

116TH CONGRESS
2D SESSION

H. R. 6389

To amend the Communications Act of 1934 to ensure just and reasonable charges for confinement facility communications services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2020

Mr. RUSH introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to ensure just and reasonable charges for confinement facility communications services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Martha Wright Prison
5 Phone Justice Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Prison, jails, and other confinement facili-
2 ties in the United States have unique telecommuni-
3 cations needs due to safety and security concerns.

4 (2) Unjust and unreasonable charges for tele-
5 phone and advanced communications services in con-
6 finement facilities negatively impact the safety and
7 security of communities in the United States by
8 damaging relationships between incarcerated persons
9 and their support systems, thereby exacerbating re-
10 cidivism.

11 (3) All people in the United States, including
12 anyone who pays for confinement facility commu-
13 nications services, should have access to communica-
14 tions services at charges that are just and reason-
15 able.

16 (4) Certain markets for confinement facility
17 communications services are distorted due to reverse
18 competition, in which the financial interests of the
19 entity making the buying decision (the confinement
20 facility) are aligned with the seller (the provider of
21 confinement facility communications services) and
22 not the consumer (the incarcerated person or a
23 member of his or her family). This reverse competi-
24 tion occurs because site commission payments to the
25 confinement facility from the provider of confine-

1 ment facility communications services are the chief
2 criterion many facilities use to select their provider
3 of confinement facility communications services.

4 (5) Charges for confinement facility commu-
5 nications services that have been shown to be unjust
6 and unreasonable are often a result of site commis-
7 sion payments that far exceed the costs incurred by
8 the confinement facility in accommodating these
9 services.

10 (6) Unjust and unreasonable charges have been
11 assessed for both audio and video services and for
12 both intrastate and interstate communications from
13 confinement facilities.

14 (7) Mrs. Martha Wright-Reed led a campaign
15 for just communications rates for incarcerated peo-
16 ple for over a decade.

17 (8) Mrs. Wright-Reed was the lead plaintiff in
18 Wright v. Corrections Corporation of America, CA
19 No. 00–293 (GK) (D.D.C. 2001).

20 (9) That case ultimately led to the Wright Peti-
21 tion at the Federal Communications Commission,
22 CC Docket No. 96–128 (November 3, 2003).

23 (10) As a grandmother, Mrs. Wright-Reed was
24 forced to choose between purchasing medication and
25 communicating with her incarcerated grandson.

1 (11) Mrs. Wright-Reed passed away on Janu-
2 ary 18, 2015, before fully realizing her dream of just
3 communications rates for all people.

4 **SEC. 3. REQUIREMENTS FOR CONFINEMENT FACILITY**
5 **COMMUNICATIONS SERVICES.**

6 (a) IN GENERAL.—Section 276 of the Communica-
7 tions Act of 1934 (47 U.S.C. 276) is amended by adding
8 at the end the following:

9 “(e) ADDITIONAL REQUIREMENTS FOR CONFINEMENT FACILITY COMMUNICATIONS SERVICES.—

11 “(1) AUTHORITY.—

12 “(A) IN GENERAL.—All charges, practices,
13 classifications, and regulations for and in con-
14 nection with confinement facility communica-
15 tions services shall be just and reasonable, and
16 any such charge, practice, classification, or reg-
17 ulation that is unjust or unreasonable is de-
18 clared to be unlawful.

19 “(B) RULEMAKING REQUIRED.—Not later
20 than 18 months after the date of the enactment
21 of this subsection, the Commission shall issue
22 rules to adopt, for the provision of confinement
23 facility communications services, rates and an-
24 cillary service charges that are just and reason-
25 able, which shall be the maximum such rates

1 and charges that a provider of confinement fa-
2 cility communications services may charge for
3 such services. In determining rates and charges
4 that are just and reasonable, the Commission
5 shall adopt such rates and charges based on the
6 average industry costs of providing such serv-
7 ices using data collected from providers of con-
8 finement facility communications services.

9 “(C) BIENNIAL REVIEW.—Not less fre-
10 quently than every 2 years following the
11 issuance of rules under subparagraph (B), the
12 Commission shall—

13 “(i) determine whether the rates and
14 ancillary service charges authorized by the
15 rules issued under such subparagraph re-
16 main just and reasonable; and

17 “(ii) if the Commission determines
18 under clause (i) that any such rate or
19 charge does not remain just and reason-
20 able, revise such rules so that such rate or
21 charge is just and reasonable.

22 “(2) INTERIM RATE CAPS.—Until the Commis-
23 sion issues the rules required by paragraph (1)(B),
24 a provider of confinement facility communications
25 services may not charge a rate for any voice service

1 communication using confinement facility commu-
2 nications services that exceeds the following:

3 “(A) For debit calling or prepaid calling,
4 \$0.04 per minute.

5 “(B) For collect calling, \$0.05 per minute.

6 “(3) ASSESSMENT ON PER-MINUTE BASIS.—Ex-
7 cept as provided in paragraph (4), a provider of con-
8 finement facility communications services—

9 “(A) shall assess all charges for a commu-
10 nication using such services on a per-minute
11 basis for the actual duration of the communica-
12 tion, measured from communication acceptance
13 to termination, rounded up to the next full
14 minute, except in the case of charges for serv-
15 ices that the confinement facility offers free of
16 charge or for amounts below the amounts per-
17 mitted under this subsection; and

18 “(B) may not charge a per-communication
19 or per-connection charge for a communication
20 using such services.

21 “(4) ANCILLARY SERVICE CHARGES.—

22 “(A) GENERAL PROHIBITION.—A provider
23 of confinement facility communications services
24 may not charge an ancillary service charge
25 other than—

1 “(i) if the Commission has not yet
2 issued the rules required by paragraph
3 (1)(B), a charge listed in subparagraph
4 (B) of this paragraph; or

5 “(ii) a charge authorized by the rules
6 adopted by the Commission under para-
7 graph (1).

8 “(B) PERMITTED CHARGES AND RATES.—
9 If the Commission has not yet issued the rules
10 required by paragraph (1)(B), a provider of
11 confinement facility communications services
12 may not charge a rate for an ancillary service
13 charge in excess of the following:

14 “(i) In the case of an automated pay-
15 ment fee, 2.9 percent of the total charge
16 on which the fee is assessed.

17 “(ii) In the case of a fee for single-call
18 and related services, the exact transaction
19 fee charged by the third-party provider,
20 with no markup.

21 “(iii) In the case of a live agent fee,
22 \$5.95 per use.

23 “(iv) In the case of a paper bill or
24 statement fee, \$2 per use.

1 “(v) In the case of a third-party fi-
2 nancial transaction fee, the exact fee, with
3 no markup, charged by the third party for
4 the transaction.

5 “(5) PROHIBITION ON SITE COMMISSIONS.—A
6 provider of confinement facility communications
7 services may not assess a site commission.

8 “(6) RELATIONSHIP TO STATE LAW.—A State
9 or political subdivision of a State may not enforce
10 any law, rule, regulation, standard, or other provi-
11 sion having the force or effect of law relating to con-
12 finement facility communications services that allows
13 for higher rates or other charges to be assessed for
14 such services than is permitted under any Federal
15 law or regulation relating to confinement facility
16 communications services.

17 “(7) DEFINITIONS.—In this subsection:

18 “(A) ANCILLARY SERVICE CHARGE.—The
19 term ‘ancillary service charge’ means any
20 charge a consumer may be assessed for the set-
21 ting up or use of a confinement facility commu-
22 nications service that is not included in the per-
23 minute charges assessed for individual commu-
24 nications.

1 “(B) AUTOMATED PAYMENT FEE.—The
2 term ‘automated payment fee’ means a credit
3 card payment, debit card payment, or bill proc-
4 essing fee, including a fee for a payment made
5 by means of interactive voice response, the
6 internet, or a kiosk.

7 “(C) COLLECT CALLING.—The term ‘col-
8 lect calling’ means an arrangement whereby a
9 credit-qualified party agrees to pay for charges
10 associated with a communication made to such
11 party using confinement facility communica-
12 tions services and originating from within a
13 confinement facility.

14 “(D) CONFINEMENT FACILITY.—The term
15 ‘confinement facility’—

16 “(i) means a jail or a prison; and

17 “(ii) includes any juvenile, detention,
18 work release, or mental health facility that
19 is used primarily to hold individuals who
20 are—

21 “(I) awaiting adjudication of
22 criminal charges or an immigration
23 matter; or

24 “(II) serving a sentence for a
25 criminal conviction.

1 “(E) CONFINEMENT FACILITY COMMU-
2 NICATIONS SERVICE.—The term ‘confinement
3 facility communications service’ means a service
4 that allows incarcerated persons to make elec-
5 tronic communications (whether intrastate,
6 interstate, or international and whether made
7 using video, audio, or any other communicative
8 method, including advanced communications
9 services) to individuals outside the confinement
10 facility, or to individuals inside the confinement
11 facility, where the incarcerated person is being
12 held, regardless of the technology used to de-
13 liver the service.

14 “(F) CONSUMER.—The term ‘consumer’
15 means the party paying a provider of confine-
16 ment facility communications services.

17 “(G) DEBIT CALLING.—The term ‘debit
18 calling’ means a presubscription or comparable
19 service which allows an incarcerated person, or
20 someone acting on an incarcerated person’s be-
21 half, to fund an account set up through a pro-
22 vider that can be used to pay for confinement
23 facility communications services originated by
24 the incarcerated person.

1 “(H) FEE FOR SINGLE-CALL AND RE-
2 LATED SERVICES.—The term ‘fee for single-call
3 and related services’ means a billing arrange-
4 ment whereby communications made by an in-
5 carcerated person using collect calling are billed
6 through a third party on a per-communication
7 basis, where the recipient does not have an ac-
8 count with the provider of confinement facility
9 communications services.

10 “(I) INCARCERATED PERSON.—The term
11 ‘incarcerated person’ means a person detained
12 at a confinement facility, regardless of the du-
13 ration of the detention.

14 “(J) JAIL.—The term ‘jail’—

15 “(i) means a facility of a law enforce-
16 ment agency of the Federal Government or
17 of a State or political subdivision of a
18 State that is used primarily to hold indi-
19 viduals who are—

20 “(I) awaiting adjudication of
21 criminal charges;

22 “(II) post-conviction and com-
23 mitted to confinement for sentences of
24 one year or less; or

1 “(III) post-conviction and await-
2 ing transfer to another facility; and

3 “(ii) includes—

4 “(I) city, county, or regional fa-
5 cilities that have contracted with a
6 private company to manage day-to-
7 day operations;

8 “(II) privately-owned and oper-
9 ated facilities primarily engaged in
10 housing city, county, or regional in-
11 carcerated persons; and

12 “(III) facilities used to detain in-
13 dividuals pursuant to a contract with
14 U.S. Immigration and Customs En-
15 forcement.

16 “(K) LIVE AGENT FEE.—The term ‘live
17 agent fee’ means a fee associated with the op-
18 tional use of a live operator to complete a con-
19 finement facility communications service trans-
20 action.

21 “(L) PAPER BILL OR STATEMENT FEE.—
22 The term ‘paper bill or statement fee’ means a
23 fee associated with providing a consumer an op-
24 tional paper billing statement.

1 “(M) PER-COMMUNICATION OR PER-CON-
2 NECTION CHARGE.—The term ‘per-communica-
3 tion or per-connection charge’ means a one-time
4 fee charged to a consumer at the initiation of
5 a communication.

6 “(N) PREPAID CALLING.—The term ‘pre-
7 paid calling’ means a calling arrangement that
8 allows a consumer to pay in advance for a spec-
9 ified amount of confinement facility commu-
10 nications services.

11 “(O) PRISON.—The term ‘prison’—

12 “(i) means a facility operated by a
13 State or Federal agency that is used pri-
14 marily to confine individuals convicted of
15 felonies and sentenced to terms in excess
16 of one year; and

17 “(ii) includes—

18 “(I) public and private facilities
19 that provide outsource housing to
20 State or Federal agencies such as
21 State Departments of Correction and
22 the Federal Bureau of Prisons; and

23 “(II) facilities that would other-
24 wise be jails but in which the majority
25 of incarcerated persons are post-con-

1 viction or are committed to confine-
2 ment for sentences of longer than one
3 year.

4 “(P) PROVIDER OF CONFINEMENT FACIL-
5 ITY COMMUNICATIONS SERVICES.—The term
6 ‘provider of confinement facility communica-
7 tions services’ means any communications serv-
8 ice provider that provides confinement facility
9 communications services, regardless of the tech-
10 nology used.

11 “(Q) SITE COMMISSION.—The term ‘site
12 commission’ means any monetary payment, in-
13 kind payment, gift, exchange of services or
14 goods, fee, technology allowance, or product
15 that a provider of confinement facility commu-
16 nications services or an affiliate of a provider of
17 confinement facility communications services
18 may pay, give, donate, or otherwise provide
19 to—

20 “(i) an entity that operates a confine-
21 ment facility;

22 “(ii) an entity with which the provider
23 of confinement facility communications
24 services enters into an agreement to pro-

1 vide confinement facility communications
2 services;

3 “(iii) a governmental agency that
4 oversees a confinement facility;

5 “(iv) the State or political subdivision
6 of a State where a confinement facility is
7 located; or

8 “(v) an agent or other representative
9 of an entity described in any of clauses (i)
10 through (iv).

11 “(R) THIRD-PARTY FINANCIAL TRANS-
12 ACTION FEE.—The term ‘third-party financial
13 transaction fee’ means the exact fee, with no
14 markup, that a provider of confinement facility
15 communications services is charged by a third
16 party to transfer money or process a financial
17 transaction to facilitate the ability of a con-
18 sumer to make an account payment via a third
19 party.

20 “(S) VOICE SERVICE.—The term ‘voice
21 service’—

22 “(i) means any service that is inter-
23 connected with the public switched tele-
24 phone network and that furnishes voice
25 communications to an end user using re-

1 sources from the North American Num-
2 bering Plan or any successor to the North
3 American Numbering Plan adopted by the
4 Commission under section 251(e)(1); and

5 “(ii) includes—

6 “(I) transmissions from a tele-
7 phone facsimile machine, computer, or
8 other device to a telephone facsimile
9 machine; and

10 “(II) without limitation, any
11 service that enables real-time, two-way
12 voice communications, including any
13 service that requires internet protocol-
14 compatible customer premises equip-
15 ment (commonly known as ‘CPE’)
16 and permits out-bound calling, wheth-
17 er or not the service is one-way or
18 two-way voice over internet protocol.”.

19 (b) CONFORMING AMENDMENT.—Section 276(d) of
20 the Communications Act of 1934 (47 U.S.C. 276(d)) is
21 amended by striking “inmate telephone service in correc-
22 tional institutions” and inserting “confinement facility
23 communications services (as defined in subsection
24 (e)(7))”.

25 (c) EXISTING CONTRACTS.—

1 (1) IN GENERAL.—In the case of a contract
2 that was entered into and under which a provider of
3 confinement facility communications services was
4 providing such services at a confinement facility on
5 or before the date of the enactment of this Act—

6 (A) paragraphs (1) through (5) of sub-
7 section (e) of section 276 of the Communica-
8 tions Act of 1934, as added by subsection (a)
9 of this section, shall apply to the provision of
10 confinement facility communications services by
11 such provider at such facility beginning on the
12 earlier of—

13 (i) the date that is 60 days after such
14 date of enactment; or

15 (ii) the date of the termination of the
16 contract; and

17 (B) the terms of such contract may not be
18 extended after such date of enactment, whether
19 by exercise of an option or otherwise.

20 (2) DEFINITIONS.—In this subsection, the
21 terms “confinement facility”, “confinement facility
22 communications service”, and “provider of confine-
23 ment facility communications services” have the
24 meanings given such terms in paragraph (7) of sub-
25 section (e) of section 276 of the Communications

1 Act of 1934, as added by subsection (a) of this sec-
2 tion.

3 **SEC. 4. AUTHORITY.**

4 Section 2(b) of the Communications Act of 1934 (47
5 U.S.C. 152(b)) is amended by inserting “section 276,”
6 after “227, inclusive,”.

○