

The Martha Wright-Reed Just and Reasonable Communications Act

A recent ruling by the Federal Communications Commission was adopted on July 18, 2024, and will affect local inmate telephone and video visitation revenue. FCC-24-75 implements the requirements of the Martha Wright-Reed Just and Reasonable Communications Act passed by Congress on December 22, 2022, and signed into law on January 5, 2023 (Martha Wright-Reed Act). The following information includes extracts from the Act.

FCC-24-75 (“the order”) implements the expanded authority granted to the Commission by the Martha Wright-Reed Act to establish a compensation plan that ensures both just and reasonable rates and charges for incarcerated people’s audio and video communications services and fair compensation for incarcerated people’s communications service providers. The order reforms the regulation of incarcerated people’s communications services (IPCS) in all correctional facilities, regardless of the technology used to deliver these services, and significantly lowers the IPCS rates that incarcerated people and their loved ones will pay.

Despite the limitations, the FCC took measures to ensure that correctional facilities have a mechanism to recover their used and useful costs, if any, in the provision of IPCS. They permit IPCS providers to reimburse correctional facilities for such used and useful costs, if it is apparent that such costs are, indeed, incurred by a facility. The IPCS rate caps adopted include all the used and useful costs incurred in the provision of IPCS regardless of whether such costs are incurred by IPCS providers or correctional facilities.

To account for the possibility of used and useful costs in allowing access to IPCS, the FCC adopted a \$0.02 allowance for correctional facility costs in what was referred to as the upper bounds of zones of reasonableness for all facilities. The reimbursement allowed extends only to those costs that are used and useful in the provision of IPCS as reflected in the order. For example, “[i]f a correctional facility were to pay for internet installation and maintenance to enable the provision of IPCS,” that payment would be considered used and useful in the provision of IPCS. In that case, the IPCS provider could reimburse the correctional facility for its costs from the revenue collected by the IPCS provider since the cost of internet installation is included in the rate caps. In contrast, IPCS providers may not reimburse correctional facilities for costs the FCC found not to be used and useful in the provision of IPCS.

Under no circumstances may reimbursement result in IPCS consumers being charged more than the rate caps that were adopted by this Act.

Tier (ADP)	Audio Rate Caps (Permanent) Per Minute		Video Rate Caps (Interim) Per Minute	
	Current Cap	Audio Rate Caps	Current Cap	Interim Video Rate Caps
Prisons (any ADP)	\$0.14	\$0.06	N/A	\$0.16
Large Jails (1,000+)	\$0.16	\$0.06	N/A	\$0.11
Med. Jails (350 – 999)	\$0.21	\$0.07	N/A	\$0.12
Small Jails (100 -349)	\$0.21	\$0.09	N/A	\$0.14
Very Small Jails (0 – 99)	\$0.21	\$0.12	N/A	\$0.25

This Act prohibits all IPCS providers from paying site commissions of any kind associated with intrastate, interstate, international, jurisdictionally mixed, and jurisdictionally indeterminate audio and video IPCS, including all monetary and in-kind site commissions, at all facilities.

The FCC defined *site commission* as any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a provider of IPCS or affiliate of a IPCS may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the IPCS enter into an agreement to provide IPCS, 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.

To effectuate this prohibition, the FCC took two actions consistent with the *2023 IPCS Notice* and the *2021 ICS Notice*. First, they preempt state and local laws and regulations allowing or requiring site commission payments for IPCS. And second, they prohibit IPCS providers from entering into contracts allowing or requiring the payment of site commissions. The scope of site commissions subject to the prohibition and preemption include all monetary payments, including lump-sum or upfront payments, payments based on percentage of revenue, and per-call payments associated with IPCS or associated ancillary services. It also includes all in-kind payments and contributions providers may offer associated with IPCS or associated ancillary services, including technology grants, equipment, training programs, or any other payment, gift, or donation offered by an IPCS provider to a correctional institution or a representative of a correctional institution.

Effective Dates and Compliance Dates

The reforms eliminating site commissions and new permanent audio and interim video rate caps will take effect 60 days after notice of them is published in the Federal Register, but compliance with those reforms will be required on a staggered basis, as set forth below:

- **January 1, 2025**, for all prisons and for jails with average daily populations of 1,000 or more incarcerated people, and **April 1, 2025**, for jails with average daily populations of less than 1,000 incarcerated people, subject to the following special provisions:
 - Where a contract existing as of June 27, 2024, includes terms and conditions that would require material alteration through renegotiation due to a conflict with these new rules involving rates, contractually prescribed site commissions, or passthrough charges included in the rates, and the contract expires on or after January 1, 2025 for prisons and for jails with average daily populations of 1,000 or more incarcerated people, or on or after April 1, 2025 for jails with average daily populations of less than 1,000 incarcerated people, the compliance dates will be **the earlier of the contract expiration date or January 1, 2026** for prisons and for jails with average daily populations of 1,000 or more incarcerated people, or **the earlier of the contract expiration date or April 1, 2026** for jails with average daily populations of less than 1,000 incarcerated people.
 - Where a contract existing as of June 27, 2024, includes terms and conditions that would require renegotiation due to a provision incorporating legally mandated site commission payments and the contract expires on or after July 1, 2025, for any size facility, the compliance date will be **the earlier of the contract expiration date or April 1, 2026**.

CTAS makes the following recommendations:

- Review the act with your county attorney to ensure all actions necessary are taken to ensure compliance.
- Review historical revenue trends for inmate phone and video visitation systems for your jail. Determine how this revenue loss will affect your county budget. Develop a plan to address the revenue loss.
- Review your current inmate phone and video visitation systems contract(s).
- Meet with your IPCS providers to discuss the impact and review the contract and timelines for modifications to comply with the act.
- In any contract renegotiations, define how the reimbursement for those costs that are determined to be *“used and useful”* will be accomplished.