

PRISON POLICY INITIATIVE

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 12-375

Comments re Third Further Notice of Proposed Rulemaking ¶¶ 296–307,
video visitation

Dear Ms. Dortch:

Since the Prison Policy Initiative report on video visitation in prisons and jails nationwide, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails*,¹ a national consensus has developed acknowledging that the growing trend of video visitation replacing traditional in-person visitation is a major step in the wrong direction for correctional best practices and for families trying to stay connected during incarceration. Our report spurred an immediate and unanimous response from the media denouncing video-only visitation, including editorials from *The New York Times* (see Exhibit 2), *The Boston Globe*, the *Austin-American Statesman*, *The Dallas Morning News*, *Street Roots* (Portland, OR), and the *Press of Atlantic City* (Pleasantville, NJ) and other news articles we previously submitted to the FCC on July 2, 2015.²

We encourage the Federal Communications Commission to revisit our 33-page report and accompanying 29 exhibits, which, among other key findings, found that:

- Video visitation contracts are almost always **bundled with other services like phones, email, and commissary**, and generally companies offer video visitation at no cost to county sheriff's departments and state departments of corrections. Eighty-four percent

¹ This report was initially submitted to the Federal Communications Commission on January 12, 2015, but for the FCC's convenience, we have attached the report in Exhibit 1. And the report, accompanying exhibits, our collection of press coverage, and related research are available online at: <http://www.prisonpolicy.org/visitation/>.

² See: <http://apps.fcc.gov/ecfs/document/view?id=60001112261>. The accompanying exhibits can be found here: <http://apps.fcc.gov/ecfs/comment/view?id=60001090463>.

(84%) of the video visitation contracts we gathered for our report were bundled with phone services, commissary, or email. And, because of the bundled contracts and the fact that the video visitation equipment is most often implemented at no cost to the government, it appears that counties and state departments of corrections sign contracts for video visitation without careful consideration of the costs to video visitation companies for implementation and the rates charged to families. For more information on cross subsidization, see “What this industry is doing: Major themes” in our report. (Relevant to the FCC’s 2015 Order and Third FNPRM ¶¶ 300, 303, 306)

- Most video visitation providers are the **same companies that have long been providing phone services** to prisons and jails: ICSolutions, Renovo (which is owned by GTL), Securus, and Telmate. JPay does not provide phone service but has long had contracts with correctional facilities to manage money transfers and provide email services, and, notably, was recently purchased by Securus. TurnKey Corrections provides commissary and video visitation. HomeWAV and iWebVisit.com seem to only provide video visitation. As the largest phone companies continue to expand into other services such as video visitation and commissary, it is possible that it will become more difficult for video visitation-only companies to successfully enter the market. This would be unfortunate because our analysis of the video visitation industry found that smaller companies such as HomeWAV and TurnKey Corrections have some of the most innovative models that could actually benefit incarcerated people and their families. (¶ 298)

The major trends in the video visitation industry since we published our January 2015 report are:

- **Video visitation is continuing to be added to more facilities.** At the time of our report, we had identified 511 correctional facilities using video visitation in some form. We now know of approximately 585 facilities using video visitation, an increase of 14% over one year. Most of these (440) are local jails. (¶ 298)
- It turns out that **Securus was not the only company using contractual language to require facilities to ban traditional in-person visitation**³ in order to stimulate demand for the expensive video visitation service. A smaller company iWebVisit.com includes similar language, such as the following, which is from iWebVisit.com’s contract with Solano County, California: “At a reasonable time after the consolidated visitation center (at the Stanton Correctional Facility or SCF) is in operation, then for non-professional visitors, to the extent consistent

³ Some examples of Securus contracts with the contract clause banning traditional visits can be found here: <http://www.prisonpolicy.org/visitation/exhibits.html>. These include: Adams County, IL (Exhibit 21, page 3), Chippewa County, WI (Exhibit 4, page 15), Maricopa County, AZ (Exhibit 12, page 17), and Tazewell County, IL (Exhibit 22, page 3).

with applicable law and in accordance with Sheriff policies, Facility will eliminate all face to face visitation through glass or otherwise and will utilize video visitation for all non-professional on-site visitors.” (See Exhibit 3).

- **The Arkansas, Minnesota,⁴ and Vermont⁵ state prison systems are adopting video visitation.** While our January 2015 report found that Securus is the video visitation industry leader, the Arkansas Department of Correction contract with Securus for video visitation is the first contract we know of in which Securus will be providing video visitation to a *state prison* system, rather than to a local jail.
- There continues to be evidence of **video visitation companies pressuring correctional facilities to use video visitation as a replacement for in-person visitation**, rather than a beneficial supplement. When discussing the adoption of video visitation, Arkansas Department of Correction spokesman Cathy Frye told the *Arkansas Democrat-Gazette*, “We agreed to the cut in audio commissions and to forgo the video commissions because the other option would have been to strongly push inmates into using video visitation instead of receiving in-person visits from their families.” Frye continued, “Because this is such new technology, many of the companies providing it are pressuring correctional facilities to strongly encourage video visitation.” (See Exhibit 4). This is exactly the type of situation that the Alabama Public Service Commission was worried about when it regulated video visitation in its July 2014 *Further Order Adopting Revised Inmate Phone Service Rules*. The order stated, “The Commission is concerned that ICS providers may be using VVS service agreements and the lure of site commission payments to dictate confinement facility policies detrimental to inmates and their families.”⁶
- **A Texas law went into effect on September 1, 2015 that requires local jails to provide a minimum of two in-person — not video — visits per week.** The law clarifies that the Texas Commission on Jail Standards’ existing policy requiring two visits per week refers to in-person visits. While the law is the first of its kind to protect in-person visits statewide, there was unfortunately a grandfather clause allowing

⁴ Beatrice Dupuy, “Minnesota prisons add video visitation,” *Star Tribune*, October 19, 2015. Accessed on January 18, 2016 from: <http://www.startribune.com/minnesota-department-of-corrections-adds-video-visitation-to-all-its-facilities/334395871/>.

⁵ “Prison email improves communications for Vermont inmates,” *Barre-Montpelier Times Argus*, September 20, 2015. Accessed on January 18, 2016 from: <http://www.timesargus.com/article/20150920/THISJUSTIN/709209897>.

⁶ Alabama Public Service Commission, *Further Order Adopting Revised Inmate Phone Service Rules*, §6.60, Docket 15957 (July 7, 2014). Accessed on December 2014 from: http://www.psc.state.al.us/telecom/Engineering/documents/July_7_2014_ICs_Order_TOc.pdf.

roughly 30 counties to continue with their video-only visitation policies.⁷

- **Travis County (Austin), Texas will restore in-person visits after it replaced traditional visits with video visits back in May 2013.** Thanks to the advocacy of families of incarcerated people, formerly incarcerated people, nonprofit Grassroots Leadership, and others, Travis County legislators voted to bring back in-person visits by April 2016.
- **Multnomah County (Portland), Oregon⁸ and the District of Columbia⁹ have largely restored in-person visitation** after replacing in-person visits with video visitation systems.
- **Securus has announced that it will no longer explicitly require county jails and state prisons to replace traditional family visits with video visits,** and will instead shift responsibility for the decision to ban visits back to correctional officials. (For our explanation of why Securus understated the magnitude of this change, namely that far more than a “handful” of the company’s contracts contain a clause that explicitly banned in-person visitation, see Exhibit 5.)
- From the limited information publicly available about use of video visitation, **it appears that video visitation usage, and therefore commissions and revenue, continue to be low.** For example, from January–August 2015, Westmoreland County, Pennsylvania received \$7,000 in commissions from its video visitation system. Initial predictions estimated revenues of a much higher \$86,000 per year. Warden John Walton told the *Pittsburgh Tribune-Review*, “We thought our numbers would be a lot higher. It's not anywhere near what we want it to be.” (See Exhibit 6.)
- Video visitation companies have continued to charge and extend **promotional rates** for remote video visits that are much lower than the rates in the contracts. For example, in Racine County, Wisconsin, the contract for Securus video visitation states that video visits will be \$29.95 for 20 minutes, but according to the Securus website, the current price is \$7.99 for 20 minutes (See Exhibit 7). While these lower rates may make video visitation more accessible to families, video visitation companies can increase the rates for remote video visits at any time. At

⁷ For a list of counties that have requested an exemption from the Texas law requiring in-person visits, see Grassroots Leadership’s press release: <http://grassrootsleadership.org/releases/2015/09/legislation-protecting-person-county-jail-visits-goes-effect>.

⁸ As a result of powerful investigative reporting done by *Street Roots* and pressure from the public and county legislators, the Multnomah County Sheriff decided to amend the county’s contract for Securus video visitation to bring back in-person visits. See: <http://www.prisonpolicy.org/blog/2015/01/29/multnomah-reverses-ban/>.

⁹ In June 2015, D.C. Mayor Bowser announced that the D.C. jail would bring back in-person visits that were replaced by video visits in 2012. However, in-person visits will only be available to those who go at least 30 days without disciplinary infractions. See: https://www.washingtonpost.com/local/dc-politics/dc-jail-is-bringing-back-intimacy/2015/06/24/325c8da4-1aac-11e5-93b7-5eddc056ad8a_story.html.

one point, a mother of someone incarcerated in an Arizona jail reached out to me disappointed that Securus had suddenly increased the price of a remote video visit from \$0.25 per minute to \$0.40 per minute, a rate she could no longer afford. One reason that the rates in the contracts rarely match the rates actually charged to families may be because **family demand continues to be low**. Figure 12 from our report found that families were much more likely to use the service when prices were low, but, even when the rate was \$0.25 per minute, Travis County, Texas families averaged less than 6 minutes of remote video visitation per incarcerated person per month, far less than the 20-minute sessions offered by the county.

- The way that video visitation has been most commonly implemented in U.S. jails is especially burdensome for families of incarcerated people who have difficulty **accessing¹⁰ and paying¹¹ for these technology products**.

Video visitation has powerful potential to keep families connected despite the isolation and extreme distances of modern incarceration.¹² But video visitation technology will never meet this goal if the industry continues to be based on the elimination of traditional, in-person visitation in order to drive families to use paid, remote video visitation.

Recommendations:

1. The FCC should, noting the potential for the companies to shift voice calls to video visits, **extend its comprehensive prison phone regulations to video visitation** products including caps on the rates and ancillary fees. For more information on ancillary fees in video visitation, see Figure 8 in our report.
2. In order to prevent companies from stimulating demand by contractually *requiring* correctional facilities to decrease the frequency, quality, or availability of free, in-person visitation, the FCC should **prohibit companies from banning in-person visitation**. The FCC should require companies, as part of their annual certification, to attest that they do not require any of their contracting facilities to ban in-person visitation. This requirement would not stop sheriffs from taking

¹⁰ Blacks and Hispanics — the racial and ethnic groups that disproportionately fill our prisons and jails — are less likely than Whites to have computers and high-speed internet access. For the demographics of computer ownership and internet access, see: http://www.prisonpolicy.org/blog/2015/03/17/internet_demographics/.

¹¹ It is especially difficult for incarcerated people and their families to afford the high costs charged for remote video visits because they are some of the poorest families in this country. In 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages. See: Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned* (Easthampton, MA: Prison Policy Initiative, July 9, 2015). Accessed on January 18, 2016 from: <http://www.prisonpolicy.org/reports/income.html>.

¹² Bernadette Rabuy and Daniel Kopf, *Separation by Bars and Miles: Visitation in state prisons* (Easthampton, MA: Prison Policy Initiative, October 20, 2015). Accessed on January 18, 2016 from: <http://www.prisonpolicy.org/reports/prisonvisits.html>.

such a regressive step on their own, but such a restriction would help ensure that video visitation develops as a useful supplement and not a regressive replacement for traditional in-person visitation.

3. **Prohibit the companies from bundling regulated and unregulated products together.** Requiring that facilities bid and contract for these services separately would end the current cross-subsidization of products that makes it impossible for facilities to make informed choices and for the FCC to comprehensively regulate the prison and jail telecommunications market. Alternatively, the FCC could strengthen safeguards in the RFP process by, for example, requiring facilities to provide separate scores or evaluations of each product. Either approach needs to enable all stakeholders to understand these services, their value, and the financial terms of the contracts.
4. **Consider developing minimum quality standards of resolution, refresh rate, lag, and audio sync for video visitation.**¹³ We note that many families complain of poor quality with video visitation that make video visitation far inferior to services like Skype or FaceTime. That, plus our own experiences with the services and our analysis of the contracts suggest that many of these quality problems originate with how the services are designed. For example, JPay's official bandwidth requirements are too low to provide quality video, and in our test we found that the facility appeared to lack even that limited bandwidth. The FCC could collect comments that review the academic literature on the appropriate thresholds for effective human video communication and devise appropriate standards.
5. **Require family- and consumer-friendly features such as charging per-minute rather than per visit.** As the experiences of TurnKey Corrections and HomeWAV demonstrate, not every conversation needs to take the same amount of time. It is both fairer and more conducive to greater communication to charge for actual usage. This would be the logical extension of § 64.6090 that prohibited companies from offering flat-rate calling pricing for telephone service.

Sincerely,



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¹³ As the Federal Communications Commission has noted, video quality is even more important for incarcerated people with disabilities. However, video visitation is distinct from videophones. For more on videophones, see Talila A. Lewis' comment to the FCC on March 25, 2013: <http://apps.fcc.gov/ecfs/document/view?id=7022134808>.