

January 19, 2016

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th St. S.W. Washington DC 20554
Re: Comment for WC Docket 12-375

Dear Chairman Wheeler:

Grassroots Leadership respectfully submits this comment for WC Docket No. 12-375 in reference to the FCC's solicitation for advocate input on video calling technology in prisons and jails as such technology relates to Inmate Calling Services (ICS).

Grassroots Leadership is a national organization based in Austin, TX fighting to end for-profit incarceration and reduce reliance on criminalization and detention through direct action, organizing, research, and public education. Addressing video calling technology in Texas jails has been a focal point of our local campaign for over two years. We strongly believe in the potential of technologies like video calls to enhance the ability of incarcerated people and their loved ones to remain connected. We also have dire concerns that video calls could be an assailant, rather than an assistant, to those who need the service most if measures are not taken to mandate the standards of the technology's utilization. Furthermore, video calls should never replace the ability of incarcerated people and their loved ones to see one another face-to-face and in-person.

Since May 2012, video calls have been the only option for those wishing to see the faces of their incarcerated loved ones at the Travis County Jail in Austin, Texas. In Travis County, video technology is administered by Securus Technologies and is utilized for both onsite "visits" as well as remote video calls. Travis County also contracts with Securus for its ICS.

Following a lawsuit filed by the Texas Civil Rights Project alleging that privileged conversations between attorneys and their clients were leaked to local prosecutors using archived Securus video, Grassroots Leadership mounted a campaign to restore in-person visitation to the Travis County Jail, to address our concerns with contracting, usage rates, and technological issues with the service. We further are working to protect other Texas counties from falling prey to what we see as an industry's assault on the rights of prisoners and their families, including the right to in-person and face-to-face visits; the right to cost-free measures for families to remain connected; and for those choosing to utilize technology to maintain connection, to be able to do so with services consistent with consumer standards for price and quality, and without fear that use of the service will compromise the privacies incarcerated loved ones are entitled to according to the U.S. Constitution.

Our research¹ with and mobilization of those directly impacted by the implementation of video calling technology and jail visitation policies resulted in the passage of Texas House Bill 549 during the 84th legislative session in 2015. The bill defines a “visit” in a Texas jail as one that occurs in-person and face-to-face, and requires that those incarcerated in Texas county jails are afforded a minimum of two 20-minute visits per week. To our knowledge, Texas was the first state to place any kind of regulation on how visitation technology is utilized by public institutions. Texas’ 84th Legislature passed HB 549 with an amendment that exempts some counties from compliance with the new rule, which leaves exempted counties vulnerable to transitioning to or maintaining visitation policies that only allow people to see each other through a video screen. (Please see Attachments for documentation of this legislative campaign, including constituent testimony)

Travis County was granted this exemption per its well-established video-only policy, a policy that included kickbacks to the county coffer. *However*, County Commissioners were compelled to address serious concerns for the way in which the policy was implemented, its contract with Securus, and the unjust impact onsite and remote video visits have on incarcerated individuals and their loved ones. As such, Travis County *voluntarily* passed a 2016 budget that funds the restoration of in-person visits at the Travis County Jail by April 2016, a heavy lift considering it also capped phone call rates pre-emptively to move the county toward compliance with the now-enforceable FCC prison phone rate structure, relinquishing commissions the county received at the previous rate.

It is with these experiences and successful campaigns as a backdrop that we wish to respond to the following:

Do commenters believe certain forms of video visitation are in fact distinct from ICS? If so, what feature(s) make them distinct? For instance, might intra-institution video visitation facilities that require the friend or family member to come to the institution in order to have a video visit fall inherently outside the definition of ICS as compared to video visitation between the inmate in the institution and a friend or family member in a remote location?

We believe that onsite (intra-institution) visits mediated by video technology should be evaluated as distinct from remote, offsite video calls inasmuch as they serve different functions. However the same technological and security concerns apply to both applications of the service.

- From a user perspective, remote, offsite video calls are, for all intents and purposes, a phone call with a video component. As such, similar guidelines in terms of rates for the service and contracting should be applied to both phone and video calls.

¹ Jorge Antonio Renaud and Kymberlie Quong Charles, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price*, October 2014 <http://grassrootsleadership.org/video-visitation-how-private-companies-push-visits-video-and-families-pay-price>

- Where onsite video visits exist they are, to our knowledge, a cost-free service available to those wishing to visit a jail in person and therefore, the question of rates does not apply. However, **we are adamantly against any measure that incentivizes the video call technology industry to seek contracts in which visitors could be subjected to a fee for onsite video visits**, and thus are interested in the proactive regulation of the way in which contracts between governing entities and technology contracts are written.

We are particularly interested in the rates that providers of video calls charge for this service compared to traditional ICS. How are these rates established? What is a typical rate charged for video visitation?

In Travis County, during our point-in-time survey of Securus video call services, we found that some users were being charged \$20 for 20-minute offi-site video calls. Additionally we have received letters from families who have used Securus in other Texas counties who experienced inexplicable rate hikes and inconsistent charges when family members were transferred to other county jails. Furthermore, family members report that refunds for video calls that had been paid for but did not happen (because of technology failures, administrative problems etc.) are consistently unreimbursed by Securus.

We do not have a clear sense of how rates are established, but we believe that, because there often financial incentives for the governing entities written into contracts, to some degree rates are based on a county's need to use the service in order to generate revenue. This is one explanation for the variation in rates from county to county.

What limits or protections would need to be implemented to provide relief from or prevent excessive rates for video visitation services, to the extent that they are not already being treated as forms of ICS?

We believe a number of protections should be provided to video visitation users, including:

- There should be caps on the rates for remote, off-site video calls and that rate should be assessed in the same way that caps for phone calls were assessed
- The FCC should proactively prohibit any ability of IT companies to ever charge for onsite video visits
- IT companies should be prohibited from including in contracts any provisions that require a governing entity to wholly replace in-person visits with visits mediated by video technology
- Commission incentives should be eliminated for government entities to use video call revenue for general revenue such as:
 - contracting provisions that compel or require a government entity to remove in-person visits, therefore artificially creating demand for video services
 - prohibit commissions from being directed to general revenue and instead, requiring that commissions be earmarked for other inmate services and programming
- IT companies should be required to address technological and administrative quality concerns that currently result in users payer for a service they are not receiving
- Penalties should be established and enforced for companies that do not comply with a minimum standard of technological and administrative quality

- Serious consequences should be established and enforced for misuse of the systems when they violate prisoners Constitutional rights

Again, we believe the potential of video call technology to provide greater connection for those wishing to see their incarcerated loved ones is great, and its reaches are likely yet unknown. Our hope is that, as the technology continues to evolve, that standards and policies that govern the delivery of this technology are established with the safety and well-being of those who are incarcerated and those who wish to see them remain at the forefront.

Thank you for the opportunity to comment on this important issue.

Respectfully,

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