Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services	)	
	)	

SECOND REPORT AND ORDER AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

NDRN, and the NAD are pleased to have the opportunity to comment on a Notice of Proposed Rulemaking (NPRM) regarding interstate phone services for prisoners.

We applaud the Commission's decision to move toward comprehensive Inmate Calling Service ("ICS") reform measures that prioritize reasonable rates structures and equal access to Telecommunications. Our comments here are limited to the issues raised in the *Third Further Notice Of Proposed Rulemaking.*

The National Disability Rights Network ("NDRN") is the non-profit membership association of protection and advocacy ("P&A") agencies that are located in all 50 states, the District of Columbia, Puerto Rico, the Native American P&A, and the United States Territories. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. P&As are an essential part of the federal disability rights enforcement scheme. The P&A system comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of

opportunity and are able to fully participate by exercising choice and self-determination. P&As represent individuals with disabilities in all institutional settings in which they may be found, including prisons, jails, and detention facilities, among others. As such, NDRN is uniquely situated to address the questions raised in this NPRM.

The National Association of the Deaf ("NAD") is the nation's premier civil rights organization of, by and for deaf and hard of hearing individuals in the United States of America. The NAD was shaped by deaf leaders who believed in the right of the American deaf community to use sign language, to congregate on issues important to them, and to have its interest represented at the national level. The NAD's mission is to preserve, protect, and promote the civil, human and linguistic rights of 48 million deaf and hard of hearing individuals in this country. Founded in 1880, the NAD has advocated for the rights of deaf and hard of hearing individuals for 135 years in all aspects of society. In 1976, the NAD began its legal advocacy services with what is now known as the NAD Law and Advocacy Center. Since the founding of the Law and Advocacy Center, the NAD has represented deaf and hard of hearing individuals in advancing their civil rights in all areas of life including but not limited to: education, employment, denial of sign language interpreters, access to health and legal services, and prisons and jails. The NAD's Law and Advocacy Center has constantly and consistently received complaints from deaf and hard of hearing people in federal and state prisons across the country. The NAD has litigated several cases against prisons and jails, and seeks to advance the civil rights of deaf and hard of hearing prisoners through regulatory reform in addition to litigation.

The P&As, and the NAD, along with other advocates, believe that improving access to and rates for use of TTYs by prisoners who are deaf, hard of hearing or have communication disabilities, while an important first step, is not the only change necessary to ensure equitable access. This community is far from homogeneous in its communication needs, and a more comprehensive solution is required. For many, a TTY does not provide equitable access to the phone system.

Studies have consistently found that prisoners who maintain close contact with friends and family members while incarcerated have better post-release outcomes and lower recidivism rates. And yet, prisoners who are deaf or hard of hearing and prisoners with disabilities nationwide are being prevented from having this opportunity.

American Sign Language, not English, is the primary language for many people who are deaf and hard of hearing. Many individuals in the United States who grow up deaf or hard of hearing, use American Sign Language ("ASL") as a first or only language. ASL is not a manual form of English. Instead, ASL is its own unique language, with its own grammar, structure and syntax. As such, there is not a one-to-one correspondence between English words and ASL, and many deaf people are not fluent in written English. Videophones, not TTYs, are the functional equivalent of telephones for this group of prisoners. The signing deaf and hard of hearing community have long since adopted videophones as the primary form of telecommunication over TTYs.

Telecommunications Relay Service (TRS) is a telephone service that allows persons who are deaf, hard of hearing, or have speech disabilities to place and receive telephone calls. TRS is available in all 50 states, the District of Columbia, Puerto Rico and the U.S. territories for local and/or long distance calls. TRS providers – generally telephone companies – are compensated for the costs of providing TRS from either a state or a federal fund. There is no cost to the TRS user.[1]

Video Relay Services (VRS) allows deaf and hard of hearing videophone users to communicate with hearing people. VRS is a form of TRS that enables persons who are deaf or hard of hearing and use American Sign Language (ASL) to communicate with voice telephone users through video equipment, rather than through typed text. 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

[1] https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs

quickly than with a text-based TRS call, VRS has become an enormously popular form of TRS.[2] It is free of charge to all telephone users, deaf or hearing.

Despite some adoption of videophone technology—often after years of costly litigation, the vast majority of juvenile and immigration detention facilities, prisons and jails still limit deaf and hard of hearing prisoners to TTYs, which can be impossible for them to use.

For example, notwithstanding the Commission's September 23, 2014 decision, many prisons and jails still block access to toll-free numbers as a security measure, and despite the fact that TTY-based TRS require the use of toll-free numbers, many of those prisons and jails do not have an exception for calling relay numbers. This restriction prevents deaf and hard of hearing prisoners who use English to communicate from using a relay service, and thus prevents their communication with friends and family, and even attorneys and court personnel. Some facilities have TTYs available on the regular phones accessible to all prisoners and others keep TTY equipment in a staff member's office or other generally inaccessible places or limit their use to certain hours. Other deaf and hard of hearing prisoners cannot use TTYs effectively even if they are available because they do not communicate in English. Other prisons have TTYs that are not compatible with the ever modernizing technology in prisons, while others still provide no telecommunications access apart from that which is provided to able-bodied, hearing individuals.

In addition, there are a number of other disabilities that may impact telecommunication, and which may require other communication solutions. These include individuals who have apraxia, people who have trouble accessing print media, those with auditory processing disabilities, and those who have more than one sensory disability, such as those who are Deaf-Blind. Flexible solutions may be required to meet the needs of these populations.

ENFORCEMENT

[2] https://www.fcc.gov/consumers/guides/video-relay-services

P&As and other members of the advocacy community have experience addressing these issues on an individual and systemic basis, and we cannot solve these problems alone. We need the active support of government and industry.

Case Example (Idaho):

DisAbility Rights Idaho sued the (now former) Director of the Idaho Department of Corrections, and (now former) Warden of the Idaho State Correctional Institution (ISCI), in January of 2012, alleging that they violated their client's right to effective communication under Title II of the ADA and Section 504 of the Rehabilitation Act by denying his request for a videophone for telephonic communications. Pursuant to a settlement agreement finalized in January of 2015, the client was provided with a videophone to use for telephonic communications. Although his access to the videophone was limited at first due to technical issues at the prison location, as of July 2015, he was able to use the videophone under the same terms and conditions and for the same duration as hearing inmates are allowed to use regular telephones at the ISCI location.

It is time for clear guidance from the FCC and true and meaningful enforcement by all agencies charged with ensuring equity, including but not limited to the U.S. Department of Justice. The result of the current communication paradigm is that prisoners who are deaf or hard of hearing or have communication disabilities are often denied equal access to communicate with those outside the prison, a violation of Title II of the Americans with Disabilities Act , 42 USC 12101-12213. These prisoners have gone months, years, and in some cases, decades, without equal access to telecommunication services. Many have lost their ability to communicate, and some have become depressed due to the isolation that persists. Others have decompensated and tried or been successful with death by suicide.

Some prison systems that are in the process of changing over to newer technologies are moving so slowly that the technology they are considering will be outmoded by the time it is installed. As noted in the NRPM, the current system is not “functionally equivalent” for all prisoners, making this a necessary area of enforcement for the Administration and its Departments. We recognize that the FCC does not bear sole responsibility for ensuring

inmate access to equitable communication. The Bureau of Prisons and U.S. Department of Justice must also do their parts to ensure equity for all members of this diverse community.

Bandwidths and broadband speeds for video call systems

Videophones require a smooth, uninterrupted signal transmission. The U.S. Department of Justice has provided specific technical requirements on this issue. FCC should reinforce such requirements by adopting them as well. Such standards have proven to be an effective guidance for state and local government entities in ensuring that VRS users are able to access the technology. Further, by having one set of standards applicable to state and local governments, there is greater clarity and accountability for government correctional entities.

Interoperability

Video visitation is not a substitute for videophones, relay services or TTYs. Video visitation devices are typically not compatible with VRS or videophones. However, generally speaking, videophones designed for use by deaf and hard of hearing individuals are compatible with one another, even those produced by different manufacturers.

We understand as well that the issue is true access and that, with that in mind, it is important that we not become enamored of any particular form of technology. As science and design advance, they may provide better solutions over time. However, at present, videophones appear to provide the best solution for many prisoners who are deaf or hard of hearing or have communication disabilities.

RECOMMENDATIONS

The undersigned organizations recommend that the FCC:

A. Use its enforcement power and unique expertise in a manner that ensures that states provide equal access to telephones for prisoners with disabilities. This access should also include prisoners served by private prison phone providers.

The FCC should enhance and support any guidance or regulation provided by the U.S. Department of Justice.

B. Mandate that all ICS providers should—at minimum—provide access to both videophones and TTYs for prisoners who are deaf, hard of hearing, or have communication disabilities, and access should be granted to the same extent telephones are available to all other prisoners.

C. Time limits on telephone calls should be extended for prisoners using VRS or TTY, in a manner that allows for equitable access with prisoners without disabilities.

Respectfully submitted,

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