

**Written Testimony of**

**Cheryl A. Leanza**

**Before the**

**Congress of the United States House of Representatives Committee on Energy  
and Commerce Subcommittee on Communications and Technology**

**Hearing**

**“Strengthening Our Communications Networks to Meet the Needs of Consumers”**

**Wednesday, October 6, 2021**

**On behalf of**

**The United Church of Christ’s Media Justice Ministry,**

**Office of Communication, Inc.**

## Summary

On behalf of the United Church of Christ's 60-plus year-old media justice ministry, the Office of Communication, Inc., I commend the Subcommittee for holding this hearing and for its focus on strengthening communications policy to serve the needs of consumers. Beyond being consumers, however, it is important that we remember the people of the U.S. are human beings, often citizens, and always in need of meaningful communication—from affordable telephone and video access to maintain close family ties for incarcerated and low-income people to dispassionate, accurate and thorough news and information about their local communities.

I appear today, first, to strongly encourage the committee to support, and quickly pass Congressman Rush's Martha Wright Act, H.R. 2489. This act will quickly bring down rates for incarcerated people and their loved ones who currently can pay as much as \$1 per minute to communicate—far in excess of what any of us on the outside pay today. It will firmly establish the Federal Communications Commission's authority to address these predatory rates and atrociously high fees and require it to continuously go back and ensure that the rates remain appropriate in light of changing conditions and new developments in the business models pursued by the companies in this space.

I also would like to urge the committee to give serious consideration to Representative Pascrel's H.R. 4208. Unfortunately, decades of neglect by the Federal Communications Commission has rendered the legal obligations of our nation's broadcasters—who receive their spectrum *free* from the American people—into a meaningless series of platitudes that ignore Congress' directive that broadcasters serve the

public interest: localism, competition and diversity. And nowhere is this more evident than the long-standing failure of the Federal Communications Commission to enforce the obligations of Section 331 stations.

Finally, I want to point out that H.R. 5400 is an extremely important bill to ensure that the FCC's Lifeline program—which is our country's long-standing program to increase the affordability of service for low-income people—continues to function without running afoul of the Anti-Deficiency Act. And H.R. 1218 directs the Federal Communications Commission to include data on certain maternal health outcomes in its broadband health mapping tool, an online platform that allows users to visualize, overlay, and analyze broadband and health data at national, state, and county levels.

## **Prison Phone Justice, The Martha Wright Act, H.R. 2489**

This testimony is submitted on behalf of the United Church of Christ's media justice ministry, and thus it must start with first principles. Many Christians take, as one of the Bible's core teachings, the words of Jesus in Matthew 25:31-40. "When I was in prison, you visited me." The most important thing we can do is to help those who society treats as "the least" among us: do not forget them, visit them, give them hope and a helping hand. And yet in our modern society, the current communications structure is a blockade preventing those connections.

The stories of people who have struggled to pay bills demonstrates the harm of predatory rates for communications. A comprehensive report, *The Prison Industry: How it started. How it works. How it harms*, by Worth Rises, documents the story of Diane Lewis:

My son was incarcerated for almost 15 years before I even realized the burden that phone call fees were placing on my family and me. I just hadn't thought about it. But my Securus bill is the first one I pay every month, and it often means that I can't afford our gas or light bills. Yet, I know the cost of not keeping in touch with my son would be even higher.

I've seen the difference between my son, who has a lot of support, and others in prison who can't make phone calls or never have family visits. There's a big difference, and it's why they struggle while inside and often go back after. It's the anger and depression that comes with doing time by yourself, and the lack of practical support needed when you get out.

I'm constantly forced to make sacrifices to pay Securus' high prices, and those sacrifices have consequences for my family. The week my sister fell ill and ultimately passed away, I spoke to my son on the phone every day, four or five times, just to keep him posted on what was happening, so that he could still feel like he was with us. My sister was his favorite aunt; I had to help him mourn. I encouraged him to place as many calls as he wanted and had to shoulder the added financial burden alongside the emotional burden of my own grief.<sup>1</sup>

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<sup>1</sup> Worth Rises, *The Prison Industry* at 54 (2020), <https://worthrises.org/resources>.

## *Summary of H.R. 2489*

H.R. 2489 is named after Mrs. Martha Wright-Reed of Washington, D.C.. Mrs. Wright-Reed was a grandmother forced to choose between purchasing medication and keeping in touch with her incarcerated grandson. She was the lead plaintiff in *Wright v. Corrections Corporation of America*, CA No. 00–293 (GK) (D.D.C. 2001), which ultimately led to the Wright Petition at the FCC. Mrs. Wright-Reed passed away on January 18, 2015, before fully realizing her dream of just communications rates for all people. No other grandmother or family member should ever have to make these difficult financial decisions just to keep in touch with their loved ones.

H.R. 2489 would immediately set an interim cap on per-minute voice calls to \$.04 for debit or prepaid calls, and \$.05 for collect calls and require the FCC to conduct a rulemaking within 18 months to set permanent rates. Further, it would prohibit abusive fees, including ancillary fees not already permitted or later approved by the FCC or legislation; per-connection or communication charges instead of charges for the actual per-minute length; site commissions; and others. By addressing the most egregious pricing practices and fees upfront, H.R. 2489 would provide immediate relief to families who have struggled to stay connected with their incarcerated loved ones due to the high cost of calls as well as pandemic-imposed limitations and prohibitions on in-person visitation.

H.R. 2489 would clarify the FCC's authority to regulate intrastate calls and apply the general consumer standard of "just and reasonable" contained in the Communications Act to incarcerated people and those making calls to them. The FCC could therefore use its established procedures, expertise, data collection, and authority to regularly investigate and address unjust and unreasonable rates. Some families spend up to \$1 per minute to

communicate with their loved ones due to the market failure caused by the lack of competition among companies that provide communications services to incarcerated people. Just and reasonable rates would also enhance safety and security by improving incarcerated people's ability to maintain and build connections with their communities, thus decreasing the likelihood that they will re-offend. H.R. 2489 is therefore consistent with other efforts to improve the criminal justice system to be both more just and more cost-efficient.

When Section 276 was adopted in 1996, it was written with traditional plain-old-telephone service via a traditional payphone in mind. Today's correctional communications providers utilize advanced technology to save costs, ensure the highest security, and provide innovative services. H.R. 2489 adopts a broad, future-proof definition of the communications services covered to ensure that the safeguards prescribed in this bill and the FCC's authority apply regardless of the technology used. Furthermore, it requires that the FCC revisit calling rates every two years.

### *The Disproportionate and Widespread Impact of Incarceration*

The challenge of predatory rates for communication paid by families, friends, clergy counsel and others is a multi-faceted problem but can be solved with a relatively straightforward solution: capping of rates to just and reasonable levels as promised in the Communications Act<sup>2</sup> to provide all people in the U.S.,<sup>3</sup> including those with incarcerated family members and friends.

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<sup>2</sup> 47 U.S.C. §202.

<sup>3</sup> 47 U.S.C. §151.

To begin, it is important to note that incarceration in this county is unjust, falling disproportionately on the backs of people of color and low-income people. Michelle Alexander's book has explained to millions of Americans:

All people make mistakes. All of us are sinners. All of us are criminals. All of us violate the law at some point in our lives. In fact, if the worst thing you have ever done is speed ten miles over the speed limit on the freeway, you have put yourself and others at more risk of harm than someone smoking marijuana in the privacy of his or her living room. Yet there are people in the United States serving life sentences for first-time drug offenses, something virtually unheard of anywhere else in the world.<sup>4</sup>

In 2018, black Americans represented 33% of the sentenced prison population, nearly triple their 12% share of the U.S. adult population.<sup>5</sup> Hispanics accounted for 23% of inmates, compared with 16% of the adult population.<sup>6</sup> And the Prison Policy Initiative explains:

The criminal justice system punishes poverty, beginning with the high price of money bail: The median felony bail bond amount (\$10,000) is the equivalent of 8 months' income for the typical detained defendant. As a result, people with low incomes are more likely to face the harms of pretrial detention. Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities.<sup>7</sup>

Even though the world seeks to shame people for being related to someone who has been arrested, been in jail, been in prison, the truth is, most of us know someone in our families who has made a mistake and wound up inside the American criminal justice system. Statistics bear this out. While many of us know the U.S. leads the world in our incarceration rate, locking up 2.3 million people or 698 people per 100,000 residents, we may not know that 113 million adults have an immediate family member who has ever

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<sup>4</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Chapter 5 (The New Press: 2010).

<sup>5</sup> John Gramlich, Pew Research Center, "Black imprisonment rate in the U.S. has fallen by a third since 2006," (MAY 6, 2020), <https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/>.

<sup>6</sup> *Id.*

<sup>7</sup> Wendy Sawyer and Peter Wagner, Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020*, <https://www.prisonpolicy.org/reports/pie2020.html>.

been to prison or jail—that is one out of every two adults and one-third of the total population of the United States.<sup>8</sup> And this number doesn't even count the number of people who have a cousin or a friend who has been incarcerated. In addition, according to the Bureau of Justice Statistics, more than a million people—an estimated 684,500 state and federal prisoners—were parents of at least one minor child in 2016—nearly half of state prisoners (47%) and more than half of federal prisoners (58%). State and federal prisoners reported having an estimated 1,473,700 minor children in 2016.<sup>9</sup>

### *The Rates and Their Impact*

The legislation would permit a nationwide solution to a pervasive problem with out-of-control rates for local calls for incarcerated people's family and loved ones. Former FCC Chairman Ajit Pai and FCC staff documented the problems with intrastate rates. He explained:

FCC staff found intrastate rates for debit or prepaid calls substantially exceed interstate rates in 45 states. Thirty-three states allow rates that are at least double the current federal cap, and 27 states allow excessive “first-minute” charges up to 26 times that of the first minute of an interstate call. Here are some numbers: For an interstate call, the first-minute charge may not exceed 25 cents today, but for an intrastate call, first-minute charges may range from \$1.65 to \$6.50. Indeed, Commission staff have identified instances in which a 15-minute intrastate debit or prepaid call costs as much as \$24.80—almost seven times more than the maximum \$3.15 that an interstate call of the same duration would cost.<sup>10</sup>

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<sup>8</sup> FWD.us, Every Second, <https://everysecond.fwd.us/#chapter1-7>; Wendy Sawyer and Peter Wagner, Prison Policy Initiative, Mass Incarceration: The Whole Pie 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>9</sup> Laura M. Maruschak, et al, “Parents in Prison and Their Minor Children: Survey of Prison Inmates, 2016,” Bureau of Justice Statistics (2021), <https://bjs.ojp.gov/library/publications/parents-prison-and-their-minor-children-survey-prison-inmates-2016>.

<sup>10</sup> Letter from FCC Chairman Ajit Pai to Brandon Presley, President, National Association of Regulatory Utility Commissioners (NARUC) (July 20, 2020), <https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf>.



Similarly, Prison Policy Initiative’s survey of rates in all 50 states showed that, “on average, phone calls from jail cost over three times more than phone calls from state prisons. Nationally, the average cost of a 15-minute call from jail is \$5.74.”<sup>11</sup>

Prison Policy Initiative explains:

In county- and city-run jails — where predatory contracts get little attention — in-state phone calls can still cost \$1 per minute, or more. Moreover, phone providers continue to extract additional profits by charging consumers hidden fees and are taking aggressive steps to limit competition in the industry.

These high rates and fees can be disastrous for people incarcerated in local jails. Local jails are very different from state prisons: On a given day, 3 out of 4 people held in jails under local authority have not even been convicted, much less sentenced. The vast majority are being held pretrial, and many will remain behind bars unless they can make bail. Charging pretrial defendants high prices for phone calls punishes people who are legally innocent, drives up costs for their appointed counsel, and makes it harder for them to contact family members and others who might help them post bail or build their defense. It also puts them at risk of losing their jobs, housing, and custody of their children while they are in jail awaiting trial.<sup>12</sup>

The damage of these high costs is profound. The Ella Baker Center documented that “the high cost of maintaining contact with incarcerated family members led more than one in three families (34%) into debt to pay for phone calls and visits alone.”<sup>13</sup> Similarly, the City of Philadelphia similarly conducted a survey to assessing the impact of fines or fees and found that 84 percent of the respondents to their survey reported there were times they

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<sup>11</sup> Peter Wagner and Alexi Jones, Prison Policy Initiative, “State of Phone Justice: Local jails, state prisons and private phone providers,”

[https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html#consolidation](https://www.prisonpolicy.org/phones/state_of_phone_justice.html#consolidation).

<sup>12</sup> Peter Wagner and Alexi Jones, Prison Policy Initiative, “State of Phone Justice: Local jails, state prisons and private phone providers,”

[https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html#consolidation](https://www.prisonpolicy.org/phones/state_of_phone_justice.html#consolidation).

<sup>13</sup> Ella Baker Center Report – Who Pays?

<https://www.ellabakercenter.org/sites/default/files/media/Who-Pays-FINAL-2.pdf>

could not afford a phone call to someone incarcerated in jail.<sup>14</sup> As Diane Lewis, whose story began these comments said, “I can talk to my son with the lights off.”

### *COVID-19 Pandemic*

The impact of the COVID-19 pandemic on incarcerated people is severe and means that communication is even more necessary. Prisons and jails ended in-person visits. Incarcerated people were dependent on institutional systems for health care and vaccines in physical facilities that did not permit social distancing safeguards.<sup>15</sup> The response of carceral facilities was extremely lacking.<sup>16</sup> According to the Prison Policy Initiative, “the virus has claimed more than 2,700 lives behind bars and infected 1 out of every 3 people in prison.”<sup>17</sup>

During the pandemic, access to communication can mean access to people outside carceral facilities who can advocate for health care and safety measures. But without in-person visits, family members cannot know how their loved ones were doing. Congress already did take action to provide free phone calls for all people incarcerated in the Federal Bureau of Prisons, those have been offered since April 2020.<sup>18</sup> This measure demonstrates

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<sup>14</sup> “The Impact of Criminal Court and Prison Fines and Fees in Philadelphia” at 2 (May 5, 2021), <https://www.phila.gov/media/20210505004207/FinesandFees-final.pdf>

<sup>15</sup> Brennan Center, “Reducing Jail and Prison Populations During the Covid-19 Pandemic,” (published March 27, 2020, last updated Sept. 24, 2021), <https://www.brennancenter.org/our-work/research-reports/reducing-jail-and-prison-populations-during-covid-19-pandemic>.

<sup>16</sup> Tiana Herring and Maanas Sharma, Prison Policy Initiative, “States of emergency: The failure of prison system responses to COVID-19,” (Sept. 1, 2021), [https://www.prisonpolicy.org/reports/states\\_of\\_emergency.html](https://www.prisonpolicy.org/reports/states_of_emergency.html) (finding all states except two received failing grades in evaluating their responses to COVID-19 for incarcerated people).

<sup>17</sup> *Id.*

<sup>18</sup> John Hendel, “Federal prisons make inmate calling, video visits free during pandemic,” Politico (April 14, 2020), <https://www.politico.com/news/2020/04/14/federal-prisons-make-inmate-calling-free-186383>.

that correctional facilities can move to ensure people access to communication which will improve outcomes for incarcerated people and their families.

*The Broken Marketplace in Carceral Communications*

Incarcerated people and immigrant or juvenile detainees don't have choice like the rest of us, they must use the telephone company selected by the prison—which then profits from the exorbitant calls. The FCC has repeatedly found consistently over the last decade that the marketplace is not functional and does not result in competitive or reasonable rates.

The FCC just explained:

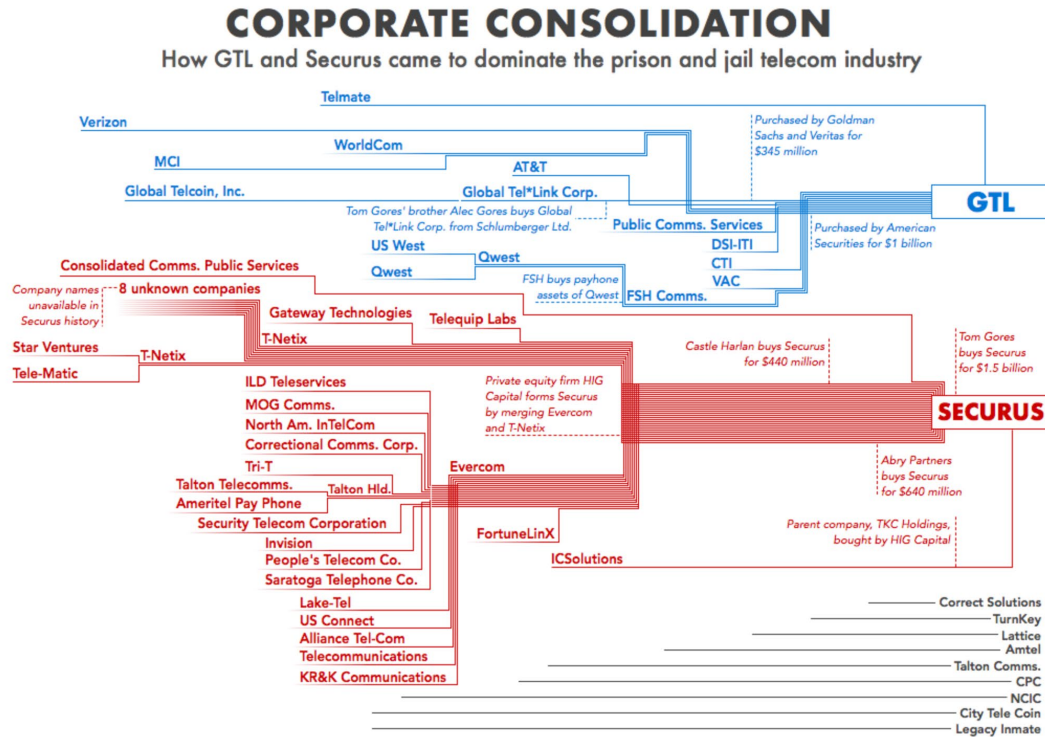
The record demonstrates, as the Commission previously found and reiterated in the August 2020 ICS Notice, that incarcerated people have no choice in the selection of their calling services provider. The authorities responsible for prisons or jails typically negotiate with the providers of inmate calling services and make their selection without input from the incarcerated people who will use the service. Once the facility makes its choice—often resulting in contracts with providers lasting several years into the future—incarcerated people in such facilities have no means to switch to another provider, even if the chosen provider raises rates, imposes additional fees, adopts unreasonable terms and conditions for use of the service, or offers inferior service. On the contrary, correctional authorities exercise near total control over how incarcerated people are able to communicate with the outside world. This control extends to control over visitation rights, the use of traditional mail and courier services, and the ability to use any form of electronic communication. Indeed, the only way an incarcerated person may legally communicate with the outside world is with the explicit permission of the correctional authority. Therefore, no competitive forces within the facility constrain providers from charging rates that far exceed the costs such providers incur in offering service.

.... The Commission has observed that “because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.” Thus, even if there is “competition” in the bidding market as some providers assert, it is not the type of competition the Commission recognizes as having an ability to “exert downward pressure on rates for consumers.”<sup>19</sup>

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<sup>19</sup> Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, at ¶¶32-33 (May 24, 2021) (footnotes omitted).

In addition, the marketplace in which carceral facilities seek vendors for communication services is highly concentrated. Prison Policy Initiative compiled a visual graphic to demonstrate the consolidation in the carceral communications industry<sup>20</sup>:



Thus, there is little competition in the marketplace as a whole and the mechanism for choosing providers does not function as a competitive economic marketplace. As a group of organizations representing both progressive and conservative viewpoints explained, carceral facilities “have every incentive to choose bids that maximize fees and maximize telephone rates—a clear ‘moral hazard.’ While competition would be everyone’s first choice

<sup>20</sup> Peter Wagner and Alexi Jones, Prison Policy Initiative, “State of Phone Justice: Local jails, state prisons and private phone providers,” [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html#consolidation](https://www.prisonpolicy.org/phones/state_of_phone_justice.html#consolidation).

for constraining telephone prices, in this case consumers—prisoners and their families—have no voice in the selection of the carrier.”<sup>21</sup>

Both the decisions at individual carceral institutions and the broader market do not function properly to produce just and reasonable rates without federal action.

*Congress’ Intent Must be Clarified After the GTL Decision*

It is unfortunate that Congress must be asked to address this problem again, because Congress has already spoken. The key provisions of H.R. 2489 include clarifying after a extremely unfortunate decision of the D.C. Circuit, that Congress meant what it said in 1996. The 1996 Telecommunications Act, as you know, was passed as highly popular bipartisan legislation. In that legislation, Congress adopted Section 276 of the Act, which specifically provided the following:

- The FCC was to establish payphone compensation for both interstate and intrastate rates around the country, 47 U.S.C. §276(b);
- Preempted any inconsistent state or local laws, 47 U.S.C. §276(c);
- Included carceral communications within the payphone statute, 47 U.S.C. §276(d).

Unfortunately, despite Congress’ clear direction, and the FCC’s efforts to follow Congress’ direction, a federal court decision a few years ago concluded that Congress had not spoken clearly enough. In the case of *GTL v. FCC*,<sup>22</sup> the D.C. Circuit concluded—over an eloquent and well-reasoned dissent—that despite Congress’ clear direction, Congress had not additionally amended Section 2 of the Communications Act and therefore the directive

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<sup>21</sup> Letter to FCC Chairman Julius Genachowski from 30 Organizations and leaders, FCC Docket No. 96-128 (May 18, 2012).

<sup>22</sup> *GTL v. Federal Communications Commission*, 866 F.3d 397 (D.C. Cir. 2017).

applying to intrastate rates could not be implemented.<sup>23</sup> Former FCC Chairman Pai indicated while he was in office that he Moreover, he explained that he had, “repeatedly expressed my desire to work with Congress to fill” the regulatory gap in the FCC’s jurisdiction.<sup>24</sup>

Even more concerning, the decision placed a great deal of weight on the fact that the FCC had not previously used Section 276 to address the problems of predatory rates for people calling carceral facilities.<sup>25</sup> The FCC has had a petition before it, the Martha Wright petition, since 2003.<sup>26</sup> The FCC should have acted immediately, only a few years after Section 276 was adopted, to address these predatory rates. In this case, the FCC’s unconscionable delay, ignoring the please of incarcerated people and their families, led the court to disallow the too-late steps by the FCC to address the issue.

Because of the *GTL* decision, Congress should pass the Martha Wright Act to make sure that Congress’ initial direction in 1996 will finally be implemented.

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<sup>23</sup> *Id.* at 410-12.

<sup>24</sup> Letter from FCC Chairman Pai, *supra*.

<sup>25</sup> *Id.* at 410.

<sup>26</sup> In the Matter of Martha Wright, *et al.*, Petition for Rulemaking (filed Oct. 31, 2003).

## H.R. 4208 — Section 331 Obligation Clarification Act

### *History*

The United Church of Christ’s media justice ministry, OC Inc., which was founded by Dr. Everett C. Parker, started its mission in 1959 in an effort to hold local broadcast stations accountable to the communities they serve. The work of Dr. Parker in the 1960s to ensure that local television broadcasters in the south served their Black viewers eventually led to the legal right for ordinary people—not just licensees—to file and receive a hearing of their grievances at the Federal Communications Commission.<sup>27</sup>

As part of that work, the UCC’s media justice ministry has been active in asking the Federal Communications Commission to hold the license-holder of both WWOR-TV and WNYC-TV accountable for complying with the FCC’s rules.<sup>28</sup> Unfortunately, the FCC has been complicit in permitting these stations to avoid their obligations over decades.

To understand H.R. 4208, one must understand how WWOR became licensed to Secaucus, NJ in the first place. The UCC explained it in a filing to the FCC back in 2007:

In 1982, RKO, the licensee for WWOR-TV of New York City, was embroiled in a fight to retain its license for the station. Congress passed an amendment requiring the Commission to issue a license to any existing commercial VHF licensee that volunteered to move to a state that was not being served by present licensees. While its license renewal application was still pending, RKO notified the Commission that it agreed “to the reallocation of WWOR-TV from New York, New York, to Secaucus, New Jersey.” The Commission ordered the reallocation, granted RKO a new five year license, and dismissed competing applications as moot. In its Order, the Commission made clear that it “expected that the licensee will devote itself to meeting the special needs of its new community (and the needs of the Northern New Jersey area in general).” The Commission recognized the “unique set of circumstances” present in the highly populated and previously unserved area of

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<sup>27</sup> Robert B. Horwitz, Broadcast reform revisited: Reverend Everett C. Parker and the “standing” case (office of communication of the *United Church of Christ v. Federal Communications Commission*), *The Communication Review*, 2:3, 311-348, DOI: 10.1080/10714429709368562 (1997).

<sup>28</sup> See, e.g., Petition for Reconsideration, Office of Communication of the United Church of Christ, Inc., and Rainbow/PUSH Coalition, File No. BTCCT-20050819AAF, *et al.* (2006).

Northern New Jersey and “expect[ed] RKO to perform a higher degree of service to its Grade B coverage area than is normally required of a broadcast licensee.” The Order indicated that at renewal time, “RKO will be judged by how it has met the obligation to serve the greater service needs of Northern New Jersey.”<sup>29</sup>

Thus, in order to retain its license, the holder of WWOR-TV committed that the station would offer service for the residents of New Jersey that exceeds the public interest standard that applies to other broadcasters. That obligation is part of WWOR’s license and applies to any entity which acquires the license.<sup>30</sup>

The FCC has failed, repeatedly, to hold WWOR and other stations to their obligations under the law and Commission rules. For example, when a New Jersey-based advocacy group, Voices of New Jersey, filed a petition to deny WWOR’s license renewal in 2007, it provided one of the most detailed comprehensive factual showings put before the FCC in recent decades:

- An independent Rutgers University study — the most comprehensive analysis of New Jersey television election coverage in state history — reviewed 332 hours of local news and found, in the 30 days before the election in 2005, the station covered only 10 New Jersey election stories.
- A detailed citizen study of a sample two-week period showing WWOR covered three prominent national stories rather than covering local stories affecting northern New Jersey, such as a spike in Newark homicides and financial troubles of a local hospital.
- A study of issues/programs lists over the whole license term, showing that the station averaged less than one New Jersey news story every two days during the license term.
- Branding and marketing of the station focused on New York, including WWOR’s website address, [www.my9NY.com](http://www.my9NY.com), and a logo that included My9NY and the Manhattan skyline.
- While the license renewal was pending, WWOR cut its news programming from one hour per day to a total of two and half hours per week and

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<sup>29</sup> Office of Communication of the United Church of Christ, Inc., and Rainbow/PUSH Coalition, Petition to Deny Renewal, File Nos. BRCT – 20070201AJT and BRCT – 20070201AJS at 20-21 (May 1, 2007) (quoting Charles B. Goldfarb, Congressional Research Service, *Reallocating Channel 9 from New York City to Secaucus, New Jersey* (July 28, 2003), in turn quoting Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983)).

<sup>30</sup> Congress’ decision to grant automatic renewal to a station agreeing to serve New Jersey with a VHF signal was reviewed and upheld. *Multi-State Communications Inc. v. Federal Communications Commission*, 728 F.2d 1519 (1984).



decreased its public affairs programming from one hour per week to one half hour per week.<sup>31</sup>

The Commission waited 7 years (of an 8-year license term) and renewed the license in 2014, dismissing the evidence presented to it and comparing the station to other stations in New Jersey, but failing to recognize WWOR's special obligation.<sup>32</sup> The FCC upheld the license renewal based on evidence that was incorrect and also which petitioners did not have an opportunity to rebut.<sup>33</sup> It then waited four more years to address these concerns Voices of New Jersey and similarly ignored the completely absence of procedural and substantive analysis.<sup>34</sup>

And the specifics about WWOR's failure to serve the citizens of New Jersey don't even begin to get into the failure of the FCC to enforce its temporary, 24-month waiver of the newspaper/broadcast common ownership rule which it issued in 2004 and which has never been enforced. The extension of those waivers were permitted by the FCC through repeated temporary extensions; approvals despite no attempt at compliance; approvals in some cases without any public notice or comment.<sup>35</sup> The FCC placed some companies above the law.

The Commission has been delinquent in enforcing broadcaster obligations and Congressional direction is needed.

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<sup>31</sup> Application for Review, Voices of New Jersey, MB Docket No. 07-260 and File No. BRCT-20070201AJT at 3-7 (filed Oct. 8, 2014).

<sup>32</sup> *Id.* at 18.

<sup>33</sup> *Id.*

<sup>34</sup> Fox Television Stations, Inc., Memorandum Opinion and Order, MB Docket No. 07-260, 33 FCC Rcd 7221 (2018).

<sup>35</sup> United Church of Christ, OC Inc., et al, Petition to Deny, Fox Television Stations, Inc. Applications for Renewal of License of WWOR-TV and WNYW, File Nos. BRCDT-20150202ACT BRCDT-20150202ACP (May 1, 2015).

## *Broadcaster Localism Obligations and Performance*

The Commission’s public interest mandate regarding the Communications Act’s public interest standard is rooted in three “traditional goals”: “competition, diversity, and localism in broadcast services.”<sup>36</sup> Congress and the Commission have long held that local television and radio broadcasting are essential to meet community needs. Our country is founded on federalism, on local control in many facets of life. Without news and information about local conditions and policies, people are unable to engage meaningfully in self-governance. Congress directed that broadcasting serve local communities throughout the country. As the Commission has explained:

[The] concept of localism has been a cornerstone of broadcast regulation for decades. The concept derives from Title III of the Communications Act of 1934, as amended (the “Communications Act”), and is reflected in and supported by a number of current Commission policies and rules. Title III generally instructs the Commission to regulate broadcasting as the public interest, convenience, and necessity dictate, and Section 307(b) explicitly requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” [47 U.S.C. §307(b).] In carrying out the mandate of Section 307(b), the Commission has long recognized that “every community of appreciable size has a presumptive need for its own transmission service.” The Supreme Court has stated that “[f]airness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”<sup>37</sup>

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The Commission has consistently held that, as temporary trustees of the public’s airwaves, broadcasters are obligated to operate their stations to serve the public interest—specifically, to air programming responsive to the needs and issues of the people in their communities of license.<sup>38</sup>

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<sup>36</sup> 2002 Biennial Regulatory Review, 18 FCC Rcd. 13620, 13624 (2003).

<sup>37</sup> Broadcast Localism, Report and Notice of Proposed Rulemaking, MB Docket No. 04-233 at ¶¶5 (quoting *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291, 2293 (2003) (quoting *Public Service Broadcasting of West Jordan, Inc.*, 97 F.C.C. 2d 960, 962 (Rev. Bd. 1984) and *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955)).

<sup>38</sup> *Id.* at ¶6.

Because of broadcasters' unique obligations, Congress granted broadcasters the right to be carried on cable systems in the 1992 Cable Act. Congress declared, "A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation."<sup>39</sup> Moreover, almost all broadcasters received their spectrum for free, in exchange for their obligations under the public interest standard.

Despite this legal obligation, and its long-standing obligation in law, broadcasters do not always serve their local communities. Pew Research Center recently conducted a comprehensive survey of the U.S. population's use of local media, surveying a representative sample of 35,000 people. According to its findings, "local television stations retain a strong hold in the local news ecosystem. They top the list of nine types of local news providers, with 38% of U.S. adults saying they often get news from a local television station."<sup>40</sup> However, "many Americans are not getting local news that is mostly about their own area – a concern raised by many journalism watchers following newsroom cutbacks and media consolidation. About half of U.S. adults (47%) say the local news they get mostly covers an area other than where they live such as a nearby city...."<sup>41</sup> "About a quarter (24%) say their local media do very well at keeping them informed on the most important stories of the day" and

[c]ommunity residents who see their local journalists as connected to the area give their local news media far higher ratings than those who do not. For example, those who say journalists are in touch with their community are 31 percentage points more likely to say their local media do a good job of dealing fairly with all sides – 73%, compared with 42% among those who say their media are out of touch.

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<sup>39</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460, 1461 (1992).

<sup>40</sup> Pew Research Center, "For Local News, Americans Embrace Digital but Still Want Strong Community Connection," (March 2019) <https://www.pewresearch.org/journalism/2019/03/26/for-local-news-americans-embrace-digital-but-still-want-strong-community-connection/>.

<sup>41</sup> *Id.*

Similarly, 35% of those whose local media cover the area where they live say they are very confident in their main local news source, compared with 25% of those whose local media cover a different geographic area.<sup>42</sup>

### *Recommendations*

The public interest standard should be more clearly articulated by Congress. The FCC, without guidance, has slowly backed away from enforcing a core obligation of its regulatees. Even conservative scholars have indicated the problem of vagueness. Randolph May, president of The Free State Foundation, has said “Congress must ask itself anew whether the public interest standard is sufficiently ‘concrete’ to fulfill Congress’s responsibility to set communications policies for the Information Age, or whether it is so vague that it can mean whatever three FCC Commissioners say it means on any given day.”<sup>43</sup> Clarity serves the public and industry. Corporations should know what is expected of them and the public requires the reliable, local news and information local broadcasting can provide.

Over twenty years ago, a Presidential Advisory Commission—comprised of broadcasters and non-broadcasters—hammered out joint, unanimous, proposal for what broadcasting should look like in the digital age. This Advisory Commission agreed on that the Federal Communications Commission should “adopt a set of mandatory minimum public interest requirements for digital broadcasters.”<sup>44</sup> Those requirements included:

1. **Community Outreach.** Digital stations should be required to develop a method for determining or ascertaining a community’s needs and interests. This process of reaching out and involving the community should serve as the station’s road

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<sup>42</sup> *Id.*

<sup>43</sup> Quoted in: Stuart N. Brotman, “Revisiting the broadcast public interest standard in communications law and regulation,” Brookings (2017), <https://www.brookings.edu/research/revisiting-the-broadcast-public-interest-standard-in-communications-law-and-regulation/>.

<sup>44</sup> Charting the Digital Future, Final Report of the Presidential Advisory Commission on Public Interest Obligations of Digital Television Broadcasters at 48 (1998), <https://www.ntia.doc.gov/files/ntia/publications/piareport-orig.pdf>.

- map for addressing these needs through news, public affairs, children’s and other local programming, and public service announcements. Further public input should be invited on a regular basis through regular postal and electronic mail services. The call for requests for public input should be closed captioned. The stations should regularly report during the year to the public on their efforts.
2. **Accountability.** Whatever the mandatory minimums, stations should report quarterly to the public on their public interest efforts, as outlined in recommendation 1, above.
  3. **Public Service Announcements.** A minimum commitment to public service announcements should be required of digital television broadcasters, with at least equal emphasis placed on locally produced PSAs addressing a community’s local needs. PSAs should run in all-day parts including in primetime and at other times of peak viewing.
  4. **Public Affairs Programming.** A minimum commitment to public affairs programming should be required of digital television broadcasters, again with some emphasis on local issues and needs. Such programming should air in visible time periods during the day and evening. Public affairs programming can occur within or outside regularly scheduled newscasts, but is not defined as coverage of news itself.

These obligations are central to the core function of local broadcasters. Today mandatory minimums are still not in place.<sup>45</sup> These core obligations are not adequately monitored or enforced by the Federal Communications Commission. Congress should adopt more specific directives.

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<sup>45</sup> Stuart N. Brotman, “Revisiting the broadcast public interest standard in communications law and regulation,” Brookings (2017), <https://www.brookings.edu/research/revisiting-the-broadcast-public-interest-standard-in-communications-law-and-regulation/>.

## **H.R. 5400 - Preventing Disruptions to Universal Service Funds Act and H.R. 1218, Data Mapping to Save Moms' Lives Act**

H.R. 5400 would extend the current Universal Service Antideficiency Temporary Suspension Act until by two more years, until December 31, 2024. As the Committee knows, the Antideficiency Act prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services.<sup>46</sup> Because of the operation of the Universal Service Fund, which wisely collects USF contributions in order close to the time the funds are needed by USF, the Fund risks running afoul of the Act. The programs funded by the USF—high cost, e-rate, Lifeline and rural telemedicine—require an orderly operation of business to function. The need for communications services by all people in the U.S., particularly schools, libraries, rural medicine and more have become even more clear during the COVID-19 pandemic. The Committee and Subcommittee should support H.R. 5400 to extend the exemption and should consider adopting a permanent exemption rather than extending it every few years.

H.R. 1218 directs the Federal Communications Commission to include data on certain maternal health outcomes in its broadband health mapping tool, an online platform that allows users to visualize, overlay, and analyze broadband and health data at national, state, and county levels.<sup>47</sup>

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<sup>46</sup> 31 U.S.C. § 1341.

<sup>47</sup> <https://www.fcc.gov/reports-research/maps/connect2health/>