and charges are just and reasonable? Additionally, the Commission seeks comment on whether using average costs of service to set rates for smaller subsets of the industry would raise any confidentiality concerns and whether those concerns might be outweighed by the public interest benefits of using average costs.

61. *Necessary Safety and Security Costs.* The Commission seeks comment on the directive in section 3(b)(2) of the Martha Wright-Reed Act that the Commission ''shall consider costs associated with any safety and security measures necessary to provide'' telephone service and advanced communications services to incarcerated people. The Commission seeks comment on what ''shall consider'' means. How much discretion, if any, does that phrase give the Commission in evaluating safety and security costs? Is the Commission required to treat all safety and security costs identified by providers or facilities as costs recoverable through rates for communications services for incarcerated people? Could the Commission ''consider'' such costs, but ultimately decide to exclude all of them from its rate calculations as unnecessary? Is there a middle ground whereby the Commission could consider safety and security costs and decide to include some of those costs, but exclude others, from its rate calculations? To what extent does the Commission's duty to consider ''costs'' depend on the strength or credibility of the record documenting such costs?

62. The Commission seeks comment on several aspects of the phrase ''necessary safety and security measures.'' How is the Commission to understand the word ''necessary'' here? How does a standard of ''necessary'' compare to the ''used and useful'' standard the Commission traditionally uses in analyzing whether rates are just and reasonable rates under section 201(b)? The Commission has, in the past, interpreted ''necessary'' as having essentially the same meaning as ''used and useful.'' But the D.C. Circuit has previously found that interpretation overly broad, explaining that ''necessary'' ''must be construed in a fashion that is consistent with the ordinary and fair meaning of the word, *i.e.,* so as to limit 'necessary' to that which is required to achieve a desired goal.'' The Commission later revised its interpretation of ''necessary'' in line with a D.C. Circuit opinion. For example, the Commission concluded that equipment is ''necessary'' for purposes of interconnection or access to unbundled network elements under section 251(c)(6) if ''an inability to deploy equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.'' The D.C. Circuit also observed that ''courts have frequently interpreted the word 'necessary' to mean less than absolutely essential, and have explicitly found that a measure may be 'necessary' even though acceptable alternatives have not been exhausted.'' How should the Commission implement the D.C. Circuit's guidance in this context? What is the ''ordinary and fair meaning'' of the word ''necessary'' as used in section 3(b)(2) of the Martha Wright-Reed Act?'' Should the Commission interpret ''necessary'' in that section to mean something less than absolutely essential or indispensable? Is it something more than ''used and useful''? What interpretation do commenters suggest, and why?

63. The Commission seeks detailed, specific comment on which safety and security measures are ''necessary'' to the provision of telephone and advanced communications services for incarcerated people and why those

measures are ''necessary.'' The Commission has previously sought comment on similar issues regarding telephone service for incarcerated people. Are any safety and security measures ''necessary'' to the provision of those services? Or are such measures core features of the correctional environment, rather than features needed to adapt communications services to that environment?

64. Some commenters assert that safety and security measures can cover a wide range of tasks, including, but not limited to, enrolling incarcerated people into voice biometrics systems, call monitoring, responding to alerts, blocking and unblocking numbers, and analyzing call recordings. The Commission seeks comment not only on what constitute safety and security measures, but also which of those measures, if any, are ''necessary'' within the meaning of the statutory language. Commenters should identify and describe any safety and security measures they consider ''necessary'' to the provision of any form of communications services for incarcerated people and to explain in detail why they deem each identified service to be ''necessary.'' Conversely, the Commission invites comment on why specific safety and security measures, or even broad categories of such measures, are not ''necessary'' to the provision of communications services for incarcerated people. The Commission also seeks comment on whether the Commission should interpret the Martha Wright-Reed Act's use of the term ''safety and security'' as having the same or different meaning as the term ''security and surveillance'' previously used in this proceeding.

65. In addition, the Commission invites comment on the extent to which resources (*e.g.,* labor, tangible and intangible assets, and materials) of the provider—as opposed to the resources of carceral facilities or authorities—are used to provide any ''necessary'' safety and security measures. To the extent more data are required from providers regarding safety and security measures, WCB and OEA should seek to obtain those data in the forthcoming supplemental data collection. The Commission also invites comment on how the Commission can determine the ''costs associated with'' any necessary safety and security measures to the extent resources of the facilities are used to provide these measures. The Commission asks for detailed comment on what steps, if any, the Commission should take to determine those costs and on how it should proceed if it is unable to determine those costs. The Commission also seeks comment on how it should address any information it has regarding those costs in setting just and reasonable rates for communications services for incarcerated people. For example, if the Commission determines that a particular safety or security measure is necessary to provide a covered service, would it be appropriate to include the underlying costs in rates and let the provider and facility determine how to appropriately share those costs?

66. Finally, the Commission invites detailed comment on the relationship, if any, between safety and security measures and site commission payments. For example, to what extent do monetary site commission payments compensate correctional institutions for costs they bear in connection with ''necessary'' safety and security services they incur, if any, using their own resources? Do providers offer safety and security products and services at discounted rates or at no cost to correctional institutions? If so, what are these products and services? Do correctional facilities instruct providers to furnish safety and security products and services on their behalf? If so, what products and services do correctional facilities typically ask providers to furnish? Do providers introduce new security and surveillance services during the contract negotiation process or at some point during the duration of a contract? If so, why do they do so and what effect do such services have on end-user rates? To the extent commenters argue that safety and security measures are embedded in site commission payments, to what extent, if any, do these payments serve to reimburse correctional facilities for costs they incur to ensure that the provision of communications services for incarcerated people does not pose any associated safety or security risk? If so, what information do correctional facilities have documenting those costs? Do correctional facilities ever provide data regarding their safety and security costs during the contract negotiation process? The Commission invites comment on these and any other matters that would assist it in understanding the relationship between safety and security measures and site commission payments.

67. *Size and Type of Correctional Institution.* The Martha Wright-Reed Act directs that the Commission ''shall consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.'' The Commission seeks comment on certain questions raised by this language.

68. The Commission first seeks comment on the Martha Wright-Reed Act's use of differing terms to refer to incarceration facilities, apparently interchangeably, including ''correctional institutions,'' ''correctional facilities,'' ''detention facilities,'' and ''facilities.'' The Commission proposes to interpret each of these statutory terms as generically and interchangeably referencing places where people are involuntarily confined. The Commission seeks comment on this proposal. The Commission also seeks comment on the meaning of the terms ''detention facility'' and ''detention facilities,'' as used in the Martha Wright-Reed Act. The statute neither defines these terms nor provides direction on how the Commission should interpret them. Neither do the Commission's rules. Should the Commission interpret the term ''detention facilities'' as having the same meaning as the Commission's existing definition of ''correctional institution'' or ''correctional facility?'' Does ''detention facility'' have a meaning different from jails and prisons? Are there compelling reasons to make any definitional distinctions between correctional institutions and detention facilities?

69. The Commission also seeks comment on whether the terms currently defined in its rules—''correctional facility or correctional institution''—could be used as generic terms to encompass the different terms used in the Martha Wright-Reed Act. The Commission proposes to continue to interpret these terms as applying to all portions of a correctional institution, collectively, to avoid the risk of any particular institution being divided into multiple entities of differing sizes in an effort to take advantage of whatever size-based rate tiers the Commission may adopt as part of its rate structure for incarcerated people's communications services. The Commission invites comment on this proposal.

70. The Commission's current rules define ''Correctional Facility or Correctional Institution'' as ''a jail or a prison'' and then separately define ''Jail'' and ''Prison.'' The Commission proposes to continue to interpret the term ''Correctional Institution'' to include all the facilities encompassed within the current definitions of ''Prison'' and ''Jail.'' The Commission seeks comment on this proposal, as well as on whether the Commission should expand those definitions to include other types of facilities. By way of example, the Commission has previously sought comment on including ''civil commitment facilities,

residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained'' as part of the definition of ''Correctional Facility.'' Should the Commission include those, or any other additional facilities, in its definitions of ''Jail,'' ''Prison,'' or ''Correctional Facility''?

71. The Martha Wright-Reed Act states that the Commission ''shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics,'' as part of its rate-setting process. The Commission seeks comment on how to interpret ''small, medium, or large facilities.'' What size categories should the Commission adopt to implement this language? What size thresholds should apply to each category? What metrics should the Commission use to define size categories, and what data should the Commission consider in setting size thresholds? The Commission also seeks comment on whether the directive to consider size differences is only relevant if the Commission uses cost-averaging in setting rates for incarcerated people's communications services, as addressed in section 3(b)(1) of the Act. In other words, if the Commission were to base its rates on something other than industry-wide average costs, would it still be obligated to consider potential cost differences associated with serving different-sized facilities?

72. The Commission's current rate structure distinguishes among different types and sizes of correctional institutions, establishing separate rate caps for prisons and jails, as well as separate rate tiers for different-sized jails. This seems consistent with the Martha Wright-Reed Act's reference to ''small, medium, or large facilities,'' but the Commission seeks comment on whether the Act allows or requires any change in the Commission's current approach to analyzing providers' costs based on the type and size of correctional institution being served. Does the Martha Wright-Reed Act require the Commission to implement more or fewer rate tiers based on type or size? The Commission invites parties to provide information in support of any claims they may make in regard to the differences or similarities in the costs associated with serving different types or sizes of facilities. Could the Commission set the same rates for small, medium, and large facilities after considering cost differences, if any?

73. To the extent the Commission continues to use multiple rate tiers for different-sized correctional institutions, the Commission seeks comment on its continued use of average daily population as the primary metric for measuring the size of correctional institutions. The Commission incorporates and renews prior calls for comments on how average daily population should factor into the rate caps, if at all. Should the Commission adjust the current distinction between jails with average daily populations below 1,000, and jails with average daily populations at or above 1,000 based on the Act's use of the terms ''small, medium, or large''? Should the Commission adopt other size thresholds to account for differing cost characteristics of different-sized correctional institutions? Are there compelling reasons to adopt a different metric for determining size other than average daily population?

74. The Martha Wright-Reed Act also directs the Commission to consider ''other characteristics'' besides size-based distinctions in setting rates for incarcerated people's communications services. The Commission seeks comment on what other characteristics it should consider in setting rates, including correctional institution type (whether it is a prison, jail, or other kind of institution), geographic location (whether it is in an urban, as opposed to a rural, area), and the technology used (whether it is wireline as opposed to wireless, internet protocol-based as opposed to circuit-switched, or is connected to the public switched telephone network (PSTN) as opposed to transmitted only via the internet). How do these characteristics affect costs? Should the Commission use ''other characteristics'' in tandem with the size of a facility when setting new rate caps? If so, how do these characteristics impact costs? How much weight should be given to the impact of other characteristics on the underlying costs? Is the primary driver of costs for some types of calls the number of calls, minutes, bits, phones, tablets, incarcerated people, network capacity, some combination of these, or something else? How does this vary with the nature of the call, for example, whether it is connected to the PSTN or is an app-to-app call, or whether it is a video or audio call regardless of the mode of transmission? Can the Commission disregard the size of the facility if some ''other characteristic'' provides more compelling cost-related differences?

75. *Effect of the Act on Other Laws.* Section 4 of the Martha Wright-Reed Act states that: ''[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility or prohibit the implementation of any safety and security measures related to such services at such facilities.'' The Commission seeks comment on the meaning and purpose of this provision. As an initial matter, the Commission proposes finding that the phrase ''this Act,'' as used in section 4, refers specifically to the Martha Wright-Reed Act, as opposed to the Communications Act. This seems to be the most logical reading of that reference, and the Commission seeks comment on this proposed finding.

76. The Commission next invites comment on the meaning of the language in the first clause of section 4 of the new Act providing that ''[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility.'' The Commission seeks comment on how it should interpret this language as a general matter. Does the language of this clause simply mean that the Martha Wright-Reed Act does not create any new obligation for state or local facilities to provide any form of incarcerated people's calling services? Does the language carry any different or additional meanings? Should the Commission interpret ''to require'' in this context as referring to all Federal, State, and local laws that affirmatively mandate the provision of telephone service or advanced communications services? Are there other possible meanings of the phrase in this provision? The Commission observes that the statute uses the phrase ''to require,'' as opposed to ''to provide,'' or ''to offer.'' What is the significance of the choice of the word ''require'' in section 4? The Commission invites comment about any of the other language in this clause and about the interplay between this language and any of the proposals contained in the *NPRM.*

77. The Commission also seeks comment on how it should interpret the second clause of section 4, which specifies that nothing in the Act shall ''prohibit the implementation of any safety and security measures related to such services at such facilities.'' Does the language of this clause simply mean that the just and reasonable ratemaking focus of the Martha Wright-Reed Act is not intended to interfere with any correctional official's decision on whether to implement any type of safety or security measure that the official desires in conjunction with audio or video communications services? Why or

why not? How broadly should the Commission interpret the phrase ''safety and security measures'' in this section? Should the Commission rely on prior definitions of safety and security measures in these types of facilities? The Commission also seeks comment on how it should construe the word ''related.'' What does it mean when safety and security measures are ''related'' to telephone service or advanced communications services?

78. The Commission notes that the Martha Wright-Reed Act also references ''safety and security measures'' in section 3(b)(2), which requires the Commission to consider the costs associated with ''necessary'' safety and security measures in determining just and reasonable rates. How do commenters propose that the Commission reconcile the language of this clause with the Commission's duty under the Act to ensure that rates are ''just and reasonable''? The provision in section 3(b)(2) requires that the Commission consider certain costs when determining just and reasonable rates, whereas the reference in section 4 ensures that correctional officials retain the ability to implement ''related'' safety and security measures. Thus, under section 4, correctional officials remain free to implement any safety and security measures related to inmate telephone service or advanced communications services. The Commission seeks comment on this analysis.

79. Consistent with the above analysis, the Commission seeks comment on what relationship, if any, section 4 may have with the Commission's consideration of ''necessary'' safety and security costs in its ratemaking calculus under section 3. The Commission has recognized that, in some circumstances, correctional officials may have used monetary site commission payments to implement safety and security measures that, for ratemaking purposes, are not necessary for the provision of incarcerated people's communications services. Contracts between correctional officials and incarcerated people's communications services providers also may require, as in-kind site commission payments, that the providers implement safety and security measures unrelated to the provision of communications services. Do commenters agree that the Commission's decision to exclude the costs of such ''unnecessary'' measures from its ratemaking calculus will not proscribe correctional facilities' prerogatives to implement them as contemplated by section 4? If not, why not? Are there other considerations the Commission should take into account with respect to the ''safety and security measures'' clause in section 4?

80. Finally, the Commission seeks comment on the relationship of section 4 to section 276(c) of the Communications Act, as amended, which remains unchanged by the Martha Wright-Reed Act. Section 276(c) provides that, ''[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.'' In practice, the Commission has relied on the ''impossibility exception'' to preempt intrastate rates and charges where it is impossible or impracticable to separate the intrastate components of a service from interstate components regulated by the Commission's rules. The impossibility exception applied to such ''jurisdictionally mixed'' rates and charges when the Commission adopted rate caps pursuant to its authority under section 201(b) of the Act. Since the Commission proposes to interpret the Martha Wright-Reed Act to provide it clear authority to establish a compensation plan ensuring ''just and reasonable'' rates and charges and fair compensation for providers for both interstate and intrastate services under section 276 of the Communications Act, the Commission proposes to find that state regulations that exceed the rates or rate caps the Commission adopt pursuant to the Martha Wright-Reed Act shall be preempted under section 276(c).

81. The Commission also seeks comment on the proper exercise of its preemption authority as it relates to state laws that mandate lower rates and charges for incarcerated people's communications services or that mandate that such services be offered free to consumers. In light of the Commission's proposal to find that it has plenary authority over intrastate communications services provided to incarcerated people, the Commission invites comment on what steps, if any, the Commission should consider following a state mandate where a provider is able to claim, and clearly substantiate its claim, that an unreasonably low rate leads to unfair compensation to providers. Additionally, to be clear, the Commission proposes to find that section 4 is no bar to its preemption authority with respect to establishing the rates and charges for audio and video communications in correctional facilities and prohibiting state or local requirements that would require higher rates or charges. The Commission seeks comment on these proposed findings. Further, the Commission proposes to find that nothing in section 4 affects its prior preemption policies under the impossibility exception, and the Commission seeks comment on this proposed finding. To the extent a party contends there is such an effect, the Commission asks for detailed comment on how it should take that effect into account in our regulation of incarcerated people's communication services. Finally, the Commission seeks comment broadly on the scope of its preemption authority in light of the Martha Wright-Reed Act, including in particular, its authority over site commissions.

82. *Necessary Rule Changes.* The Martha Wright-Reed Act specifies that the Commission ''shall promulgate any regulations necessary to implement this Act and the amendments made by this Act'' not earlier than 18 months and not later than 24 months after the date of enactment. As discussed above, the Commission interprets the statutory amendments to sections 2, 3, and 276 of the Communications Act as providing the Commission plenary authority over all audio or video communications services (other than electronic messaging), by wire or radio, between incarcerated people and individuals not subject to involuntary confinement. As part of the Act, the Commission must ensure that all payphone providers are fairly compensated and that all rates and charges are just and reasonable. In addition, some entities that are not subject to the Commission's current inmate calling services rules are now ''payphone service providers'' within the meaning of section 276(b)(1) of the Communications Act and thus will be subject to our new rules implementing these statutory mandates. The Commission seeks comment on what specific rule changes or new rules are necessary to effectuate the Martha Wright-Reed Act. Any comments proposing new or amended rules should include, as part of the commenter's submission, a draft rule or markup of an existing rule to be incorporated into Subpart FF of Part 64 of the Commission's rules. The Commission notes that while the Act precludes the Commission's implementing rules from becoming effective earlier than July 2024, the statutory amendments became effective upon enactment on January 5, 2023 and are effective today. Pending the effective date of any new rules the Commission adopts, any entity that is an inmate calling services provider within the meaning of the Commission's

existing rules must comply fully with those rules.

83. The Act allows or requires that the Commission make certain types of data analyses in promulgating implementing regulations. The Commission proposes to interpret the Act as allowing it to perform any and all acts and issue any orders, including orders requiring the submission of data and other information from audio and video communications service providers now covered by the Act, conducive to the discharge of these and its other implementation responsibilities under the Martha Wright-Reed Act. The Commission invites comment on this proposal.

84. *Accessibility Rule Changes Necessitated by the Expanded Definition of Advanced Communications Services.* The Commission also seeks comment on the extent to which the Martha Wright-Reed Act expands its ability to ensure that any audio and video communications services used by incarcerated people are accessible to and usable by people with disabilities. With the addition of this new category of services to the definition of ''advanced communications services,'' some of these services, as well as some equipment used for such services, regardless of technology used, may be newly subject to accessibility requirements under section 716 of the Communications Act. Section 716, added to the Communications Act by the Twenty-First Century Communications and Video Accessibility Act of 2010, requires providers of advanced communications services and manufacturers of equipment used with such services to ensure that such services and equipment are accessible to and usable by people with disabilities, unless doing so is not achievable. If accessibility is not achievable either by building it into the service or equipment or by using third party accessibility solutions, then a manufacturer or service provider must ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless not achievable. Each provider of advanced communications services has a duty not to install network features, functions, or capabilities that impede accessibility or usability. In 2011, the Commission adopted Part 14 of its rules, which implements these statutory provisions, requiring service providers and equipment manufacturers of all types of advanced communications services and equipment to meet specific obligations, performance objectives, recordkeeping, and reporting requirements.

85. The Commission seeks comment generally on what changes to Part 14 of its rules are needed to implement the amended definition of ''advanced communications services.'' The Commission specifically proposes to amend the Part 14 definition of ''advanced communications services'' to incorporate the amended statutory definition, and seeks comment on this proposal. Is there any reason the Commission should not adopt the statutory definition verbatim? Are there specific terms in the new category of advanced communications services, apart from those raised above, that the Commission should separately define in section 14.10 of its rules, and if so, how should they be defined?

86. The Commission also seeks comment on whether any changes are needed to other provisions of Part 14 to reflect the inclusion of these services and equipment. For example, are there specific performance objectives or recordkeeping requirements that should be added or modified to ensure that providers of covered communications services and manufacturers of associated equipment used by incarcerated people are in full compliance with their accessibility obligations?

87. *Payphones Other Than in the Incarceration Context.* Although the Martha Wright-Reed Act specifically addresses payphones in the incarceration context, certain amendments to section 276 of the Communications Act apply to payphones more generally, including both those used by incarcerated people and those used by the public, in the case of more traditional payphones. In 1999, the Commission determined that traditional (*i.e.,* non-inmate calling services) payphones do not require pricing regulation because that portion of the payphone market was sufficiently competitive. In addition, advancements in mobile and wireless technology have made traditional payphones virtually obsolete. For payphone service outside of the incarceration context, the Commission proposes to find that no new regulations are ''necessary'' to implement the Martha Wright-Reed Act and its amendments to the Communications Act pursuant to section 3(a) of the Act. Accordingly, the Commission proposes relying on its existing rules governing traditional payphone service to ensure that all payphone providers outside of the incarceration context are fairly compensated and that their rates and charges are just and reasonable, consistent with section 276(b)(1)(a), as amended. The Commission seeks comment on the proposal to find new payphone service rules unnecessary and to continue relying on its existing rules to satisfy any of the new statutory requirements that apply outside the incarceration context.

88. *Effect on Small Entities.* The Commission recognizes that its actions in this proceeding may affect several groups of small entities. For example, payphone service providers that provide only limited communications services to incarcerated people, or that provide communications services to incarcerated people via technologies not previously covered by section 276, will be subject to new regulatory requirements. In addition, the Commission's implementation of the Martha Wright-Reed Act may subject entities currently subject to its inmate calling services rules to new regulatory obligations. The Commission therefore seeks comment on how it should take into account the impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face, in effectuating the mandates set forth in the Martha Wright-Reed Act and the Communications Act. Parties should also address any alternative proposals that would minimize the burdens on small businesses.

89. *Other Reforms Related to Incarcerated People's Communications Services.* In addition to seeking comment on actions the Commission should take to implement the Martha Wright-Reed Act, the Commission proposes revisions to its rules to reflect updated language used to refer to calls made by incarcerated people. The Commission's rules currently use ''inmate calling services'' or ''ICS'' to refer to ''a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service.'' With the Martha Wright-Reed Act's expansion of the Commission's authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission uses today and will use going forward the term ''incarcerated people's communications services'' or ''IPCS'' to refer to these broader service offerings. In connection with this change in terminology, the Commission has also changed references to ''inmates'' to ''incarcerated people'' at the request of public interest advocates. To reflect this evolution in terminology, the Commission proposes codifying these

changes in its existing rules and in any new rules the Commission adopts pursuant to this proceeding. The Commission seeks comment on this proposal.

90. Finally, the Commission invites parties to comment on any other matters that may be relevant to its implementation of the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services.

Digital Equity and Inclusion

91. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

92. *Ex Parte Rules.* The proceeding that the Notice of Proposed Rulemaking initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

93. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in the Notice of Proposed Rulemaking.

94. *Initial Paperwork Reduction Act of 1995 Analysis.* The Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA. If the Commission adopts any new or modified information collection requirements, they will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Initial Regulatory Flexibility Analysis

95. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the Notice of Proposed Rulemaking. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of, the Proposed Rules

96. In the *NPRM,* the Commission seeks comment on implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), enacted by Congress to ensure just and reasonable rates for telephone and advanced communications services in correctional and detention facilities. The Act was passed in an effort to remedy decades of exorbitant rates for telecommunications services paid by family members, clergy, counsel and other critical support systems.

97. The Commission seeks comment on the purpose and scope of the amendments made to its authority and how the Act expands its authority over incarcerated people's communications services, including over advanced communications services, intrastate services, and ''any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.'' The Commission also seeks comment on the Act's directions regarding how it should consider implementing the Act, including when it is to adopt rules, the use of data to set just and reasonable rates, the costs of facility safety and security measures, and the size of correctional facilities. Lastly, the Commission also seeks comment on how the Act affects its ability to ensure that incarcerated people's communications services and associated equipment promote digital equity and are accessible to and usable by incarcerated people with disabilities.

Legal Basis

98. The proposed action is authorized pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

99. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

100. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

101. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

102. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county or municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

103. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including Voice over internet Protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

104. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

105. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

106. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

107. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The

SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

108. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

109. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

110. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

111. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that includes incarcerated people's communications services providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services. Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

112. *Telecommunications Relay Service (TRS) Providers.* Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services. Internet-based TRS (*iTRS*) connects an individual with a hearing or a speech disability to a TRS communications assistant using an internet Protocol-enabled device via the internet, rather than the public switched telephone network. Video Relay Service (VRS) one form of *iTRS,* enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device. Internet Protocol Captioned Telephone Service (IP CTS) another form of *iTRS,* permits a person with hearing loss to have a telephone conversation while reading

captions of what the other party is saying on an internet-connected device. Providers must be certified by the Commission to provide VRS and IP CTS and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.

113. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard. Internet Service Providers (ISPs) and Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on Commission data there are ten certified *iTRS* providers. The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

114. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

115. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the *NPRM,* the Commission seeks comment on further reforms to the regulations governing incarcerated people's communications services, which could potentially affect potential reporting and compliance requirements for small entities and for providers of incarcerated people's communications services of all sizes. For example, the *NPRM* seeks comment on whether to continue using a ''total industry cost'' approach in setting rate caps, which would result in the same per-unit rate caps for interstate and intrastate voice services. Were the Commission to follow this approach in implementing the Act's ''just and reasonable rates'' requirement—resulting in a unitary rate cap for any providers of incarcerated people's interstate and intrastate communications services—it would potentially reduce the compliance burden on smaller providers.

116. The Commission's implementation of the Martha Wright-Reed Act may require entities, including small entities and incarcerated people's communications services providers of all sizes, currently subject to the Commission's inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission's expanded regulatory authority, such as providers offering only intrastate or certain advanced communications. In addition, the Commission recognizes that its actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. In assessing the cost of compliance for small entities and for providers of incarcerated people's communications services of all sizes, at this time, the Commission is not in a position to determine whether the proposed rules in the *NPRM* will impose any significant costs for compliance in general, or whether they will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. It is also undetermined at this time if any new software, or modifications to existing software, will be necessary for small entities and for providers of incarcerated people's communications services of all sizes to effectively comply with the proposed rules.

117. Within 18–24 months following enactment, the Commission is required by the Martha Wright-Reed Act to adopt rules to ensure that the rates and fees for incarcerated people's communications services are just and reasonable. This may include new ratemaking methodologies, such as the use of industry-wide average costs of telephonic service and advanced communications data; new services, such as any audio or video communications service used to communicate with persons outside of the facility, regardless of technology used; and new entities, such as providers that are newly subject to our authority. In the *NPRM,* the Commission seeks comment on the collection and use of existing and additional data in determining just and reasonable rates and charges for incarcerated people's communications services, as well as on the implementation of its newly expanded jurisdictional authority. If rules are adopted pursuant to these proposals, they would apply to incarcerated people's communications services providers of all sizes, including small providers.

118. The Commission seeks comment on updating and restructuring its current (third) mandatory data collection. First, to the extent that the Commission updates and restructures its most recent data collection, providers of incarcerated people's communications services of all sizes, including small providers, would need to maintain and report their cost data in accordance with the Commission's rules. Similarly, if the Commission imposes data collection requirements, or other new rules specific to implementation of the Martha Wright-Reed Act, the data collection requirements and other rules will be applicable to incarcerated people's communications services providers of all sizes. The Commission also seeks comment on how it should proceed if a particular provider or providers do not provide reliable and accurate information in response to the updated data collection. Any procedures it may adopt would impact reporting requirements for all relevant entities, including small entities. Additionally, the Commission seeks comment how to proceed if information submitted by providers does not allow it to determine with precision the costs attributable to any particular service or function, or groups of services or functions. Any steps the Commission would take to ensure the accuracy or precision of providers' data submissions could also potentially affect reporting requirements for all relevant entities, including small entities and providers of incarcerated people's communications services of all sizes.

Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

119. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

120. In the *NPRM,* the Commission seeks to fulfill Congress's intent via the implementation of the Martha Wright-Reed Act, including its directive that the Commission ensure just and reasonable rates and charges for incarcerated people's audio and video communications services. While doing so, the Commission is mindful of the potential impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face in complying with any rules the Commission may adopt. Below the Commission discusses several steps it has taken that could reduce the economic impact for small entities.

121. Allowing additional time for small and medium-sized businesses to comply with the proposed rules, including the timeframe for compliance, could reduce the economic impact for small entities. The Commission considered and seeks comment on whether such an approach would serve the public interest. In doing so, the Commission has provided small entities the opportunity to offer alternatives not already considered, giving small entities ample time to minimize whatever potential burdens they may face.

122. The Commission also seeks comment on the Martha Wright-Reed Act's directive to consider the size of incarceration facilities in setting just and reasonable rates and charges for services. The Commission seeks comment on whether the ''industry-wide'' average cost language in the Martha Wright-Reed Act refers only to some subset of providers of incarcerated people's communications services or all such providers. In doing so, the Commission seeks information that will help to determine the appropriate approach to ensuring just and reasonable rates as required by the Act. The Commission would also benefit by using the information obtained from comments to inform its evaluation of its regulatory options, including those that may potentially be less burdensome for smaller providers.

123. The Martha Wright-Reed Act states that the Commission ''shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics,'' as part of its rate-setting process. The Commission seeks comment on how to interpret ''small, medium, or large facilities.'' The Commission considered and seeks comment on whether it is obligated to consider potential cost differences associated with serving different-sized facilities if it sets rates based on something other than industry-wide average costs. This information will assist the Commission in considering alternatives such as whether it should implement more or fewer rate tiers based on the type or size of facility, and whether the Commission should set the same rates for small, medium, and large facilities after considering cost differences, if any.

124. Considering the economic impact on small entities through comments filed in response to the NPRM and this IRFA, as part of its efforts to implement the Martha Wright-Reed Act and promulgate rules in these proceedings, could allow the Commission to potentially obtain cost-benefit analyses and other input that would enable it to identify reasonable alternatives that may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

Ordering Clauses

126. *It is ordered,* pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022), the Notice of Proposed Rulemaking is hereby adopted.

127. *It is further ordered,* pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register** and reply comments on or before 60 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–07068 Filed 4–6–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 27, and 52

[FAR Case 2020–010, Docket No. FAR–2020–0010, Sequence No. 1]

RIN 9000–AO12

Federal Acquisition Regulation: Small Business Innovation Research and Technology Transfer Programs

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, published in the **Federal Register** on April 2, 2019. In addition, this proposed rule would implement competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before June 6, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020–010 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2020–010''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2020–010''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name,