

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER DENYING STAY PETITION

Adopted: October 15, 2024

Released: October 15, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On October 7, 2024, Pay Tel Communications, Inc. (Pay Tel) filed a petition requesting that the Commission stay its Report and Order in the captioned proceedings pending judicial review. For the reasons discussed below, we deny Pay Tel’s stay request.

II. BACKGROUND

2. The 2024 IPCS Order implemented the expanded authority granted to the Commission by the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), adopting comprehensive reforms that will significantly reduce the financial burdens incarcerated people face to communicate with their loved ones. The Act amended the Communications Act of 1934, as amended, (Communications Act) to require that the Commission “establish a compensation plan to ensure that all [Incarcerated People’s Communications Services (IPCS)] providers are fairly compensated and all rates and charges are just and reasonable for completed” IPCS communications. Consistent with this Congressional mandate, in the 2024 IPCS Order, the Commission reduced existing per-minute rate caps for all incarcerated people’s audio communication services, and established, for the first time, interim per-minute rate caps for incarcerated people’s video communications services. In establishing these rate caps, the Commission employed the used and useful framework it has used for decades in determining just and reasonable rates, a zone of reasonableness methodology that it had previously used

1 Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services, WC Docket Nos. 23-62, 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (rel. July 22, 2024) (2024 IPCS Order or Order, 2024 IPCS Reconsideration Order, or 2024 IPCS Notice); see Pay Tel Communications, Inc.’s Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 7, 2024) (Pay Tel Stay Petition); Declaration of Don. J. Wood, WC Docket Nos. 23-62, 12-375 (filed Oct. 7, 2024) (Wood Declaration). The Wright Petitioners, United Church of Christ Media Justice Ministry, and Pennsylvania Prison Society (collectively, the Public Interest Parties), filed an opposition to the Pay Tel Stay Petition. See Opposition to Pay Tel Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375 (filed Oct. 14, 2024) (Public Interest Parties Opposition).

2 Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2022).

3 47 U.S.C. § 276(b)(1)(A).

4 See, e.g., 2024 IPCS Order at 60, para. 119.

to set rate caps for audio IPCS, and an industry-average cost methodology specifically permitted in the Martha Wright-Reed Act.<sup>5</sup> In setting the new rate caps, the Commission relied on cost and other data submitted by IPCS providers, including Pay Tel.<sup>6</sup>

3. In the *2024 IPCS Order*, the Commission also ended IPCS providers' long-standing practice of paying site commission to carceral facilities, the costs of which were passed through to consumers via higher IPCS rates.<sup>7</sup> The *Order* strengthened the Commission's requirements for access to IPCS by incarcerated people with disabilities; adopted stronger consumer protection rules, including permanent rules addressing providers' treatment of unused funds in inactive IPCS accounts; and permitted providers, for the first time, to offer optional alternate pricing plans, subject to conditions to protect and benefit IPCS consumers.<sup>8</sup> Although many of the new requirements are effective 60 days after publication in the Federal Register, the Commission established staggered compliance deadlines for the new rate caps and the elimination of site commissions.<sup>9</sup>

4. On October 2, 2024, the Wireline Competition Bureau (WCB or the Bureau) issued the *Securus Stay Denial Order*, which denied Securus Technologies, LLC's (Securus's) petition for an administrative stay of the *2024 IPCS Order*.<sup>10</sup> In its October 7, 2024, petition, Pay Tel acknowledges that its legal arguments overlap, to a certain extent, with the legal arguments that we rejected in the *Securus Stay Denial Order*.<sup>11</sup> Pay Tel contends, however, that a stay pending judicial review is warranted because the *2024 IPCS Order* "is founded on several instances of clear error which create a likelihood of reversal on appeal," because "Pay Tel and other similarly situated [IPCS] providers" will be irreparably harmed if that *Order* is implemented, because a stay "would not injure third parties," and because "the balance of equities favors" such a stay.<sup>12</sup>

### III. DISCUSSION

5. To qualify for the extraordinary remedy of a stay, a petitioner must show that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would

---

<sup>5</sup> See, e.g., *id.* at 65-66, para. 127 (discussing the adoption of rate caps derived from industry average costs); *id.* at 89-90, paras. 159-60 (discussing the used and useful framework and the zone of reasonableness approach).

<sup>6</sup> See *id.* at 102-04, paras. 184-85.

<sup>7</sup> See, e.g., *id.* at 132, para. 245 (prohibiting IPCS providers from paying site commissions of any kind and preempting all state and local laws and regulations requiring or allowing IPCS providers to pay site commissions associated with IPCS).

<sup>8</sup> See, e.g., *id.* at 229-49, 253-61, 261-91, paras. 427-71 (discussing alternate pricing plans), 482-98 (amending the Commission's rules to improve communications for incarcerated people with disabilities), 499-556 (discussing reforms to the Commission's consumer protection rules).

<sup>9</sup> *Id.* at 304-08, paras. 587-94. The Commission also issued the *2024 IPCS Reconsideration Order*, which resolved various petitions seeking reconsideration of, clarification of, or waivers from prior Commission orders. See *2024 IPCS Reconsideration Order* at 309-12, paras. 599-607. Additionally, the Commission issued the *2024 IPCS Notice* to obtain additional public comment on IPCS-related issues that it could not resolve on the record then before it. See *2024 IPCS Notice* at 312-319, paras. 608-24.

<sup>10</sup> *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order Denying Stay Petition, DA 24-1035 (WCB rel. October 2, 2024) (*Securus Stay Denial Order*).

<sup>11</sup> Pay Tel Stay Petition at 1.

<sup>12</sup> *Id.* at i-ii.

favor grant of the stay.<sup>13</sup> A stay is an “intrusion into the ordinary processes of administration and judicial review,” . . . and accordingly “is not a matter of right, even if irreparable injury might otherwise result” to the movant.<sup>14</sup> The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.<sup>15</sup> Pay Tel has failed to meet that burden.<sup>16</sup>

#### A. Pay Tel Has Not Shown It Is Likely to Prevail on the Merits

6. To show likelihood of success on the merits, a petitioner must make a “strong showing” that it is likely to succeed;<sup>17</sup> a “mere possibility of relief” is insufficient.<sup>18</sup> As the D.C. Circuit has recognized, “[w]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review.”<sup>19</sup> Pay Tel principally argues that the *2024 IPCS Order* is inconsistent with the requirements of the Martha Wright-Reed Act and section 276(b)(1)(A) of the Communications Act because it set rate caps that fail to ensure that all IPCS providers are fairly compensated; excluded most categories of IPCS safety and security measure costs from its ratemaking calculus; failed to allow correctional facilities “to recover their demonstrated costs associated with providing IPCS”; and committed “other methodological errors exacerbating the harm to providers.”<sup>20</sup>

7. *Fair Compensation for IPCS Providers.* Pay Tel argues that the Commission set rate caps that “fail to ensure that ‘all’ IPCS providers are ‘fairly compensated’” and critiques the Commission’s application of the fair compensation standard in section 276(b)(1)(A) in several respects.<sup>21</sup> We find none of Pay Tel’s arguments persuasive. Pay Tel first asserts that while the Martha Wright-Reed Act allows the Commission to use industry-wide average costs in setting rate caps, it also may use individual provider costs in setting rates and “must allow *all* IPCS providers to recover their prudently-incurred costs.”<sup>22</sup> This argument was raised in the rulemaking and, as we stated in denying Securus’s

---

<sup>13</sup> *Securus Stay Denial Order* at para. 6; see *LightSquared Technical Working Group Report*, Order Denying Motion for Stay, IB Docket No. 11-109, 36 FCC Rcd 1262, 1266, para. 8 (2021) (*Ligado Stay Denial Order*) (citing *Nken v. Holder*, 556 U.S. 418, 425-26 (2009)).

<sup>14</sup> *Nken*, 556 U.S. at 427 (internal citations omitted); *Securus Stay Denial Order* at para. 6.

<sup>15</sup> *Securus Stay Denial Order* at para. 6; *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8 (citing *Nken*, 556 U.S. at 433-34).

<sup>16</sup> Although Pay Tel challenges only certain aspects of the *2024 IPCS Order*, it requests that we stay that *Order*, including the rules it adopts, in its entirety. Pay Tel Stay Petition at 1 n.1. Pay Tel’s support for this request consists of statements that the *2024 IPCS Order* and accompanying rules were “adopted as part of a comprehensive plan of regulation which should be considered together as such” and “the segregation of individual components of the plan can lead to anomalous results.” Pay Tel Stay Petition at 1 n.1. Those statements fall far short of meeting the stay criteria and, in any event, are inconsistent with the Commission’s determinations, in the *2024 IPCS Order*, that “each of the rules and policies adopted” in that *Order* “shall be severable” from each other and that if any of those “rules or policies is declared invalid or unenforceable for any reason, the unaffected rules shall remain in full force and effect.” *2024 IPCS Order*, at 309, para. 598. See also Public Interest Parties Opposition at 3 (“Pay Tel seeks an overbroad stay of the entire [Martha Wright-Reed Act] Order while only addressing one aspect of the reforms adopted under the Order.”).

<sup>17</sup> *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

<sup>18</sup> *Id.* at 434 (internal quotation marks omitted).

<sup>19</sup> *Virginia Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>20</sup> Pay Tel Stay Petition at 7.

<sup>21</sup> *Id.* at 7-11.

<sup>22</sup> *Id.* at 7 (emphasis in original); see also Martha Wright-Reed Act § 3(b)(1) (explaining that the Commission “may use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in “determining just and reasonable rates”).

request for a stay, “the *2024 IPCS Order* squarely addressed it.”<sup>23</sup> As the Commission explained, the statutory mandate of fair compensation “need not be evaluated on a provider-by-provider basis.”<sup>24</sup> The Martha Wright-Reed Act “is clear that the Commission may use ‘industry-wide average costs’ in setting just and reasonable rates under section 276(b)(1)(A).”<sup>25</sup> The Commission thus concluded that “a provider will be fairly compensated if the rates and fees it is permitted to charge will afford it an opportunity to recover industry-average costs associated with prudent investments used and useful in providing IPCS and associated ancillary services at the facilities the provider serves.”<sup>26</sup>

8. In a similar vein, Pay Tel also argues that the Commission “effectively reads the ‘fair compensation’ requirement out of [s]ection 276 by collapsing it with, and giving primacy to, the new language added in the [Martha Wright-Reed Act] that the Commission ensure that ‘all rates and charges are just and reasonable.’”<sup>27</sup> This argument was also raised in the rulemaking and squarely addressed in the *2024 IPCS Order*.<sup>28</sup> There, the Commission explained that “giving effect to both standards requires a balanced approach that ‘emphas[izes] consumers’ (particularly incarcerated people’s) and provider’s right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of ‘payphone service,’ as well as ensuring that such rates ensure that ‘all payphone providers are fairly compensated.’”<sup>29</sup> Contrary to Pay Tel’s assertion, the Commission’s “rate-making methodology and the statutory interpretation of the Martha Wright-Reed Act ensure that both standards are given full effect.”<sup>30</sup>

9. Pay Tel also selectively relies on certain statements in the *2024 IPCS Order* that it contends demonstrate infirmities with the Commission’s application of the fair compensation mandate.<sup>31</sup> Pay Tel asserts that “of the twelve IPCS providers selected by staff for analysis, four of the twelve (i.e., 33%) will not be able to recover their demonstrated costs under the Order’s rate caps.”<sup>32</sup> Pay Tel argues that “dismissal of one-third of the control group conflicts with the clear policy of [s]ection 276 to ‘promote competition’ among providers” and that “implicit in the Order’s reasoning is the flawed

---

<sup>23</sup> *Securus Stay Denial Order* at 4, para. 7; Public Interest Parties Opposition at 3 (arguing that “Pay Tel simply rehashes an argument that the Commission . . . has already rejected”).

<sup>24</sup> *2024 IPCS Order* at 37, para. 69; Public Interest Parties Opposition at 3 (asserting that Pay Tel’s “attack on Congress’s decision to permit setting just and reasonable rates on an industry-wide, rather than provider-by-provider, basis ‘ignores the fact that fair compensation does not require the Commission to adopt rate caps which allow for the recovery of inefficiently incurred costs.’” (citing *2024 IPCS Order* at 122, para. 219 n.778)).

<sup>25</sup> *Securus Stay Denial Order* at 4, para. 7.

<sup>26</sup> *2024 IPCS Order* at 38, para. 71; *2024 IPCS Order* at 66, para. 127 (explaining that “using industry average costs to set rates will best ensure rates that are just and reasonable for consumers and providers and provide fair compensation for providers”); Public Interest Parties Opposition at 4 (“Adopting rate caps based on average costs naturally means that some IPCS providers’ reported costs will be below their revenue at the rate caps. This is an outcome that Congress has deemed acceptable when it empowered the Commission to use industry-average costs to set ‘just and reasonable’ rates.”).

<sup>27</sup> Pay Tel Stay Petition at 7-8 (quoting 47 U.S.C. § 276(b)(1)(A)).

<sup>28</sup> *2024 IPCS Order* at 33, para. 60 n.207 (rejecting a claim that the *Order* collapses the fair compensation standard into the just and reasonable standard).

<sup>29</sup> *Id.* at 33, para. 60 (quoting *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Notice of Proposed Rulemaking and Order, 38 FCC Rcd 2669, 2675-76, 2697-98, paras. 14, 73 (2023)).

<sup>30</sup> *2024 IPCS Order* at 33, para. 60 n.207.

<sup>31</sup> *Cf. Securus Stay Denial Order* at 5, para. 10 (rejecting a similar argument from Securus “insofar as it selectively relies on certain statements in the *2024 IPCS Order*”).

<sup>32</sup> Pay Tel Stay Petition at 8 (footnote omitted).

assumption that the domination of the industry by one or two providers is a desirable outcome intended by the [Martha Wright-Reed Act].”<sup>33</sup> We disagree. In the *2024 IPCS Order*, the Commission properly “reject[ed] claims that [its] actions could harm competition.”<sup>34</sup> The Commission explained that “[c]ompetition should not be mistaken for the number of competitors” and that competition “delivers lower prices, adjusted for quality, and . . . may sometimes drive out inefficient competitors.”<sup>35</sup> Pay Tel also fails to account for the fact that the Commission’s estimate of IPCS providers that it projected would have potential revenues exceeding reported costs was “conservative” and that the Commission “likely underestimate[d] the extent to which providers w[ould] be able to recover their costs under [the Commission’s] rate caps.”<sup>36</sup>

10. Pay Tel then claims that “the Order’s mathematical computation of market share fails to grapple with the substance of the problem created at the facility level.”<sup>37</sup> It argues that “[e]ven for the eight providers whose *total* revenue . . . is projected to exceed *total* reported expenses” that will not be true for each facility those providers serve, thus denying cost recovery “at almost 30% of the facilities serviced by the eight providers who are expected to recover their overall costs at a company level.”<sup>38</sup> According to Pay Tel, when “[c]ombined with the facilities put at risk for the four providers not recovering their costs, some {[ ]} facilities are at risk under the Commission’s new regulatory approach—representing 31% of all jails and prisons studied by the Commission in setting rate caps.”<sup>39</sup> Pay Tel assumes that “most, if not all, of the facilities at risk are jails” and concludes that “approximately one-half of all jails currently receiving IPCS are at risk of losing service.”<sup>40</sup>

11. As to Pay Tel’s initial argument that the Commission “must allow *all* IPCS providers to recover their prudently-incurred costs,”<sup>41</sup> in the *2024 IPCS Order*, the Commission concluded that “a provider will be fairly compensated if it is afforded an opportunity to recover the industry average of [the prudently incurred investments and expenses that are used and useful in the provision of IPCS] on a company-wide basis” rather than on a facility-by-facility basis.<sup>42</sup> This conclusion is anchored in the Martha Wright-Reed Act’s grant of “explicit authority” to use industry-wide average costs in setting IPCS rates.<sup>43</sup> As the Commission observed, “[u]se of industry-wide average costs, of necessity, evaluates provider compensation on a more aggregated—rather than provider-by-provider—basis.”<sup>44</sup>

---

<sup>33</sup> *Id.* at 8-9.

<sup>34</sup> *2024 IPCS Order*, Appx. J at 455, para. 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 121, para. 217.

<sup>37</sup> Pay Tel Stay Petition at 9.

<sup>38</sup> *Id.* at 9 (emphasis in original); Wood Declaration at para. 21.

<sup>39</sup> *Id.* at 10; Wood Declaration at para. 22. Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

<sup>40</sup> Pay Tel Stay Petition at 10.

<sup>41</sup> *Id.* at 7 (emphasis in original).

<sup>42</sup> *2024 IPCS Order* at 122, para. 219.

<sup>43</sup> *Id.* at 36, para. 68; Martha Wright-Reed Act § 3(b)(1). *See also* Public Interest Parties Opposition at 5 (“At bottom, Pay Tel essentially ignores Congress’s decision to shift away from a per-call compensation scheme under the [Martha Wright-Reed Act]. Specifically, in the [Martha Wright-Reed Act], Congress amended the section 276 ‘fair compensation’ requirement to no longer ask that the Commission evaluate payphone rates on a per-call basis or ensure that providers were fairly compensated for ‘each and every’ completed call. . . . Pay Tel’s argument seeks to undo this shift.”).

<sup>44</sup> *2024 IPCS Order* at 36-37, para. 68.

12. Furthermore, Pay Tel ignores the fact that the Commission’s rate cap structure was designed to capture the differences in costs across facilities of all types and sizes, to the extent the data permitted. Thus, in setting IPCS rate caps, the Commission adopted “a rate cap structure that first distinguishes between two types of facilities (jails and prisons) and then four tiers of jails based on size.”<sup>45</sup> The Commission did so as part of its implementation of the directive in the Martha Wright-Reed Act to “consider . . . differences in the costs” incurred to provide IPCS “by small, medium, or large facilities.”<sup>46</sup> Because record data did “in fact, indicate significant variations in costs due to facility size” the Commission decided to adopt a “more granular tiering structure” to better capture cost differences between facilities of different sizes.<sup>47</sup>

13. We also find unpersuasive Pay Tel’s assertion that one half of all jail facilities risk losing service under the Commission’s rate caps. Pay Tel has not substantiated this assertion and otherwise ignores the Commission’s analysis of the effect of its IPCS rate caps on small jails in the *2024 IPCS Order*. As the Commission explained, “[c]ontrary to some claims, which argue that [the Commission’s] rate caps impact smaller providers and thus smaller facilities, provider size is no predictor of the choice to serve very small jails.”<sup>48</sup> In fact, “[{ ]”<sup>49</sup> Thus, “it is implausible that [the Commission’s] caps will prevent supply in small jails.”<sup>50</sup> Pay Tel asserts that its claim regarding a potential for loss of service “relies specifically on the Commission’s analysis as reflected in the order” but adds nothing more than speculation on this point.<sup>51</sup> We are thus unconvinced by Pay Tel’s arguments.

14. Finally, Pay Tel takes issue with the fact that the *2024 IPCS Order* references “efficient” and “inefficient” providers in connection with its discussion of cost recovery.<sup>52</sup> Specifically, Pay Tel alleges that the *2024 IPCS Order* “applies a circular definition of ‘efficiency’ in which the ‘inefficient’ providers are deemed as such only because their average costs exceed the average cost of the dominant providers after erroneously and arbitrarily rejecting the majority the safety and security costs reported by those companies.”<sup>53</sup> To the extent safety and security costs are included, Pay Tel states that its reported costs “are consistent with industry average costs and consistent with the operation of an efficient provider.”<sup>54</sup> Pay Tel’s argument thus relies primarily on the notion that the Commission improperly

---

<sup>45</sup> *Id.* at 79, para. 146.

<sup>46</sup> Martha Wright-Reed Act § 3(b)(2). As the Public Interest Parties highlight, “the Commission . . . found that 72% of all reported facilities would have capped revenues in excess of costs” (citing *2024 IPCS Order*, Appx. J at 454-55, para. 6)).

<sup>47</sup> *2024 IPCS Order* at 81-82, paras. 148, 150. “The Commission sensibly ‘decline[d] to set rate caps that ensure cost recovery for providers with unusually high costs because to let unusual cases determine rates generally would result in unjust and unreasonable rates,’ contrary to the independent mandate of section 276(b)(1)(A). Instead the Commission made clear that ‘if such providers exist, they can seek a waiver.’” *Securus Stay Denial Order* at 4-5, para. 8 (footnote omitted).

<sup>48</sup> *2024 IPCS Order*, Appx. J at 454, para. 6.

<sup>49</sup> *Id.*, Appx. J at 454-55, para. 6; *see also id.*, Appx. J at 454, para. 6 n.14 (noting that “the eight providers which already have revenues less site commissions beneath [the Commission’s] caps serve an overwhelming number of small and very small facilities, as well as medium and large facilities”).

<sup>50</sup> *Id.*, Appx. J at 455, para. 6.

<sup>51</sup> Pay Tel Stay Petition at 10 (alleging that the *2024 IPCS Order* “possibly” puts at risk service in one half of all jails).

<sup>52</sup> *Id.* at 10; Wood Declaration at para. 23.

<sup>53</sup> Pay Tel Stay Petition at 10-11 (emphasis omitted).

<sup>54</sup> *Id.* at 11. *See also* Public Interest Parties Opposition at 5 (“Pay Tel attempts to blame any potential inefficiencies on the Commission’s decision to prohibit the recovery of certain safety and security costs under the new rates.

(continued....)

excluded certain safety and security costs, and we therefore take it up with its other arguments about safety and security costs below.

15. *Treatment of Safety and Security Costs.* Pay Tel contends that the Commission’s handling of providers’ varying safety and security costs made Pay Tel appear to be an inefficient provider. But Pay Tel unwittingly supplies the response to its own critique in observing that “[t]he percentage of total service costs reported as falling into one of the seven Safety & Security categories varied significantly by Provider.”<sup>55</sup> Indeed, the Commission acknowledged that the categories of safety and security costs reported in the 2023 Mandatory Data Collection were “imprecise.”<sup>56</sup> It also acknowledged that “providers’ allocations of their safety and security costs are at times inexact among these categories.”<sup>57</sup> To account for the imperfect nature of the data, the Commission evaluated the categories of safety and security measures “based on the nature of the preponderance of tasks or functions within each category. If the predominant uses of tasks and functions within a category [were] not used and useful, the entire category [was] treated as not used and useful” in establishing the lower bounds of the Commission’s zones of reasonableness.<sup>58</sup> The Commission also adjusted its rate setting within those zones “to develop overall rate caps that recognize the imprecision of both the seven defined safety and security categories in the 2023 Mandatory Data Collection, and the inconsistencies in the narrative descriptions and varied allocations made in provider responses.”<sup>59</sup> These adjustments provided the Commission with a workable methodology to conduct a thorough and orderly review of the safety and security cost data in the record under the used and useful framework.

16. Thus, in constructing the lower bounds of the zones of reasonableness, the Commission appropriately removed “costs of those categories of safety and security measures that [the Commission found] generally . . . not used and useful in the provision of IPCS.”<sup>60</sup> In doing so, it actually “retain[ed] a significant portion of providers’ reported safety and security costs, i.e., \$180 million.”<sup>61</sup> But the Commission concluded that incorporating into its lower bounds those safety and security costs that it found not to be used and useful “would run counter to the purposes and language of the Martha Wright-Reed Act and would fail to yield just and reasonable rates.”<sup>62</sup> Thus, contrary to Pay Tel’s assertions, the Commission’s treatment of certain safety and security costs was informed by the limitations of the data before the Commission and the dual requirements of the Martha Wright-Reed Act to ensure just and reasonable rates and charges for IPCS consumers and fair compensation for IPCS providers.

17. Pay Tel argues that the Commission erred in its evaluation and treatment of safety and security costs in several respects, none of which we find persuasive.<sup>63</sup> First, Pay Tel suggests that the Commission “explicitly rejects the notion that the IPCS [sic] has any responsibility to ‘protect the general

(Continued from previous page) \_\_\_\_\_

However, ‘excluding certain costs is precisely the task that Congress required the Commission to perform’ under the [Martha Wright-Reed Act].” (quoting *Securus Stay Denial Order* at 5, para. 9)).

<sup>55</sup> Wood Declaration at para. 24; *see also id.* at para. 23 (noting that “the cost distinctions observed between Providers for both audio and video IPCS are largely an artifact of how each Provider reported costs associated with Safety & Security”).

<sup>56</sup> *2024 IPCS Order* at 205, para. 385.

<sup>57</sup> *Id.*.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 206, para. 387.

<sup>60</sup> *Id.* at 111, para. 200.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 111-12, para. 200.

<sup>63</sup> *See generally* Pay Tel Stay Petition at 11-15.

public’ and ‘ensure’” that IPCS are used safely.<sup>64</sup> Here again the Commission spoke clearly in the *2024 IPCS Order* when it rejected the same argument from Pay Tel.<sup>65</sup> The Commission “do[es] not dispute, and indeed the Commission has long recognized, that communications services for incarcerated people occur in a unique context” and, as a result, “the Commission has recognized that there are certain features that ensure these communications services are available to incarcerated people and can be used safely.”<sup>66</sup> But the Commission noted that the need to ensure the safe use of IPCS “do[es] not overcome [the Commission’s] responsibility here where incarcerated people or their loved ones are the ones paying for and using IPCS subject to Commission-specified rate regulations.”<sup>67</sup> Nothing has changed since the Commission made these statements.

18. Pay Tel also argues that the Commission adopted a “newly-minted user benefit standard” in its application of the used and useful framework, which “improperly fails to give weight to the technology and service configuration determinations of the local governmental entities tasked with operating confinement facilities and providers who are experts on their systems and the technology needed to keep IPCS safe and secure” and ignores that “IPCS users are the ‘causers’ of the safety and security costs in question.”<sup>68</sup> We disagree.

19. The Commission did not adopt a new “user benefit” standard in its evaluation of safety and security measures. Pay Tel raised this argument in the rulemaking and the Commission responded to it, noting that “the used and useful framework, as applied for decades by the Commission in its familiar ratemaking functions, is an equitable principle that prevents ratepayers from having to pay for costs that are primarily incurred for the benefit of the provider, while allowing regulated entities to be compensated for providing service.”<sup>69</sup> Contrary to Pay Tel’s claims, it is this well-established framework that the Commission applied in evaluating “all of the arguably recoverable costs in the record, including costs associated with safety and security measures, to distinguish those costs that should be included in [the Commission’s] ratemaking calculus from those that should not.”<sup>70</sup>

20. The Commission also did not discount, second guess, or otherwise intrude upon the discretion of correctional officials and IPCS providers in its evaluation of the costs associated with safety and security measures that should be included in the Commission’s ratemaking calculus and those that should not. The Commission’s actions in the *2024 IPCS Order*, and in particular its actions regarding safety and security measures “[were] about fulfilling [the Commission’s] obligation under the Martha Wright-Reed Act to adopt a compensation plan that ensures just and reasonable rates and charges for IPCS consumers and providers and fair compensation for IPCS providers.”<sup>71</sup> None of the Commission’s actions “prohibit any correctional institution from implementing any safety and security measure that it

---

<sup>64</sup> *Id.* at 12 (quoting *2024 IPCS Order* at 202, para. 380).

<sup>65</sup> *2024 IPCS Order* at 202, para. 380 n.1362 (“Pay Tel mischaracterizes our rejection of Securus’s overbroad interpretation of ‘customer’ as a more general rejection of the need to provide appropriate safety and security measures as part of the provision of IPCS.”).

<sup>66</sup> *Id.* at 192-93, para. 367.

<sup>67</sup> *Id.* at 202, para. 380.

<sup>68</sup> Pay Tel Stay Petition at 13-14.

<sup>69</sup> *2024 IPCS Order* at 205, para. 384 n.1382; Public Interest Parties Opposition at 6 (noting that “[u]nder Commission precedents, the ‘used and useful’ standard calls for an evaluation of whether a cost ‘promotes customer benefits, or is primarily for the benefit of the carrier’” (quoting *2024 IPCS Order* at 195, para. 370)).

<sup>70</sup> *Id.* at 208, para. 389.

<sup>71</sup> *Id.* at 208-09, para. 390.



deems appropriate or desirable.”<sup>72</sup> The Commission’s actions do, however, “ensure that IPCS consumers do not bear the costs of those safety and security measures that are not used and useful or necessary to provide IPCS regardless of how desirable these measures may be to correctional institutions.”<sup>73</sup> And the Commission did so “in applying bedrock ratemaking precedent to evaluate all of the claimed IPCS costs and expenses in the record before [the Commission] to determine the extent to which consumers should bear those costs.”<sup>74</sup> Pay Tel does not attempt to address the Commission’s extensive evaluation of safety and security costs in the *2024 IPCS Order* or provide any information or data to substantiate its claim that the Commission’s ratemaking exercise intruded upon the discretion of correctional official and IPCS providers in connection with safety and security measures.

21. Instead of applying the used and useful framework to safety and security costs as the Commission did, Pay Tel suggests that the proper focus of the inquiry is on IPCS consumers who “are the ‘causers’ of the safety and security costs in question and should therefore bear such costs under well-established [cost-causation] principles endorsed by the Commission.”<sup>75</sup> This same suggestion was considered and rejected by the Commission in the *2024 IPCS Order*.<sup>76</sup> The Commission explained that the cost-causation analysis applicable in intercarrier compensation reform was not directly comparable to the fundamentally different context of IPCS.<sup>77</sup> As the *2024 IPCS Order* further explains, “costs that are not used and useful in the provision of IPCS are not caused by IPCS communications, and thus neither party to such communications reasonably can be seen as causing those costs through the use of IPCS.”<sup>78</sup>

22. Finally, Pay Tel criticizes the Commission’s application of the used and useful standard, arguing that it applied the standard “in an arbitrary and incoherent manner.”<sup>79</sup> This is because, in Pay Tel’s view, the Commission “prohibits recovery for safety and security measures it concedes benefit users while allowing recovery for measures it says do not benefit users.”<sup>80</sup> We disagree with this characterization. Because the Commission evaluated the safety and security cost data based on the preponderance of tasks within each category, it is not surprising that, in some cases, such as for law enforcement support services, some functions within a given category might benefit consumers.<sup>81</sup> But that does not mean the costs of those functions, much less all the costs within that category, should be recoverable under the used and useful standard. Indeed, in the case of law enforcement support services, the Commission noted that certain tasks, while potentially beneficial, “do not facilitate the provision of

---

<sup>72</sup> *Id.* at 32, para. 57. *See also* Public Interest Parties Opposition at 6 (explaining that the exclusion of certain safety and security costs “by no means prohibits what safety and security measures facilities may employ, like Pay Tel erroneously suggests”).

<sup>73</sup> *Id.* at 32-33, para. 57. *See also* Public Interest Parties Opposition at 6 (“Excluding safety and security costs that are not used and useful to the IPCS ratepayer from the new rate caps is merely a regulation of what facilities and service providers may charge rate payers for these measures.”)

<sup>74</sup> *Id.* at 209, para. 390.

<sup>75</sup> Pay Tel Stay Petition at 13.

<sup>76</sup> *2024 IPCS Order* at 133, para. 246 n.846.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Pay Tel Stay Petition at 14.

<sup>80</sup> *Id.*

<sup>81</sup> *2024 IPCS Order* at 212, para. 394 (recognizing that “some functions in this category [law enforcement support services] may provide a benefit to incarcerated people”). The zone of reasonableness approach the Commission used in developing its overall rate caps helped to account for these outcomes and the Commission acknowledged that in the *2024 IPCS Order*. *See id.* at 196, 206-08, paras. 372, 387-88. *See also* Public Interest Parties Opposition at 7 (noting that “tasks that benefit IPCS users do not always also facilitate the provision of IPCS”).

IPCS and are therefore not used and useful in the provision of IPCS.”<sup>82</sup> Conversely, in other circumstances there may be categories that have no direct benefit to the consumer but that the Commission concluded were used and useful and therefore recoverable.<sup>83</sup> Should a given provider be able to demonstrate in a given instance that a particular safety and security cost not generally included in the rate caps is, in fact, used and useful, it is free to seek a waiver dealing with its special circumstances.<sup>84</sup>

23. *Facility Costs.* In the *2024 IPCS Order*, the Commission permitted “IPCS providers to reimburse correctional facilities for the used and useful costs the facilities incur to enable the provision of IPCS” to incarcerated people.<sup>85</sup> Pay Tel claims that the Commission acted arbitrarily in permitting this reimbursement “despite failing to allow providers to first recover” those costs either through the rate caps or rate cap additives.<sup>86</sup> This argument ignores the Commission’s decision to incorporate facility costs into its final rate caps by utilizing facility costs as one of several factors in establishing its final rate caps above the lower bounds.<sup>87</sup> While Pay Tel questions the Commission decision not to include a rate additive of \$0.02 per minute to its rate caps to account for used and useful correctional facility costs,<sup>88</sup> the Commission appropriately concluded that the data before it did not enable it “to quantify such costs with anything near the level of specificity that would be required to adopt a specific “just and reasonable” additive reflecting used and useful correctional facility costs.”<sup>89</sup>

24. Pay Tel contends that the Commission’s decision to permit IPCS providers to reimburse correctional facilities for the used and useful costs that the facilities incur to enable the provision of IPCS is both inconsistent with the Commission’s prohibition against the payment of site commissions associated with IPCS and “ineffectual.”<sup>90</sup> The Commission, however, “decouple[d]” the “reimbursement of correctional facilities for costs used and useful in providing IPCS” from “other IPCS provider payments to correctional facilities” and excluded such reimbursement to facilities from its prohibition

---

<sup>82</sup> *Id.* at 213, para. 394.

<sup>83</sup> For example, in the case of CALEA compliance measures, the Commission was “not persuaded that the functionalities associated with CALEA compliance generally would directly benefit IPCS users” but concluded that they are used and useful in the provision of IPCS primarily because “without CALEA compliance, IPCS providers could not offer their audio and certain advanced communications services.” *Id.* at 209, para. 391.

<sup>84</sup> *Id.* at 205-06, para. 385 n.1384; *see also id.* at 124, para. 222 n.787 (explaining how the Commission has relied on similar approaches to identifying recoverable costs in other contexts in the past); Public Interest Parties Opposition at 7 (noting that “Pay Tel has notably failed to provide any examples of a particular safety and security cost not generally included in the rate caps that is, in fact, used and useful”).

<sup>85</sup> *2024 IPCS Order* at 132, para. 246.

<sup>86</sup> Pay Tel Stay Petition at 15. Pay Tel’s acknowledgement that the *2024 IPCS Order* permits IPCS providers to reimburse facilities for the costs they incur in making IPCS available to incarcerated people, Pay Tel Stay Petition at 15, contradicts its contention that the Commission erred “by failing to allow facilities to recover” those costs. *Id.*

<sup>87</sup> *Securus Stay Denial Order* at 11-12, para. 25 (citing *2024 IPCS Order* at 118-19, para. 214 (recognizing “several specific factors that guide us to select rate caps above our lower bounds” including that “facilities may incur certain costs that are used and useful in the provision of IPCS”).

<sup>88</sup> Pay Tel Stay Petition at 16.

<sup>89</sup> *2024 IPCS Order*, at 94, para. 169; *see id.* (recognizing that, given the state of the record, the Commission could not accept at face value a \$0.02 per minute additive, or any alternative additive, and simultaneously ensure that its rate caps would be just and reasonable and fairly compensatory). Contrary to Pay Tel’s argument, Pay Tel Stay Petition at 15, the Commission appropriately excluded any estimate of facility costs from the lower bounds of the zones of reasonableness given the absence of reliable facility cost data. *Securus Stay Denial Order* at 11-12, para. 25 (quoting *2024 IPCS Order* at 92, para. 166 (“Despite these numerous and repeated public attempts to obtain relevant data, commenters have neither provided updated facility cost data nor proposed a methodology that would allow the Commission to accurately estimate used and useful correctional facility costs.”)).

<sup>90</sup> Pay Tel Stay Petition at 17.

against site commissions.<sup>91</sup> As indicated above, the Commission’s ratemaking calculus specifically recognized that facilities incur used and useful IPCS costs. The procedure the Commission chose to enable facilities to recover those costs—negotiations between IPCS providers and correctional officials—is a reasonable one, given the sparse data on facility costs in the rulemaking record. While IPCS providers and correctional officials may encounter difficulties in determining the amounts of reimbursement providers may pay facilities, the staggered dates for complying with the prohibition against site commissions explicitly recognize those difficulties.<sup>92</sup> Pay Tel makes no claim that it and the facilities it serves will be unable to determine those amounts within the specified time frames.

25. *Other Methodological Issues.* Pay Tel claims that the “Order commits a number of methodological and similar errors that materially and adversely impact providers.”<sup>93</sup> While Pay Tel does not substantiate these claims and provides no support for its assertions, it nonetheless contends that each of the alleged errors “improperly served to understate actual IPCS costs to the harm of providers.”<sup>94</sup> Pay Tel’s alleged methodological issues are addressed below.

26. *Reliance on Total Costs.* Pay Tel claims the Commission erred in using “unbilled minutes . . . to calculate rate caps.”<sup>95</sup> In the *Securus Stay Denial Order*, we rejected a similar allegation made by Securus,<sup>96</sup> stating that, “[i]n determining the upper and lower bounds of its zones of reasonableness, the Commission calculated industry average costs per minute by dividing total costs (the sum of the costs of both billed and unbilled minutes) by total minutes, based on its finding that this approach more accurately reflected providers’ average costs per minute than an approach that used billed minutes as the denominator.”<sup>97</sup> As the Commission determined in the *2024 IPCS Order*, “[t]he use of both billed and unbilled minutes is an improvement from the *2021 ICS Order*, which divided expenses by paid minutes, and better reflects the cost of actual minutes.”<sup>98</sup> Consistent with our prior finding with regard to Securus, we find here that Pay Tel’s “arguments ignore the adverse effects rate caps based on only billed minutes would have on IPCS consumers, as well as the variability of unbilled minutes practices now and in the future.”<sup>99</sup> “[T]he ratio of billed minutes to unbilled minutes varies across facilities, and rate caps based on the average cost of a billed minute would allow over recovery of costs, and therefore unreasonably high rates, in facilities” with relatively high ratios, “while allowing under-recovery in other facilities.”<sup>100</sup> The *Securus Stay Denial Order* also recognized the variability of facilities’ mandates to IPCS providers to offer “free” calls and hence the inherent unreliability of relying

---

<sup>91</sup> *2024 IPCS Order* at 143-44, para. 242.

<sup>92</sup> *Id.* at 302, para. 588.

<sup>93</sup> Pay Tel Stay Petition at 17. *See also* Public Interest Parties Opposition at 8 (explaining that Pay Tel “rehashes several claims from Securus’s petition for stay regarding . . . certain ‘methodological errors’ and that the “Bureau has comprehensively explained why these claims lack merit in its order denying Securus’s request”).

<sup>94</sup> Pay Tel Stay Petition at 17.

<sup>95</sup> *Id.*

<sup>96</sup> *Securus Stay Denial Order* at 9-10, paras. 19-21.

<sup>97</sup> *Id.* at 9, para. 19 (citing *2024 IPCS Order* at 107, para. 190).

<sup>98</sup> *2024 IPCS Order*, Appx. E at 378, para. 4.

<sup>99</sup> *Securus Stay Denial Order* at 9, para. 20 (citing *2024 IPCS Order*, Appx. E at 378, para. 4 n.8).

<sup>100</sup> *2024 IPCS Order*, Appx. E at 378, para. 4 n.8; *see Securus Stay Denial Order*, at para. 20 (recognizing that rate caps based on the average costs of billed minutes would result in incarcerated people who receive relatively few free minutes to subsidize other IPCS users).

on billed minutes alone, stating that “under the rules adopted in the *2024 IPCS Order*, nothing requires IPCS providers to bear the costs of such calls themselves at the behest of correctional institutions.”<sup>101</sup>

27. *Inflation*. Pay Tel claims that the Commission “refus[ed] to account for inflation when setting rate caps.”<sup>102</sup> We addressed and rejected a similar claim made by Securus in the *Securus Stay Denial Order*.<sup>103</sup> As noted there, “the Commission expressly acknowledged accounting for inflation as one of a number of factors used in setting its rate caps.”<sup>104</sup> We added that “[s]etting rate caps above the lower bounds will help to account for . . . any inflation not offset by productivity growth.”<sup>105</sup> Pay Tel makes no attempt to address or quantify the role productivity increases play in offsetting inflation. It also does not acknowledge that inflation in the telecommunications industry has been lower than in the economy generally.<sup>106</sup>

28. *Compliance Costs*. Pay Tel claims that the Commission “exclud[ed] the costs of complying with its new rules from its rate cap calculations.”<sup>107</sup> Pay Tel is mistaken. As we recognized in the *Securus Stay Denial Order*, “[w]hile the Commission stated that it generally excluded one-time implementation costs as being inappropriate for inclusion in permanent rate caps, it nonetheless included compliance costs as a factor in its rate setting.”<sup>108</sup> The Commission “factored into its calculations the possibility that providers’ costs of implementing the Commission’s actions “may, on balance, exceed their ongoing savings from” implementing Commission rules that lower their costs.<sup>109</sup> The *2024 IPCS Order* took “the conservative approach of setting [its] rates somewhat above the lower bounds to account for” these and other costs providers may incur.<sup>110</sup>

29. *Compliance Dates for Ancillary Service Charges*. Pay Tel claims that the *2024 IPCS Order* does not contain a “clear and direct statement” on “when the prohibition on ancillary [service] charges takes effect” and argues in favor of delaying the compliance dates for the prohibition as the

<sup>101</sup> *Securus Stay Denial Order* at 10, para. 21. Furthermore, as we observed in regard to Securus’s stay petition, “the number of unbilled minutes is {[ ]}, and would have at most only *de minimis* impact on [Pay Tel] and other providers. For example, based on the Brattle Group’s analysis, the total reported unbilled audio minutes as a percentage of total audio minutes is . . . approximately {[ ]} for all providers. Thus, excluding unbilled minutes in the calculation of the rates is unlikely to materially impact the actual rate caps.” *Id.* at 10, para. 20 n.82 (quoting Opposition to Securus Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (Public Interest Parties Opposition to Securus Stay Petition)) (quotation marks omitted).

<sup>102</sup> Pay Tel Stay Petition at 17.

<sup>103</sup> *Securus Stay Denial Order* at 11, para. 23.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* (citing *2024 IPCS Order* at 118-19, para. 213 (“Setting rate caps above the lower bounds will help to account for the possibility that the adjustments [the Commission] applied to providers’ reported costs to obtain the lower bound estimates were too aggressive, to account for the possibility that aspects of our evaluation of used and useful costs to provide IPCS may be inaccurate to some degree, to account for any inflation not offset by productivity growth, and to ensure that providers will be better able to recover their costs of providing TRS.”)).

<sup>106</sup> *2024 IPCS Order* at 68, n.431 (“[H]istorically, growth in the Telecommunications [producer price index (PPI)] has been lower, on average, than general measures of inflation. Over the last decade, the average annual change of the Telecommunications PPI was 0.7%, as compared to the average annual change of the broader [gross domestic product] Deflator over the same period of 2.6%.”).

<sup>107</sup> Pay Tel Stay Petition at 17. A similar allegation by Securus was addressed and dismissed in the *Securus Stay Denial Order*. See *Securus Stay Denial Order* at 11, para. 24.

<sup>108</sup> *Securus Stay Denial Order* at 11, para. 24 (citing *2024 IPCS Order* at 119, para. 214).

<sup>109</sup> *Id.*

<sup>110</sup> *2024 IPCS Order* at 119, para. 214.

Commission did for its rate cap and site commission reforms.<sup>111</sup> Pay Tel further claims that the *Securus Stay Denial Order* “fails to consider or explain why the ancillary service prohibition should be treated differently and independently from the other components of its ‘comprehensive’ rate reforms.”<sup>112</sup> Pay Tel misses the *2024 IPCS Order*’s clear direction.

30. As previously indicated in the *Securus Stay Denial Order*,<sup>113</sup> the *2024 IPCS Order* delays compliance with its rate cap and site commission reforms, recognizing that “IPCS providers, governmental officials, and correctional officials may need additional time . . . to renegotiate contracts in response to our actions today.”<sup>114</sup> The Commission explained that the staggered compliance dates it adopted for the rate caps and site commission reforms “strike[] a reasonable balance between” the need to “alleviate the burden of unreasonably high . . . rates” and the fact that IPCS providers and correctional officials “will need more than 30 days to execute any contractual amendments necessary to implement the new” rate cap and site commission reforms.<sup>115</sup> The *2024 IPCS Order* further clarified that “all other rules and requirements adopted in this Order also will take effect 60 days after notice is published in the Federal Register.”<sup>116</sup> It found that this effective date “best balances the need to bring these important, pro-consumer rules into effect expeditiously while affording IPCS providers sufficient time to implement any changes necessary to comply with [the Commission’s] rules.”<sup>117</sup> The staggered compliance dates for rate caps and site commission reform are therefore properly understood as exceptions to the general compliance requirements applicable to other provisions of the *2024 IPCS Order*. The *2024 IPCS Order* noted that the Commission “do[es] not view [its] other reforms as involving similar complexities such that a longer effective date period is necessary.”<sup>118</sup>

31. Pay Tel nonetheless argues that “the prohibition of ancillary fees is part and parcel of a comprehensive approach to rate setting” and that ending ancillary service charges “is one component of ‘comprehensive’ rate reform.”<sup>119</sup> While it is true that the Commission’s reforms are designed to work in concert, that fact alone is insufficient to justify extending compliance dates for the ancillary service charge prohibition. The elimination of separate ancillary service charges was based on “four independently sufficient findings,” which generally were independent from the specific IPCS rate caps established in the *2024 IPCS Order*.<sup>120</sup> For example, the conclusions that eliminating separate ancillary services charges: (1) better reflected the nature of IPCS offerings;<sup>121</sup> (2) would eliminate incentives for

---

<sup>111</sup> Pay Tel Stay Petition at 19. *See generally id.* at 19-21. Pay Tel references “the Bureau’s new interpretation” of the Commission’s prohibition on ancillary fees. *Id.* at 20. To clarify, the *Securus Stay Denial Order* restated the relevant provisions of the *2024 IPCS Order* related to the timing of that provision. Further, Pay Tel’s request would more naturally be the subject of a petition for clarification as opposed to a stay petition, the granting of which would not provide the clarification Pay Tel seeks but would rather stay the entirety of the Order, precluding a resolution of the issue and frustrating the goals of IPCS reform and the Commission’s implementation of the Martha Wright-Reed Act generally.

<sup>112</sup> *Id.* at 21.

<sup>113</sup> *See generally Securus Stay Denial Order* at 13-14, paras 28-29.

<sup>114</sup> *2024 IPCS Order* at 305, para. 588; *see also Securus Stay Denial Order* at 14, para. 29.

<sup>115</sup> *2024 IPCS Order* at 305, para. 589 (internal quotations omitted).

<sup>116</sup> *Id.* at 308, para. 595.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Pay Tel Stay Petition at 20.

<sup>120</sup> *2024 IPCS Order* at 223-24, para. 415.

<sup>121</sup> *Id.* at 223-24, paras. 415-17.

marketplace abuses designed to inflate ancillary service fee revenue;<sup>122</sup> (3) accounted for the lack of data sufficient to set separate just and reasonable charges for individual ancillary services;<sup>123</sup> and (4) would yield other benefits such as operational efficiencies and reduced barriers to communications,<sup>124</sup> are entirely distinct from the details of the prospective IPCS rate caps. Pay Tel also argues that “ancillary payments cannot be eliminated until site commission payments are eliminated—and site commission payments cannot be eliminated until contracts are revised.”<sup>125</sup> Apart from the revenue reduction that Pay Tel asserts is involved, Pay Tel does not make clear why eliminating site commissions should be a necessary predicate for eliminating ancillary service charges. And Pay Tel also does not address the fact that it will continue to benefit from the higher prior rate caps as it manages its transition to the new rate caps and implements the Commission’s site commission reforms. Thus, there also is no practical necessity that the new IPCS rate caps be in place before the prohibition on separate ancillary service charges workably could take effect.

32. Pay Tel claims that the *2024 IPCS Order*’s inclusion of “passthrough charges” as one type of term or condition that could require material alteration of contracts “could reasonably be understood to include ancillary fees.”<sup>126</sup> But the adoption of staggered compliance dates for rate caps and site commission reforms was premised on the fact that these were “terms and conditions that would require material alteration through [contract] renegotiation.”<sup>127</sup> Apart from its claims regarding the financial impact of prohibiting ancillary service charges, Pay Tel stops short of contending that ending ancillary service charges would require material alteration of its IPCS contracts, nor does it provide any support that its IPCS contracts have, in fact, been or are being renegotiated to comply with the prohibition on ancillary service charges. It also claims that “the existing recovery of ancillary charges as a separate revenue source is part of the overall pool of revenue from which negotiations over facility contracts have taken place.”<sup>128</sup> But, again, this assertion, while unsurprising, falls short of claiming and substantiating a claim that these changes have required or will require material alterations to their IPCS contracts.

33. Pay Tel thus has failed to establish that its challenges to the Commission’s actions are likely to succeed on the merits.

#### **B. Pay Tel Has Failed to Show It Will Suffer Irreparable Harm**

34. Pay Tel likewise fails to demonstrate that it would suffer imminent and irreparable harm without a stay. To establish irreparable harm, a petitioner must show that it will suffer injury that is “‘both certain and great,’ ‘actual and not theoretical,’ ‘beyond remediation,’ and ‘of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.’”<sup>129</sup> In doing so, the petitioner must present actual evidence to “substantiate [its] claim” of injury.<sup>130</sup> “‘Bare allegations of

---

<sup>122</sup> *Id.* at 224-26, paras. 418-19.

<sup>123</sup> *Id.* at 226-27, para. 420.

<sup>124</sup> *Id.* at 227-28, paras. 421-24.

<sup>125</sup> Pay Tel Stay Petition at 20.

<sup>126</sup> *Id.* at 20.

<sup>127</sup> *2024 IPCS Order* at 304, para. 587.

<sup>128</sup> Pay Tel Stay Petition at 21.

<sup>129</sup> *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)); *Securus Stay Denial Order* at 15, para. 31; see *Ligado Stay Denial Order*, 36 FCC Rcd at 1267, para. 10.

<sup>130</sup> *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

what is likely to occur are of no value' under this factor, because we 'must decide whether the harm will *in fact* occur.'"<sup>131</sup> Pay Tel has not met its burden to make and substantiate these showings.

35. The crux of Pay Tel's argument is that it "will suffer direct and unrecoverable economic losses" and "significant" compliance costs without a stay.<sup>132</sup> Specifically, Pay Tel alleges that the reduced rates imposed under the Commission's rate caps will result in a {{ }}.<sup>133</sup> Rather than challenge the *2024 IPCS Order's* estimates or challenge the methodology that led to them, Pay Tel offers its own unsubstantiated figures, which we decline to adopt on the record before us.<sup>134</sup> Notably, Pay Tel's claimed future losses grossly exceed those calculated in the *2024 IPCS Order* even when using costs the Commission found likely to be overstated, which estimated a smaller {{ }}, in combined audio and video communications revenues assuming no increase in demand.<sup>135</sup>

<sup>131</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, CC Docket No. 96-98, 11 FCC Rcd 11754, 11757, para. 8 (1996) (quoting *Wis. Gas*, 758 F.2d at 674).

<sup>132</sup> Pay Tel Stay Petition at 18. Although Pay Tel also claims it will suffer "stranded costs relating to prior investment," Pay Tel neither identifies which investments may be stranded, nor quantifies the costs allegedly involved. *See id.*; *see also* Wood Declaration at para. 14 (alleging, without detail, that Pay Tel has {{ }); Pay Tel Stay Petition at 2 ("Pay Tel has re-invested . . . by developing and implementing educational, vocational training, and self-help resources."). We find Pay Tel's claims of stranded investment to be both speculative and unsupported. And, as we explained in response to Securus, we are unconvinced by claims that private {{ }} will ebb as a result of the *2024 IPCS Order*. *See Securus Stay Denial Order* at 18, para. 40 (observing that "[c]ontrary to [such] claims, the rate setting methodology used by the Commission in the *2024 IPCS Order* accounted for the costs of research and development"). To the extent Pay Tel asserts a claim for "significant compliance costs" as well, we find it has neither substantiated that claim nor provided evidence of such costs, and deny such claims along similar grounds, consistent with the *Securus Stay Denial Order*. *See* Pay Tel Stay Petition at 18; *Securus Stay Denial Order* at 16, para. 35 (refuting claims of harm based on compliance costs).

<sup>133</sup> Pay Tel Stay Petition at 21 (claiming {{ }); We note that, inconsistent with its claim of earning a {{ }} Pay Tel's 2022 data show that its {{ }}). *Compare* Pay Tel Stay Petition at 4 with *2024 IPCS Order*, Appx. F at 394, Tbl. 9. This amounts to a difference of nearly {{ }} which we cannot explain on the data before us, leaving us wary of accepting the proffered figures, as discussed further below.

<sup>134</sup> Pay Tel states that their estimated {{ }} were reached by estimating revenues at the new rate caps and adjusting "[a]ll Ancillary Service Charges" and "[a]ll costs associated with the payment of site commissions" to zero. *See* Wood Decl. at paras. 4-5. We find these numbers unsubstantiated and difficult to verify. For example, while Dr. Wood appears to have included site commissions in his estimated reduction of revenues, the lack of detail leaves it impossible to understand whether his treatment of site commissions is appropriately reflected elsewhere, such as in his calculation of "EBITDA" and "EBT." *See, e.g., id.* at para. 9.

Additionally, we note that the 2022 revenue and site commission data Pay Tel cites in its petition differ from those the Commission derived from Pay Tel's submitted data and relied upon in the *2024 IPCS Order* by a cumulative difference of nearly \$1 million. *Compare* Wood Decl. at para. 5 (stating 2022 audio service revenue of {{ }} with *2024 IPCS Order*, Appx. F at 392, Tbl. 7 ({{ })); Wood Decl. at para. 6 (stating 2022 video service revenue of {{ }} with *2024 IPCS Order*, Appx. F at 392, Tbl. 7 ({{ })); Wood Decl. at para. 7 (stating 2022 Ancillary Service revenue of {{ }} with *2024 IPCS Order*, Appx. F at 392, Tbl. 7 ({{ })); Wood Decl. at para. 8 (stating 2022 site commissions of {{ }} with *2024 IPCS Order*, Appx. F at 386, Tbl. 3 ({{ })). Dr. Wood obtained access to the confidential version of the *2024 IPCS Order* under the relevant Protective Orders in this proceeding and presumably had an opportunity to compare those submitted data with the data included in his declaration but does not articulate a reason for such differences; nor does he provide the calculations underlying his data that might enable us to reconcile these differences.

<sup>135</sup> The Commission estimated Pay Tel's total IPCS potential revenue at the new rate caps to be {{ }}, while using costs the Commission found likely to be overstated, and while assuming no increase in demand at the lower rates. *See 2024 IPCS Order* at 453-54, Appx. J, para. 4 n.6 & Tbl. 3.

(continued....)

This shortfall is further winnowed after accounting for the effects of audio demand elasticity, which suggests audio communications minutes will increase as the price per minute falls, largely offsetting this shortfall.<sup>136</sup> We estimate this increase in audio revenue to total roughly {{ }}.<sup>137</sup> Given the Commission's lower interim video IPCS rate caps, video demand elasticity, which we expect to perform similarly, will also generate additional revenue. Therefore, other things remaining constant, we would expect to see a similar increase in video communications minutes which would further offset this shortfall. In sum, we find Pay Tel's claims insufficient to demonstrate irreparable harm, particularly because the new rate caps will leave Pay Tel in a roughly similar position to that which Pay Tel itself reported for calendar year 2022, when its reported expenses including site commissions {{ }}.<sup>138</sup>

36. Tied to this claim, Pay Tel also alleges that, for the period beginning November 19, 2024, Pay Tel will suffer lost ancillary service charge revenue of {{" }} annually from the prohibition of such charges, and alleges additional annual payments of {{ }} in ongoing site commission payments it will remain obligated to make.<sup>139</sup> We find Pay Tel has not substantiated these contentions. As we stated in the *Securus Stay Denial Order*, the new rate caps include recovery of all costs of providing ancillary services.<sup>140</sup> Claims of lost ancillary services revenue are therefore misleading; in the long term, the Commission's IPCS rate caps will allow providers to recover all ancillary service costs as part of their per-minute charges.<sup>141</sup> And in the short term, before Pay Tel has fully instituted the new rate caps, it will continue to charge above-cost rates. Therefore, because the costs of ancillary services are subsumed within the new lower rate caps, the rates that Pay Tel is currently charging will allow it to recover its costs of providing both IPCS and ancillary services, plus an additional margin of profit to the extent that their current rates lie above the new rate caps.<sup>142</sup> Although full

(Continued from previous page) \_\_\_\_\_

In subsequent *ex parte* filings, Pay Tel neither disputed nor refuted these estimates. See generally Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dockets 23-62, 12-375 (filed July 9, 2024) (Pay Tel July 9, 2024 *Ex Parte*); Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375 (filed July 11, 2024).

<sup>136</sup> 2024 IPCS Order at 301, para. 581.

<sup>137</sup> A description of the staff calculations resulting in this estimate is set forth in Appendix A.

<sup>138</sup> As the Commission noted in the 2024 IPCS Order, we find this result much more likely to reflect accounting practices than to indicate that Pay Tel was not a profitable going concern. See 2024 IPCS Order at 111, para. 199; *id.*, Appx. F at 394-95, paras. 20-21. {{ }} See *id.*, Appx. F at 394, Tbl. 9.

<sup>139</sup> Wood Decl. paras. 7-8; see also Pay Tel Stay Petition at 22. But see 2024 IPCS Order Appx. F at 392, Tbl. 7 (citing Pay Tel's IPCS Ancillary Revenue as {{ }}).

<sup>140</sup> *Securus Stay Denial Order* at para. 32 (citing 2024 IPCS Order at 68-75, paras. 130-37 (describing providers' ancillary services costs as being included in the rate cap calculations)).

<sup>141</sup> See 2024 IPCS Order at 220-29, paras. 408-26; *Securus Stay Denial Order* at 15, para. 32; see also Public Interest Parties Opposition at 9 ("[A]s the Bureau observed in the context of Securus's petition, alleged losses in connection with the prohibition on separate ancillary fees [are] misleading because 'in the long term, the Commission's IPCS rate caps allow providers to recover all ancillary service charges costs as part of their per-minute charges'" (quoting *Securus Stay Denial Order* at 15, para. 32)). For reference, Pay Tel's average ancillary expenses per audio minute are {{ }}, and are nearly identical to the industry average of \$0.011. See 2024 IPCS Order, Appx. F at 398, Tbl. 11.

<sup>142</sup> All of Pay Tel's existing rates lie well-above the new rate caps, affording them significant margin to offset these purported losses. Specifically, Pay Tel charges audio IPCS rates that are, on average, above the respective rate cap by {{ }}

(continued....)



compliance with the prohibition on the payment of site commissions will not take place immediately, that same interim margin Pay Tel and other providers will collect from charging above-cost rates will more than account for their site commissions costs over the same period.<sup>143</sup> We therefore find claims of significant losses from the prohibition on ancillary service charges meritless, and find no irreparable harm stemming from Pay Tel’s purported lost revenues.

37. Pay Tel doubles down on its arguments, asserting “[s]uch losses are an existential threat to Pay Tel’s continued viability” and “at a minimum, will cause Pay Tel to curtail operations in high cost facilities . . . .”<sup>144</sup> We are unpersuaded. Pay Tel’s own data show it had already been operating at a loss in 2022.<sup>145</sup> Further, as explained in the *2024 IPCS Order*, other providers reported substantially lower per minute costs, including like-sized providers serving smaller facilities; this in turn suggests that Pay Tel may well be able to match the efficiency of its rivals.<sup>146</sup> Pay Tel previously raised such claims;<sup>147</sup> the Commission rejected those claims in the *2024 IPCS Order*, and we do so again now.<sup>148</sup>

38. In short, Pay Tel fails to account for the offsetting revenue that we expect lower rates will produce, ignores the windfalls it may reap by charging above-cost rates in the period before it must comply with the new rate caps, and claims commercial viability concerns which fall flat compared to similarly-situated providers, and alongside the operational losses which Pay Tel itself reported in 2022. Based on the foregoing, we therefore conclude that Pay Tel has failed to demonstrate any imminent, actual irreparable harm resulting from the *Order*.<sup>149</sup>

### C. Pay Tel Has Not Shown That a Stay Is in the Public Interest and Would Not Harm

(Continued from previous page) \_\_\_\_\_

} Compare *2024 IPCS Order*,

Appx. F at 393, Tbl. 8 with *id.* at 115, para. 207.

<sup>143</sup> Our review of Pay Tel’s data shows that Pay Tel’s average site commissions per audio and video minute is {{ }}, ranging between {{ }}, i.e., amounts generally equivalent to, or substantially less than, the corresponding margin between Pay Tel’s current rates and the new rate caps. *2024 IPCS Order*, Appx. F at 401, Tbl. 14); *supra* note 142.

<sup>144</sup> Pay Tel Stay Petition at 22. Pay Tel argues further that the “speculative potential for future profit does not undo the immediate and substantial loss that Pay Tel will suffer.” *Id.* at 22 (citing *2024 IPCS Order* at 120-21, para. 217); *see also id.* at 8-9, n.34 (arguing that “any assumptions about call stimulation resulting from lower rates are not appropriate”). Pay Tel bases this argument on speculation that facilities will restrict access to IPCS in light of the reforms adopted in the *Order*, which we find unpersuasive. *See infra* para. 41 & n.155. Because Pay Tel offers no further rationale for why the Commission’s estimates of future demand are inappropriate within the broader analysis of providers’ future net losses (or gains) under the rate caps, we find such arguments meritless. Indeed, in its *ex parte* filings, Pay Tel neither disputed nor refuted these estimates. *See generally* Pay Tel July 9, 2024 *Ex Parte*; *see also 2024 IPCS Order* at 301, para. 581 (adopting the same demand elasticity figure as that adopted in the *2021 ICS Order*, and observing that “[n]o commenter disputed our elasticity estimate or the methodology underlying it”).

<sup>145</sup> *See 2024 IPCS Order*, Appx. F at 394, Tbl. 9 (reflecting a {{ }}). *But see supra* n.138. Our estimate of Pay Tel’s net returns under the new rate caps is derived from the same data, and thus relies on the same underlying accounting practices, which Pay Tel reported in 2022 (and which, as we note above, produced a net loss, *see supra* para. 35 & n.138). We therefore think it remains likely, for the same reasons, that Pay Tel would remain a profitable going concern.

<sup>146</sup> *See 2024 IPCS Order*, Appx. J at 453-44, para. 5.

<sup>147</sup> *See, e.g.,* Pay Tel July 9, 2024 *Ex Parte* at 2 (arguing service at high cost facilities will be chilled).

<sup>148</sup> *2024 IPCS Order* Appx. J at 453-56, paras. 6-7 & nn.7, 14 (concluding that “it is implausible that our rate caps will prevent supply in small jails”).

<sup>149</sup> *See Public Interest Parties Opposition* at 9 (“It is blackletter law that economic loss ordinarily ‘does not, in and of itself, constitute irreparable harm.’ . . . Here, Pay Tel does not demonstrate that the various types of financial losses it claims it would suffer under the MWRA Order is unrecoverable.” (quoting *In re NTE Comm., LLC*, 26 F.4th 980, 990-91 (D.C. Cir. 2022))).

### Other Parties

39. We next conclude that staying the *2024 IPCS Order* is not in the public interest, as a stay would inhibit or delay the Commission’s ability to fulfill statutory obligations and objectives mandated by the Martha Wright-Reed Act and necessary to protect consumers.

40. Pay Tel’s primary argument that granting a stay would benefit the public interest is that the reforms adopted in the *2024 IPCS Order* will “pric[e] out IPCS providers, particularly in jails,” leading to IPCS services becoming unavailable or less available in certain facilities.<sup>150</sup> As discussed above, however, Pay Tel ignores the Commission’s conclusion that its estimates of providers’ average costs were “likely overstated,” making it “unlikely that any provider will be unable to recover its individual average costs.”<sup>151</sup> Pay Tel similarly fails to account for the Commission’s conclusion that, even when applying these overstated estimates, the rate cap structure adopted in the *2024 IPCS Order* will allow adequate cost recovery for providers representing “96 percent of [average daily population], and 96 percent of billed and unbilled minutes in the dataset.”<sup>152</sup> Consequently, Pay Tel falls far short of establishing that, let alone the extent to which, IPCS services may become unavailable in certain facilities.<sup>153</sup>

---

<sup>150</sup> Pay Tel Stay Petition at 23-24; *see* Wood Decl. at paras. 20-22. The *2024 IPCS Order* addressed and rejected similar claims. *See 2024 IPCS Order*, Appx. J at 454-55, para. 6 (“Contrary to some claims, which argue that our rate caps impact smaller providers and thus smaller facilities, provider size is no predictor of the choice to serve very small jails. As illustrated in Table 4, all eight of the providers discussed above serve very small jails. {

} Thus, it is implausible that our caps will prevent supply in small jails.”).

<sup>151</sup> *2024 IPCS Order* at 120, para. 216 n.765; *see also id.* at 120-21, para. 217 (noting that providers’ average per-minute costs are likely to diminish due to, e.g., increased communications volumes and investment into video IPCS services). We separately reject Pay Tel’s arguments regarding the Commission’s analysis of projected revenues under the rate caps. *See* Appx. A; *supra* note 144.

<sup>152</sup> *2024 IPCS Order* at 120, para. 216. Pay Tel observes that these providers reported per-minute costs above the rate caps for some of the facilities they serve. *See* Pay Tel Stay Petition at 9; Wood Decl. at para. 21. However, Pay Tel fails to acknowledge, for example, that many of these individual facilities may be grouped into contracts with other facilities in a manner that should, in the aggregate, allow for the providers to recover the total costs under each contract; or that the total costs attributed to any particular facility may be an artifact of the cost allocation process, rather than a precise estimate of the costs of serving that facility. *See, e.g.,* ViaPath Comments, WC Docket Nos. 23-62 and 12-375, at 5 (filed June 2, 2023) (“[N]ot all IPCS providers track costs at the facility level in the normal course of business.”); Securus Reply, WC Docket Nos. 23-62 and 12-375, at 16 (filed July 12, 2023) (“[C]ost allocations tend to produce more reliable results across entire datasets than for individual facilities whose costs may reflect differing requirements set by the correctional authority. Moreover, for multi-facility contracts, providers may rely on the overall costs and revenues for all facilities regardless of the particular cost and revenue ratio at any particular facility.”); *2024 IPCS Order*, Appx. E at 379-80, paras. 5-6; *id.*, Appx. G at 408, para. 6 (“[T]he [least absolute shrinkage and selection operator (Lasso)] results confirm that there are certain data deficiencies at the facility-level, likely due to differences in cost allocation approaches across providers as well as instances of cost misallocation,” which “create outlier facility cost observations.”). Similarly, Pay Tel inflates its estimate of facilities where IPCS will become unavailable by assuming, in circumstances where a given provider might stop serving certain facilities or even exit the market outright, that other providers (who may operate more efficiently, i.e., at lower average costs) will not take over service at the facilities served by that provider. *See* Pay Tel Stay Petition at 8; Wood Decl. at para. 20; *see also 2024 IPCS Order*, Appx. J at 453-56, paras. 5-7.

<sup>153</sup> For similar reasons, we are unpersuaded by Pay Tel’s argument that “[p]ricing out IPCS providers will also harm incarcerated persons and their families through further constriction of the IPCS market.” Pay Tel Stay Petition at 24. Additionally, the Commission considered, and rejected, such arguments in the *2024 IPCS Order*. *See 2024 IPCS Order*, Appx. J at 455, para. 7 (“Competition should not be mistaken for the number of competitors.”); *see also* Public Interest Parties Opposition at 10-11 (“Pay Tel provides no evidence that these outcomes are likely. To the contrary . . . the Commission has comprehensively demonstrated that the new rate caps would ensure fair

(continued....)

41. Pay Tel further argues that because the Commission excluded the costs of certain safety and security measures from its rate cap calculations, these measures may be curtailed or eliminated, thereby harming incarcerated people, their families, and the general public due to the potential for increased crime and fraud.<sup>154</sup> Pay Tel also claims that the *2024 IPCS Order* may drive facilities to restrict access to IPCS.<sup>155</sup> As we observed in the *Securus Stay Denial Order*, the Commission “found similar concerns raised in the record to be generally unsupported”; and like Securus, Pay Tel “offers no further substantiation for such claims.”<sup>156</sup> Nevertheless, the *2024 IPCS Order* explicitly accounts for these theorized harms by extending the transition deadlines for the new rate cap and site commission rules, which Pay Tel fails to acknowledge.<sup>157</sup>

42. By contrast, granting a stay would be contrary to the public interest because it would delay the benefits of comprehensive reform and otherwise inhibit the Commission’s ability to protect consumers.<sup>158</sup> A stay would effectively force consumers to pay prices above the just and reasonable rates determined in the *2024 IPCS Order* over a prolonged period, while also delaying the associated reforms that also inure to the public’s benefit.<sup>159</sup> For example, and as the Commission observed in the *2024 IPCS Order*, consumers stand to gain from the elimination of ancillary service charges, which are a source of

(Continued from previous page) \_\_\_\_\_  
compensation of providers. . . . To the extent that not being able to charge exploitative rates would cause a provider to exit the market and let a more efficient provider enter, that is an outcome consistent with Congress’s intent under the [Martha Wright-Reed] Act.”).

<sup>154</sup> See Pay Tel Stay Petition at 24-25.

<sup>155</sup> See *id.* at 25.

<sup>156</sup> See *Securus Stay Denial Order* at 18, para. 39; *2024 IPCS Order* at 166-67, 209, 307-08, paras. 311-12, 390 n.1399, 594; *id.*, Appx. J at 455-56, para. 7; see also Public Interest Parties Opposition at 11-12 (“Pay Tel provides no evidence that these outcomes are likely. . . . [N]othing in the [2024 IPCS Order] prevents facilities from offering the safety and security features they see fit.”).

<sup>157</sup> See *Securus Stay Denial Order* at 18; *2024 IPCS Order* at 304-08, paras. 587-94. Pay Tel raises a further concern identical to one raised by Securus, regarding the fact that “many [incarcerated people] will not see the benefits from the rate caps until 2026,” while at the same time those people “will lose out on the updated communications platforms and offerings” that Pay Tel is allegedly stymied from offering due to requirements that apply before 2026. Pay Tel Stay Petition at 25. We are similarly unpersuaded by this argument. See *Securus Stay Denial Order* at 18, paras. 39-40 & n.156.

<sup>158</sup> Pay Tel contends that “the public does not have a legally cognizable interest in the [2024 IPCS Order] taking effect before a court determines whether the Commission exceeded its legal authority.” Pay Tel Stay Petition at 23 (citing *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022), for the proposition that the “public’s true interest lies in the correct application of the law”). This argument misconstrues and misapplies the relevant discussion in *Biden*, which itself addressed several elements suggesting that the government’s action in question was in the public interest. *Biden*, 23 F.4th at 612. In any case, the cited principle from *Biden* turns the focus to the likelihood of success on the merits, which as addressed above, Pay Tel has failed to establish. See, e.g., *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006); *Congregation Lubavitch v. City of Cincinnati*, 923 F.2d 458, 460 (6th Cir. 1991).

<sup>159</sup> See, e.g., *2024 IPCS Order* at 308, para. 594 (“Any further delays in requiring compliance with our rate cap and site commission reforms risks perpetuating unjust and unreasonable rates and charges for IPCS consumers or yielding unfair compensation for IPCS providers, contrary to the directives of the Martha Wright-Reed Act.”); *id.* at 3-4, 229-30, 261-63, 277-78, 301-04, paras. 3, 427-28, 499-501, 530-31, 579-86 (discussing the compelling public interests served by the Commission’s IPCS reforms); Public Interest Parties Opposition at 8 (arguing that Pay Tel’s stay request is overbroad, as the *2024 IPCS Order* “adopts reforms on a number of other important issues, which Pay Tel’s Stay Request does not address”); *id.* at 10 (“[D]elaying the implementation of the [2024 IPCS Order] would cause significant financial and other harms to incarcerated people and their families that have been subject to unreasonable and predatory prices for too long” and “would add millions of dollars of financial burden for these communities each year).

consumer confusion and detrimental provider practices.<sup>160</sup> The public interest in seeing the Commission’s reforms take effect on the schedule prescribed in the *2024 IPCS Order* is especially pronounced given the length of time that incarcerated persons and their friends and family have already shouldered undue financial burdens to keep in touch,<sup>161</sup> particularly when Congress expressly directed the Commission to enact regulations to implement the Martha Wright-Reed Act within 24 months from the statute’s enactment.<sup>162</sup>

43. For all these reasons, we find that Pay Tel has not shown that a stay is in the public interest and would not harm other parties.

#### IV. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 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), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, this Order Denying Stay Petition in WC Docket Nos. 23-62 and 12-375 IS ADOPTED.

45. IT IS FURTHER ORDERED, that Pay Tel Communications Inc.’s Petition for Stay Pending Judicial Review of the Report and Order, filed October 7, 2024, in WC Docket Nos. 23-62 and 12-375, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

---

<sup>160</sup> See *2024 IPCS Order*, at 224-26, 227-29, paras. 418-19, 421-26.

<sup>161</sup> See *id.* at 6-12, paras. 9-20 (recounting over a decade of reform efforts); Martha Wright-Reed Act § 3(a). Additionally, as the Public Interest Parties argue, a stay will “deprive many incarcerated people of the regular contact with their families and communities that is essential to their health and wellbeing, as well as their access to legal representation.” Public Interest Parties Opposition at 10-11; see also Public Interest Parties Opposition to Securus Stay Petition at 9-10 (“A stay will cause tremendous harm by depriving consumers of the lower rates, and increased family connection, that Congress sought to achieve through the [Martha Wright-Reed Act]. Such delay would prevent many incarcerated people from the health, safety, and wellbeing benefits that reliable communications with their loved ones could bring.”); Opposition of Stephen A. Raher to Securus Technologies’ Petition for Stay Pending Judicial Review, WC Docket Nos. 23-62, 12-375, at 5 (filed Oct. 1, 2024) (noting that the “public would be harmed by granting the Petition because a stay would extend the long history of unreasonable IPCS rates, even though lowering these rates was the primary motivation behind the enactment of the [Martha] Wright-Reed Act”).

<sup>162</sup> See Public Interest Parties Opposition at 11 (“Staying the [2024 IPCS Order] would also frustrate Congress’s express directive that regulations implementing the [Martha Wright-Reed] Act be timely promulgated and effectuated to afford incarcerated people and their families much-needed relief.”).

## APPENDIX A

**Estimate of the Impact of Demand Elasticity on Pay Tel’s Audio IPCS Revenues Under the Commission’s New Rate Caps**

1. In the *2021 ICS Order*, the Commission concluded based on evidence in the record that inmate calling services were subject to demand elasticity—i.e., that decreases in prices for inmate calling services would lead to increased demand for those services.<sup>163</sup> The Commission continued to rely on its prior conclusion that incarcerated people’s communications services were subject to demand elasticity in the *2024 IPCS Order*.<sup>164</sup> Utilizing this conclusion in our analysis of the claims of harm Pay Tel makes in its petition for stay, we anticipate that the reduction in per-minute rates across rate cap tiers for Pay Tel’s facilities will lead to increased minutes of use for audio communications and consequently increased audio IPCS revenues, which will largely offset reductions in audio IPCS revenues arising from the Commission’s lower rates.

2. To assess the stimulative effects of the Commission’s rate caps on Pay Tel’s audio IPCS revenues, we compare Pay Tel’s 2022 audio revenues net of site commissions to the lower revenues we would expect Pay Tel to collect under the new rate cap regime, which likely will be largely offset by an increase in demand induced by lower prices. This offsetting occurs for two reasons: the bulk of the price declines under the *2024 IPCS Order* come from the elimination of site commissions, which lowers prices without impacting providers’ revenues; and this large drop in prices generates a large increase in demand.

3. *Pay Tel’s 2022 Audio IPCS Revenues.* We first calculate Pay Tel’s 2022 audio IPCS revenues. In 2022, Pay Tel’s audio IPCS revenues, inclusive of site commissions, were approximately {{ [REDACTED] }}.<sup>165</sup> To determine Pay Tel’s audio IPCS revenues net of site commission payments, we calculate and then deduct the amount of audio IPCS revenues related to site commission payments. Pay Tel paid a total of approximately {{ [REDACTED] }} in IPCS site commissions to correctional facilities in 2022.<sup>166</sup> We allocate approximately {{ [REDACTED] }} in site commission revenues to Pay Tel audio IPCS, given that audio IPCS revenues account for about {{ [REDACTED] }} of Pay Tel’s total audio and video IPCS revenue.<sup>167</sup> Thus, we estimate that Pay Tel retained audio revenues of approximately {{ [REDACTED] }} in 2022.

4. *Pay Tel’s Estimated Audio IPCS Revenues Under the New Rate Caps.* Next, we calculate Pay Tel’s audio IPCS revenues under the new rate caps, by reducing Pay Tel per-minute audio rates to the audio rate caps for each rate cap tier, multiplying those rates by total Pay Tel audio minutes in each tier, and summing across tiers. This results in total Pay Tel audio IPCS revenues under the new caps of approximately {{ [REDACTED] }}, which represents a roughly {{ [REDACTED] }} in audio revenues exclusive of site commissions at 2022 demand levels.

5. *Impact of Demand Elasticity on Pay Tel’s Audio IPCS Revenues.* As the Commission concluded in the *2024 IPCS Order*, lower IPCS rates will predictably stimulate demand. To estimate the amount of that increase, we use an elasticity of demand for audio IPCS of 0.3 determined by the Commission and apply it to the percent decrease of Pay Tel’s rates under the new rate caps.<sup>168</sup> We calculate an average percentage {{ [REDACTED] }}

<sup>163</sup> *2024 IPCS Order* at 301, para. 581.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*, Appx. F at 392, Tbl. 7.

<sup>166</sup> *Id.*, Appx. F at 386, Tbl. 3.

<sup>167</sup> *See id.*

<sup>168</sup> *Id.* at 301, para. 581.

}}, which is due in large part to the elimination of site commission payments. Using an elasticity of demand of 0.3, we estimate that this reduction in rates leads to about a {{ }} increase in minutes of use and a concurrent increase in audio revenues of about {{ }}. This expansion of expected revenues from increased demand for audio IPCS communications largely offsets the reduction in Pay Tel's audio revenues net of site commissions {{ }}.

6. *Video IPCS Revenues.* While we are unable to perform a similar calculation for estimating the increased revenues Pay Tel would obtain given the increase in demand for video IPCS that will result from the new lower video IPCS rate caps, Pay Tel would undoubtedly benefit from additional revenues that would further offset the reductions in revenue it claims it would experience under the new rate caps.