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B-336627

September 10, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC) titled “Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services” (FCC 24-75). We received the rule on July 30, 2024. It was published in the *Federal Register* as a final rule on August 26, 2024. 89 Fed. Reg. 68369. According to FCC, the rule is effective 60 days after the date of publication in the *Federal Register*. But the amendments to sections 64.611(l)(2), (3), (5), (6); 64.6040(f); 64.6060; 64.6110; 64.6120; 64.6130(b), (e), (f), (g), (i)–(l); 64.6140(c), (d), (e)(2)–(4), (f)(2), and (f)(4) of title 47, *Code of Federal Regulations*, will not become effective until the Office of Management and Budget (OMB) completes any review that the Wireline Competition Bureau or the Consumer and Governmental Affairs Bureau determine is required under the Paperwork Reduction Act. FCC also stated that the removal of section 64.6090 will not become effective until after OMB completes any review of the section. FCC stated further that it directed the Wireline Competition Bureau and Consumer and Governmental Affairs Bureau to announce effective dates for these sections by publication in the *Federal Register* and by subsequent public notice.

In its submission to us, FCC stated that this final rule implements the expanded authority granted to FCC 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 communication services (IPCS) providers. See generally *Martha Wright-Reed Just and Reasonable Communications Act of 2022*, Pub. L. No. 117-338, 136 Stat. 6156 (2022). FCC also stated that the rule fundamentally reforms the regulation of audio and video communications services

provided in all correctional facilities, and significantly lowers the IPCS rates that incarcerated people and their loved ones will pay.

Enclosed is our assessment of FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Trent Harkrader
Chief, Wireline Competition Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
TITLED
“INCARCERATED PEOPLE’S COMMUNICATIONS SERVICES;
IMPLEMENTATION OF THE MARTHA WRIGHT-REED ACT;
RATES FOR INTERSTATE INMATE CALLING SERVICES”
(FCC 24-75)

(i) Cost-benefit analysis

The Federal Communications Commission (FCC) prepared an analysis of the costs and benefits of this final rule. FCC, *Report and Order, Order on Reconsideration, Clarification And Waiver, And Further Notice of Proposed Rulemaking* 302–305 (July 18, 2024), available at <https://docs.fcc.gov/public/attachments/FCC-24-75A1.pdf>.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FCC prepared a final RFA analysis. 89 Fed. Reg. at 68370.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FCC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FCC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 7, 2023, FCC issued a proposed rule. 88 Fed. Reg. 20804. FCC stated that it did not receive comments on the proposal. See 89 Fed. Reg. at 68370–68371.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FCC determined that this final rule does not contain information collection requirements under the Act. 89 Fed. Reg. at 68370.

Statutory authorization for the rule

FCC promulgated the rule pursuant to sections 151, 152, 152 note, 154, 201, 218, 220, 225, 255, 276, 403, and 617 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FCC is not subject to the Order.