



NATIONAL SHERIFFS' ASSOCIATION

MARTHA WRIGHT-REED IMPLEMENTATION ORDER UPDATE

The following is an update on NSA's ongoing efforts regarding the FCC's *Martha Wright-Reed Implementation Order* (the "*Order*"), released in July of 2024. Among other things, the *Order* prohibits incarcerated persons' communications service ("IPCS") providers from: (i) paying site commissions to jails or (ii) recovering any cost that the FCC deems not "used and useful" to the provision of IPCS through rates charged to incarcerated persons. The FCC has explicitly stated that only basic safety and security costs – such as call blocking, three-way call prevention, approved calling lists, and PINs – are used and useful. Costs for more advanced measures – such as call monitoring, call recording, and voice biometrics – are **not** used and useful and therefore **not** recoverable from IPCS rates. The cost of beneficial programs not directly related to calling – such as educational and re-entry programs – are also **not** used and useful and therefore **not** recoverable from IPCS rates. Funding for costs that are not used and useful must come from other sources. This is true whether the IPCS provider incurs the cost directly, or the correctional facility incurs the cost and the IPCS provider provides compensation from the IPCS revenue it collects.

NSA is pursuing redress of the *Order* on three fronts: a Petition for Review proceeding in the Court of Appeals for the First Circuit; a Petition for Reconsideration proceeding before the FCC; and a Further Notice of Proposed Rulemaking (FNPRM), also before the FCC. Each of these avenues is discussed in turn below.

I. Petition for Review in the Court of Appeals for the First Circuit

On December 6, 2024, the NSA filed a motion to intervene in the petition for review proceeding of the *Order* before the First Circuit. A petition for review (also called an appeal) asks a federal court to review an agency's decision for error. Seventeen states, four sheriffs' offices, two IPCS providers, and one state sheriffs' association (the "Petitioners") appealed the *Order*, seeking to reverse the FCC's decision. **NSA, along with one IPCS provider, have filed to support the Petitioners.**

If the court approves the proposed briefing schedule, the Petitioners will file their briefs on January 27, 2025. The intervenors in support of the Petitioners – including NSA – will file their briefs a week later on February 3, 2025. The FCC will file its brief in response on April 7, 2025, and the intervenors in support of the FCC will file on April 14, 2025. The Petitioners and

the FCC will file short reply briefs on May 5, 2025. The court will likely schedule oral argument sometime after that, and then render an opinion.

Potential outcomes include vacating the *Order*, reversing it, or upholding it. If the court vacates the *Order*, it has no effect, and the FCC must essentially start from scratch. If the court reverses the *Order*, it will give some indication as to what needs to be corrected, and the FCC will need to go back and hold a proceeding to correct the errors identified by the court. If the court upholds the *Order*, then nothing changes, and the *Order* will go into effect as-is. Different aspects of the *Order* can have different outcomes, e.g. one part may be reversed while another is upheld.

II. Petition for Reconsideration

On November 26, 2024, NSA filed comments and reply comments in support of a Petition for Reconsideration of the *Order* that was filed by NCIC, an IPCS provider. A petition for reconsideration asks the FCC to go back and reconsider portions of the *Order* and provide a different outcome. It can be used where new facts have come to light after a decision is made, or if the FCC did not consider an aspect of the issue correctly.

In its comments, NSA supported NCIC's request that the FCC reconsider the adopted rates because it did not have sufficient evidence of safety and security costs. NSA also provided additional data from its recent surveys on the likelihood of a reduction in access to IPCS that may result from the adoption of the *Order*. A copy of NSA's comments is available [here](#).

NSA also filed reply comments addressing arguments by parties opposing the petition for reconsideration. In its reply, NSA demonstrated how the comments in opposition failed to address NCIC's arguments. A copy of NSA's reply comments is available [here](#).

The FCC may reconsider its position on this matter, or it may simply uphold its original decision. As with an appeal, the FCC may reconsider some aspects of its decision but uphold others.

III. Further Notice of Proposed Rulemaking

On October 21, 2024, NSA filed comments on the FCC's Further Notice of Proposed Rulemaking (FNPRM). In the FNPRM, the FCC sought comment on whether to include a uniform cost additive to the new IPCS rates to provide compensation for costs incurred by facilities. This would essentially establish a flat compensatory rate for facilities to cover IPCS costs, instead of having the IPCS provider and the facility negotiate, as indicated previously.

In its comments, NSA supported the use of a cost additive but pointed out important factors that must be included for a cost additive to be helpful. These factors included addressing the size categories of facilities with individual additives, and ensuring the cost additive is

actually an additive – i.e., an amount *on top of* the adopted rates, and not a *subset of* the adopted rates. A copy of NSA’s comments is available [here](#). NSA will be filing reply comments on December 17, 2024.

If you have any questions, please feel free to contact Yesim Karaman, ykaraman@sheriffs.org, or Sal Taillerfer, sta@bloonstonlaw.com.