



January 19, 2016

Marlene H. Dortch, Commission Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Re: WC Docket No. 12-375, *In the Matter of Rates for Interstate Inmate Calling Services; Second Report & Order and Third Further Notice of Proposed Rulemaking; Comments on Paragraphs 221-249 “Accessible Inmate Calling Services”*

Dear Commissioners:

On the occasion of HEARD’s seventh statement to the Federal Communications Commission (“Commission”) regarding the issue of phone justice for Deaf, DeafBlind, Deaf-Disabled, Hard of Hearing and Disabled prisoners, we begin just as we have before:

Meaningful family contact and consistent access to advocates and attorneys is paramount for deaf and disabled prisoners who customarily experience continuous discrimination, severe isolation, and horrendous abuse in prison settings.¹ Yet, the expensive and inaccessible telephone systems that exist in prisons nationwide serve as extremely effective barriers to communication for the vast majority of deaf and disabled prisoners.

¹ McCay Vernon. *The Horror of being Deaf and In Prison*, American Annals of the Deaf, Vol. 155, No. 3 (2010). *See also*, hundreds of letters from prisoners in HEARD’s Deaf & Deaf-Blind Prisoner Database which prove beyond a doubt that deaf prisoners are routinely physically and sexually assaulted; and punished for their “failure to obey” oral commands, using sign language to communicate, “failure” to follow rules and procedures that were never communicated to them, for missing counts that they were unaware of, and for filing grievances about these persistent inequities.

Yet still, people across this nation continue to spend months, and even years,² with no communication with their children, loved ones or attorneys—*simply* because of their disability.

Helping Educate to Advance the Rights of the Deaf (HEARD) is an all-volunteer nonprofit organization that uses education, research and advocacy to promote equal access to justice for deaf³ defendants, prisoners, and returning citizens nationwide. HEARD created and maintains the only national database of deaf prisoners, and accordingly maintains consistent contact with several hundred deaf prisoners and their loved ones nationwide. This correspondence coupled with continuous interactions with justice, legal and corrections professionals, in addition to our own experiences as members of the deaf and legal communities informs our advocacy. HEARD also investigates possible deaf wrongful conviction cases; trains and provides technical and legal support to justice, legal and corrections professionals; conducts deaf prisoner and defendant research; and assists deaf prisoners who experience civil and human rights violations in our nation's jails and prisons.

HEARD's advocacy foregrounds the Americans with Disabilities Act, the Rehabilitation Act and other federal and state laws that protect the rights of people with disabilities. HEARD has been particularly active in this docket for more than three years, having submitted numerous comments and organized hundreds of deaf and disabled incarcerated individuals to do the same. Additionally, HEARD has twice provided invited testimony on this issue at the Commission's Inmate Calling Services Reform workshops.

HEARD is interested in the enforcement of federal disability rights laws which, among other things, mandate that public entities and public accommodations— including jails, prisons and private prison telephone companies— provide equal access to people with disabilities.

² Deaf prisoners in several states have had no telecommunications access for several years, while deaf detainees often spend their entire time in jail with no telecommunication.

³ Historically, "Deaf" has been used to refer to the culture and community of Deaf signing people collectively; while "deaf or hard of hearing" has been used to refer to the level of audiological function and hearing ability had by any one individual. Those with the audiological classification of deaf or hard of hearing may not identify themselves as culturally Deaf. However, for the sake of this comment, "deaf" will include "Deaf," "deaf," "Hard of Hearing," "Late Deafened," "DeafBlind" and "Deaf-Disabled" people, unless otherwise noted.

I. INTRODUCTION

The Commission's historic October 2015 order reaffirms the right of all prisoners to maintain contact with loved ones, advocates and attorneys by capping rates on all local, in-state long distance, interstate and international calls beginning early this year.

To date, however neither the Commission nor the Department of Justice ("DOJ") has taken action to remedy the obvious injustice of prisoners with disabilities not being able to access telecommunications in our nation's juvenile and immigration detention centers – where our community members who are minors or migrants usually have no grasp of the English language – or in jails and prisons where still the vast majority of our community only uses English as a second language and relies on American Sign Language ("ASL") as a first or only language.

Last year marked the 25th Anniversary of the Americans with Disabilities Act; but this means very little to deaf people & people with disabilities have not had access to telecommunications from or to our nations prisons. This lack of equal access to telecommunications coupled with the ongoing failures in prisons across the nation to follow federal disability rights laws continues to lead to, among other things:

- Mental illness and suicide;
- Loss of community & familial connections;
- Little or no access to legal counsel;
- Higher recidivism rates than non-disabled people; and
- Unchecked abuse of and discrimination in jails & prisons that already fail to provide accommodations to & adequate protections for deaf and disabled prisoners.

It is unconscionable that private prison telephone companies make millions of dollars while continuously refusing to provide equal access pursuant to long-standing federal disability rights laws.

The Commission emphasizes that its recent efforts are to ensure that 'rates for Inmate Calling Services are just, reasonable, and fair.' While we applaud the Commission's decision to ensure that rates are just and reasonable, we remind the Commission that there is no justice without equality. We applaud the Commission's October 2015 decision to ensure that rates are just and reasonable, but we remind the FCC that there is no justice without equality.

In 2016, equal access to telecommunications for deaf and disabled prisoners and for deaf family members with incarcerated loved ones, means a minimum access to telecommunications devices including voice carry over, captioned telephones, TTYs, and most notably, videophones.

HEARD again has supported other filers in drafting comments in response to this order that are specific to a range of disability rights issues, so our comments here are limited to issues raised in the *Third Further Notice Of Proposed Rulemaking*. Further, since HEARD has made clear its position on the need for the Commission and DOJ to actively enforce federal disability rights laws and to consider specific regulations to ensure that videophones are installed in detention centers, jails and prisons, we will focus this comment on distinguishing between videophones, video calling and video visitation—while emphasizing that all video communication must be affordable, and universally accessible.

II. BACKGROUND IN BRIEF

This year marks HEARD's fourth year of advocacy in the Prison Phone Justice Campaign. Through this Campaign, HEARD has lobbied alongside other advocates, attorneys and family members who have been calling on the FCC to bring an end to excessive telephone rates for prisoners and their loved ones. Most prisons do not have videophones to allow clear communication in our native language-ASL. Instead, our community members are forced to rely on outdated and unreliable TTY technology and pay higher rates than their hearing counterparts who use traditional telephones.

Since many deaf people use American Sign Language (ASL) as a primary or only language, the TTY is useless for many of those affected by mass incarceration. This means they go months and years at a time with absolutely no telecommunication with their loved ones, attorneys or advocates. Hearing and non-disabled prisoners in most jails have almost access to telephones.

Intrastate TTY-to-TTY Phone Bill Example (Florida): Prior to the Commission establishing a cap for telephone rates, a 15-minute intrastate voice-to-voice phone call could cost \$17. These rates disproportionately impacted deaf prisoners and deaf people with incarcerated hearing loved ones. For instance, today HEARD submits a several phone bills from April 2015 where a Deaf caller in a Florida prison called their Deaf partner in Florida and two of several CenturyLink-AT&T bills charged, \$720.63 for 120.4 minutes and \$385.44 for 64.5 minutes of call time. These individuals are ASL speakers and English is a second language for them. Videophones

would be the functional equivalent of telephone for these individuals and individuals who share their language.

This is injustice manifest.

HEARD brought the issue of equal access to the Commission as one that cannot be disregarded, especially considering the extremely high rates of disability found within our nation's incarcerated population. Despite increased awareness about the plight of deaf inmates and the wide availability of low- & no-cost measures that can readily eliminate access barriers, inequities persist in jails and prisons nationwide.

During our Campaign, we mobilized unprecedented participation in an Commission proceeding from hundreds of Deaf, DeafBlind, DeafDisabled and Hard of Hearing prisoners, as well as their families, advocates and attorneys. Prisoners' comments spoke to the mental illness inducing isolation experienced after decades of having little or no access to telecommunication in jails and prisons coupled with the lack of access inaccessible technology, sky-high rates, and additional fees being charged to prisoners using relay, that in most cases prevent them from communicating with the outside world.

In addition, HEARD rallied members of deaf communities, family members of deaf prisoners & allies to submit comments about the unique impact of inaccessible telecommunications in prison for deaf prisoners and their family members and advocates. These comments illustrated how the absence of videophones, captioned telephones, and other auxiliary telecommunication aids prevent deaf prisoners from connecting with their loved ones (and deaf people from connecting with incarcerated loved ones as well). They also illuminated issues related to systemic abuse of deaf prisoners that necessitates communication with advocates via sign language—a language that is unique from English.

We sincerely hope that this will be the last of our comments in this docket.

III. DISTINGUISHING VIDEO VISITATION, VIDEO CALLING & VIDEOPHONES

There is a common misconception among jails, prisons and ICS providers that once they have implemented video visitation or video calling that deaf prisoner have access to telecommunications via videophones. We want to emphasize that these three are completely distinct. We clarify below.

Many prisons are moving to install video visitation. This normally requires that the family member drive to a remote location (usually one building or room away from the prisoner) where they can access a phone with a video screen that dials directly to the prisoner they wish to visit. The charges right now are excessive, with contracts often requiring that prisons ban in person visits upon installing video visitation. This is becoming more common with rollouts throughout the country--although many state advocates are fighting against the inhumane provision in contracts that bans in-person visits. Even when video visitation is installed, deaf and disabled prisoners still have no telecommunication access. Their loved one would still have to drive or fly to the prison, pay, and then connect via video. Hearing prisoners who communicate via spoken language can still use telephones *and* receive video visits.

Videophones are operated by and through one of just a handful of Video Relay Service (“VRS”) providers. VRS providers are certified by the Commission and paid through an established fund to provide video relay services. This is the service that specially caters to people with disabilities and people who are deaf. VRS allows Deaf videophone users to communicate with hearing people and with other Deaf or hearing people who use ASL to communicate. It is free of charge to all telephone users, deaf or hearing.

VRS is a form of Telecommunications Relay Service (“TRS”) that enables persons who are deaf or who use ASL to communicate with voice telephone users through video equipment, rather than through typed text, and directly with other signers as well. Video equipment links the VRS user with a TRS operator – called a “communications assistant” (“CA”) – so that the VRS user and the CA can see and communicate with each other in signed conversation. Because the conversation between the VRS user and the CA flows much more quickly than with a text-based TRS call, and because ASL is the first and only language of many Deaf individuals, VRS has become an enormously popular form of TRS.⁴

We want to clarify that videophones and video visitation are completely different--and as far as we know, to date, are not compatible. To simplify, our volunteers have used video visitation to communicate with deaf prisoners from designated locations. When our volunteers use visitation, we have to drive to the prison or jail, sit in the same room as other family members, and chat with the deaf detainee or prisoner via video visitation—usually from a pod where

⁴ FCC Consumer Guide: Video Relay Services, <https://www.fcc.gov/consumers/guides/video-relay-services>.

everyone can see the prisoners ASL. We still cannot communicate with these same prisoners via traditional telephone and hearing prisoners at the same facilities can call us any time phones are available at their facility.

Often, ICS vendors are holding themselves out as capable of providing VRS which stalls—and in some cases completely impedes—the installation of videophones in prisons once video visitation is installed, many prison administrators and ICS vendors, attempt to note that they are in compliance with federal disability rights laws that require equal access to telecommunication services. This could not be further from the truth or prove commenters' point on the need for clear guidance from the Commission disability access.

At least one ICS plans to try to find a way to charge family members for taxpayer funded relay services, which is deeply concerning and should be banned by the Commission outright.

Video calling is less common, and so we will not discuss this video communication in depth. This is a remote conference call-like technology. In the few places where video calling is available, often the calls are cost prohibitive. Again, however, to our knowledge, this type of video communication does not allow a deaf or disabled individual to call traditional telephone numbers as videophones do. Instead, it allows the family member to schedule a video call from home using a username instead of having to drive all the way to the facility for a video visit.

Our goal is to clarify that video visitation and video calling is not the equivalent of a videophone. We wish to also emphasize that video communication in all forms should be affordable for families and payment commensurate to the amount of time the individuals have to communicate. Further, as previously noted, it would be unjust and illegal to allow any ICS company to profit from videophone calls made through taxpayer-funded VRS. At present, no jail or prison that has installed videophones charges the prisoner or the family member for use of the videophone.

IV. RECOMMENDATIONS

Blocking access to telecommunication for deaf and disabled people in prisons not only further isolates these individuals from their families and the community. Failure to ensure equal telecommunication access also it makes it harder for deaf and disabled prisoners to successfully reenter society, while making them prime targets for abuse. These prisoners are now at even more risk because staff and prisoners know that they have very little recourse with respect to filing written

grievances and obtaining outside support and advocacy. Deaf and disabled prisoners must have access to effective, affordable and accessible telecommunications so they can communicate with advocates and attorneys.

Departments of corrections across the nation continue to be sued as a result of their failure to provide equal access to communications to deaf and disabled prisoners—including failure to provide equal telecommunications access. While each of these departments of corrections tend to settle, also agreeing on videophone and other auxiliary aid installations, these settlements cost DOCs and taxpayers dearly, and take many years to resolve. Since all departments of corrections and ICS providers have the same obligations under federal disability rights laws, and since this responsibility is carved into this “evolving standards of decency” backdrop, it is important for corrections professionals and all contracted companies to be fully aware of their affirmative obligation to ensure that programs, services and activities are accessible to all people regardless of ability—particularly in light of the extremely high incidence of abuse of prisoners with disabilities.

The Commission must ensure that its regulations touch *every* prisoner. Multiple Video Relay Service companies have installed and maintained videophones in prisons and jails on both short and long term basis *at no cost to the facility or ICS provider*. Prisons and jails with videophones and other auxiliary should serve as models for other facilities.

We again urge the Commission to develop a robust national accessibility standard to guide ICS providers and prisons across this nation down the path of universal accessibility. We strongly urge the Commission to use its authority to ensure that spirit and the letter of the Americans with Disabilities Act and Rehabilitation Act are followed by ICS providers. If necessary, the Commission should collaborate with the Department of Justice to remedy this systemic injustice.

For the foregoing reasons, HEARD suggests that the Commission mandate the following in addition to all of our previous recommendations:

- 1) Beginning with juvenile and immigration detention facilities, where deaf and disabled youth and immigrants have very low English literacy rates and need to maintain contact with their parents, guardians and legal counsel, require that all ICS companies provide—at minimum—access to both

- videophones and TTYs for incarcerated individuals who are deaf or who use ASL to communicate;
- 2) ICS providers ensure that deaf and hard of hearing prisoners, prisoners with deaf family members, and prisoners with speech challenges have – at minimum – access to videophones, captioned telephones, amplified telephones, TTYs and other auxiliary aids;
 - 3) Several ICS companies assert that they are in the midst of Research & Development on video calling options for deaf and disabled prisoners. There should be a mandated interim solution of installation of videophones until these companies can resolve the access barriers that persist in the prisons where they are contracted to provide service;
 - 4) The FCC should require states to provide equal access for people with disabilities in all contracts with detention, jails and prison phone providers or require the facilities to provide such access themselves;
 - 5) Create model national standards that provide guidance about exactly what equal access to telecommunications for prisoners with disabilities and for prisoners with loved ones with disabilities looks like. These guidelines should minimally include information about federal disability rights laws, Deaf Culture and communication, the meaning and makings of “functional equivalency;” and guidance for ICS providers and prisons about modern technology that exists – *often at no cost* – and is acceptable and accessible for deaf people and people disabilities.

V. CONCLUSION

We end where we began. Thousands of deaf and disabled people in jails and prisons nationwide have no access to telecommunications. The Commission has the authority and influence to ensure that individuals with disabilities have equal telecommunication access, and we are calling upon you to ensure that prison telecommunication is affordable *and* universally accessible—that fair reaches all, not some.

We thank you for the opportunity to comment on this issue and humbly urge the Commission to act with all deliberate speed in this matter.

Sincerely,

/s/

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