

# Electronic Messaging

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*Delivering America's Corrections Industry into the 21<sup>st</sup> Century*

**January 30, 2016**

## **Introduction**

On January 21, 2016, the Prison Policy Initiative published a report entitled "You've Got Mail: The promise of cyber communication in prisons and the need for regulation" authored by Stephen Rahe. As a pioneer of electronic messaging services for correctional facilities, Smart Communications is in a position to clarify some misconceptions and add to the important ongoing discussion regarding advanced communication services provided to those under the custody and care of correctional facilities in the United States.

The report correctly points out that "New technologies such as video visitation and electronic messaging have the potential to improve quality of life for incarcerated people and help correctional administrators effectively run secure facilities." Smart Communications was founded in 2009 with these two tenants, improving low cost communications for inmates, and helping administrators more effectively run their facilities, as its primary missions.

Over the last six years we have consistently executed that mission through our electronic messaging and related services.

The report also correctly identifies Smart Communications as the only provider in the industry where the focus is on electronic messaging. Electronic messaging is at the core of our business. It is not an add-on service like those offered by others in the industry whose focus is on other services such as telephones or video visitation.

Smart Communications would like to address some of the concerns raised by the report and set the record straight on electronic messaging for correctional facilities.

## **Benefits of Electronic Messaging**

The report asserts that "Electronic messaging in correctional settings has the potential to be a beneficial tool, and if implemented correctly could provide value to everyone involved." We agree with this assessment of the technology, and our business was founded on this very idea.

The report also asserts that "...electronic messaging allows comparatively timely communication between incarcerated people and their friends and families. In fact, in some situations electronic

messaging can be more convenient than the telephone...” In our discussions with free-world customers, we find that many of them use electronic messaging to schedule telephone calls, which helps inmates to more effectively connect with their friends and family members. Electronic messaging acts as a complimentary supplement to the other forms of communication available such as the telephones and postal mail.

On the topic of postal mail, the report points out that “Electronic communications reduce work in facility mailrooms by avoiding the need to manually inspect mail.” We find this claim to be true, though it is difficult if not impossible to quantify. Unfortunately, many correctional facilities do not keep records on the specific numbers of letters and other parcels processed in their mail rooms, but those that contract for our services do consistently report a significant decrease in the volume of postal mail that they receive and process as a result of implementing the Smart Communications electronic messaging system. This is an important point to remember as we get into pricing and value later in this report.

Ask anyone in corrections what their number one priority is and their answer will usually include “safety.” The report asserts that “There are also security benefits. Staff reviews of message contents can be done electronically, and investigators can monitor messages using customized queries.” This benefit is more important than it may appear at first. Postal mail is consistently cited as one of the number one ways that contraband enters correctional facilities. By reducing the postal mail volume, the inmates and staff at these facilities are less likely to be exposed to drugs and other material that is sent into the jail. The report correctly asserts that “Messaging also helps avoid the introduction of contraband through the mail.” Staff can spend more time scrutinizing the mail that does remain to ensure that it is safe. Electronic messages are also searchable allowing for automated monitoring and alerts to staff when a keyword of interest is detected. This allows the jail staff and investigators to act more quickly and with greater efficiency.

## **Supposed Drawbacks of Electronic Messaging**

The report also brings up several perceived drawbacks that come with electronic messaging. The question of access is raised, stating “Not everyone has or is comfortable using a computer. Internet access is least available in poor households and among African-Americans and Latinos...” When it comes to computers, it is true that not everyone is an expert. For those who do not have access to electronic messaging, these services do not eliminate postal mail as an option, but act as supplements to it. Second, we find that nearly two-thirds of our free-world users access our messaging service through a mobile device, usually a smart phone. Access to high-speed broadband Internet and having a home computer are no longer an impediment to using electronic messaging services.

Another issue that is brought up is that using electronic messaging services require the free-world user to go to a specific website or app to access the service. This is also true of many other communications services such as Facebook or Twitter. If you want to send a message to a potential date on any of the thousands of online dating services, you will do so through their own website or app. Having to go to a

vendor's website or use their app as part of the communication process is not the exception, it's the rule.

The issue of attachments is also raised by the report, stating "Electronic messaging services often prohibit attachments, or allow them with restrictions and at additional cost." First, the author is assuming that electronic messaging is modeled after free-world Internet e-mail, which is not the case (we will discuss this more later). In reality, it is the correctional facilities that insist on restrictions regarding attachments and other non-message content. For example, Smart Communications provides an electronic photo delivery service which is separate and distinct from the electronic messaging service. This is not done for monetary purposes but that of security and safety. Each correctional facility has different rules and regulations as to what they allow to be delivered to those under their custody and care. Many correctional facilities no longer allow photographs to be received via postal mail, and having this option available electronically restores the inmate's ability to receive photographs from home. By separating messages from photos, it allows each individual message and photo to be reviewed on its own merits rather than as a package. If a family member sends a message and bundled a photo that a facility were to find objectionable (regardless of the reason), we would rather the message be delivered and the photo be rejected on its own rather than denying the inmate the entire package because of a single objectionable attachment. Also, unlike postal mail, if a facility rejects a photo we refund the credits used to send it so that the sender can send a different photo or messages instead, further increasing the value of the service and eliminating the cost for a photo that isn't delivered by the facility.

The author of the report also brings up the issue of retention of content, stating "...when someone sends or receives messages through an electronic service, the contents are held (even after its "delivery") by the service provider." This is simply inherent to electronic communication. After the inmate receives a physical letter they can place it in their property. With an electronic message, there is no physical property for the inmate to keep. Even after the message is "delivered" the provider needs to retain a copy so that the inmate can access and read the message again in the future.

The security of the information held by providers is also an important issue. The report asserts that "In an age where large corporations and government agencies fall victim to unauthorized data access on a regular basis, it is obvious that electronic messaging providers are vulnerable as well." In information security there is a saying that "it's not if you're attacked, but when." Smart Communications takes information security very seriously, as should all providers of electronic messaging services. We follow industry best-practices and contractual requirements regarding the handling of credit card transactions, something that all merchants are required to do. We apply those same data security standards to all of the information that has been entrusted to us to ensure that it is not accessed by unauthorized parties. Smart Communications has never suffered a data breach and takes proactive steps to actively monitor and defend our infrastructure. Information security is an important topic, one that all service providers should take seriously. The risk of a data breach is one inherent in operating online services, and one that should not be treated as an afterthought.

Another issue brought up by the report revolves around age restrictions imposed by the various Terms of Service used in the industry. Smart Communications only allows those 18 and older to open accounts and make purchases. We have updated our own Terms of Service to clarify that this applies to the account holder only. If the account holder wishes to supervise children and other minors in their care while they use the service we encourage the entire family to engage in communication as this has been shown to reduce recidivism. We thank the author for bringing this issue to our attention and would encourage other providers to make similar provisions.

Character limits also make their way into the report. The author cites character limits “up to 6,000” characters per message. Somehow they missed that Smart Communications has always offered messages up to 30,000 characters in length which works out to about ten pages of typed text. We sampled all messages sent through our SmartJailMail.com service between July 1, 2015 and December 21, 2015. When looking at the 6,000 character limit used by some other services, we found that only about 586 out of every 100,000 messages were longer than 6,000 characters. Upping the limit to 20,000 characters, we found that only about 50 of every 100,000 messages was longer than 20,000 characters in length. Going up to our own limit of 30,000 characters, we found only six messages in the entire six month period that used all 30,000 characters. Clearly there is a need for limits higher than 6,000 characters, and we have been a leader in this respect several times over since our inception in 2009. The only reason we implement a limit at all is to prevent abuse of the service. If there were a demand for messages longer than 30,000 characters we would consider raising it, but clearly that demand does not exist. In fact, the average length of a message from our sample period is a mere 783 characters, or about what would fit on the back of a postcard.

Also, First Class postage at 49 cents only covers an envelope weighing less than one ounce. This covers a standard envelope and about four sheets of plain paper. Fully utilizing the front and back of all four sheets gets you about eight pages of written text for the cost of one stamp. Writing a message longer than that will cost additional postage due to the added weight of additional sheets of paper. If written today, Martin Luther King’s “Letter from a Birmingham Jail” covers 12 pages and just over 40,000 characters (in Times New Roman font at 12pt, 1” margins) which would require multiple electronic messages, yes, but would also require multiple postage stamps.

## **It’s Not “Real E-Mail”**

The report spends a considerable number of words comparing electronic messaging to free-world Internet e-mail as though one is inherently better than the other, or that electronic messaging services are inferior to free-world e-mail as a result of the design requirements of electronic messaging used in correctional facilities.

The author states that “Electronic messaging typically operates on a closed network that does not directly interact with normal internet-based email systems.” This is entirely true, but it is true because the two systems have entirely different goals and requirements. Internet e-mail was designed to be

open and allow anyone to freely exchange messages with anyone else on the network. It operates at incredible scale, but is also fraught with problems that its designers never anticipated such as the influx of spam, viruses, and social engineering attacks which make up the vast majority of all e-mail traffic.

Electronic messaging in correctional facilities is designed to accommodate the security needs of the correctional facilities while also providing an experience to inmates and their friends and family members that resembles e-mail for ease-of-use. It operates on a closed network which allows for the proper security and monitoring that is required in order for the service to exist at all.

Some electronic messaging services are one-way “inbound only” delivery systems which are no better than sending a fax to the jail to be printed on paper and delivered to the inmate by hand. Smart Communications was a pioneer of the two-way “kiosk-based” electronic messaging service in 2009 and strongly believes that a two-way system is necessary for the benefits to be truly realized for everyone involved.

Internet access is also brought up in the report.

“One major issue in the field of emerging technologies is the extent to which incarcerated users can access the internet. This does not directly impact electronic messaging, because messaging services operate on proprietary platforms that do not allow incarcerated users direct access to the internet.”

No correctional facility will allow incarcerated individuals to have unrestricted access to the Internet, primarily due to security concerns. This only reinforces the need for electronic messaging systems to be built around closed, proprietary networks.

It is unrealistic to expect electronic messaging services designed specifically for correctional facilities to be built upon or utilize the open, standards-based approaches used for e-mail on the public Internet. They are different technologies designed for different purposes. Interoperability with public, free-world e-mail is not a design consideration for these services.

## Price and Value

Price is an important topic and is the primary reason that the Raheer report was written. The concern is that communications providers are using unregulated services such as electronic messaging to take advantage of those who are incarcerated as well as their friends and family members. Here we will consider price compared to the value provided for that price. At one point in the report, the author states that “...the fact that so many facilities offer electronic messaging at 50¢ per message suggests that prices are likely set with an eye toward the cost of the most similar competing product: a single-piece first-class letter.” Smart Communications cannot comment on how or why other providers set their prices, but we can say with confidence that our electronic messaging service, provided at 50 cents

per message, does provide far greater value at a comparable price than is available through postal mail alone. Both faster and more convenient than postal mail, electronic messaging is the best form of written communication an inmate has with the outside world, and the best value.

In addition to value, the price reflects the significant investment costs required to bring electronic messaging to incarcerated individuals. Free-world e-mail is typically said to be free, but is that really the case? As an electronic service, you need a computer or smart phone and Internet access to utilize any e-mail service. These devices and subscriptions carry their own costs to own and access, but provide access to many online communications services, which includes free-world e-mail. In a correctional setting, there are no computers or smart phones provided by the facility for inmates to use. When Smart Communications brings electronic messaging to a jail, it does so by installing all of the necessary equipment and infrastructure at its own expense. These costs can easily reach into the hundreds of thousands of dollars in capital expenditure which we recover 50 cents at a time over a period of several years.

The author agrees that postal mail is “not as speedy as it used to be”, “delivery time for first-class mail has dramatically lengthened in recent years” and that the “U.S. Postal Service (USPS) no longer serves the role it used to occupy as a low-cost provider of quick delivery service.”

For a penny more than the price of a postage stamp, electronic messaging provides faster service to both the sender and the recipient, fosters increased communication, and still provides for all of the necessary security and monitoring required by the correctional facility to keep their staff, inmates, and the public safe, while also rewarding American businesses for making proactive investments and taking the risks necessary to bring these advanced services to the market.

One area where we strongly disagree with the author is when the investment cost is marginalized, stating that “...electronic messaging services typically take advantage of hardware that is already installed for other purposes (i.e., commissary ordering or video visitation) and the costs to operate a closed electronic messaging network are likely quite low.” As was previously noted, Smart Communications is the only provider that does not have another line of business to subsidize the cost of the equipment necessary to deliver two-way electronic messaging services. Our price has to reflect the entirety of cost associated with the design, fabrication, assembly, delivery, installation materials and labor, ongoing maintenance, payment processing, defending against charge-backs, and ongoing administration of the services. The initial investment can take several years to recover, 50 cents at a time. We find the assertion that prices bear “...absolutely no relevance to the cost of providing electronic messaging service in correctional facilities” to be woefully misinformed.

In cases where the price is “a low of 5¢ per message” we believe that this represents a purely add-on service where the equipment has been subsidized by other services, such as a commissary vendor purchasing equipment from TechFriends and offsetting that equipment cost through a combination of reducing commissary commissions to the facility over time, having the facility provide for the installation

of the equipment, and charging higher prices on commissary items (which are then passed on to their customers: the inmates and those who provide their funds). Not enough information was provided in the report to make a determination in the specific instance cited, but a 5 cent per message price does not accurately represent the costs of operating a standalone electronic messaging service.

Some other vendors may be using electronic messaging as an add-on service, but in our case it is the other way around. As part of delivering our electronic messaging services, we are able to work with the facilities to automate other areas of their operation such as hosting the ordering interface for their commissary vendor. This helps to lower commissary prices because that vendor would otherwise be paying for the equipment and infrastructure necessary to support online ordering (resulting in higher commissary item prices for the inmate, as noted above). We are able to convert request forms into an electronic format to streamline the request and response cycle, drastically improving response times for inmate questions and concerns, and hold staff accountable to respond to all requests. We can also deliver a law library directly to the inmate housing areas cheaper than a facility could on their own, providing inmates with greater and more convenient access to legal resources that are always up-to-date than they would otherwise have.

Another issue which adversely impacts our industry is that of credit card charge-backs. After credits have been purchased, used, and the incarcerated individual has been released, a free-world user may contact their credit card company and open a dispute on the credit card purchase. This typically results in a \$25 processing fee whether or not we are successful in defending the charge (averaging about \$7), as well as time and other resources being utilized to protect against fraud. Online transactions are considered “card not present” transactions by merchant providers and are notoriously difficult to defend against, further adding to operating costs which must be subsidized and factored into our prices.

Earlier we mentioned that many facilities see a reduction in the volume of postal mail received into their facilities. We would assert that electronic messaging is not so much an “additional” cost to the free-world users, but a shift in spending habits from postal mail into electronic messaging. Given the choice between slow, cumbersome postal mail and fast, effective electronic messaging, the market is choosing the latter because it provides better service and better overall value.

## **On-Site Commissions**

Related to price is the issue of on-site commissions. Smart Communications pays most facilities a standard rate of 10% on earned revenue. Unlike the regulated telephone industry, inflated commissions are typically not an issue in the electronic messaging market. The report asserts that the combination of pricing and commissions “...suffer[s] from many of the same perverse pricing dynamics that spurred the FCC to regulate phone rates in prisons and jails.” We do not believe this to be the case at all. The report correctly points out that “It is difficult to tell whether commission revenues are substantial, but limited information suggests that electronic messaging income [to the facility from commissions] is minimal.” These “minimal” funds paid to the facility help to offset the increased electrical costs of having

computer kiosks running 24 hours a day, staff time to escort service technicians in to do repairs, as well as overhead to manage accounting, security, and other areas where the facility staff is impacted by the kiosk equipment.

Unlike the telephone and commissary services, on-site commissions are typically not a leading consideration for the correctional facility when contracting with an electronic messaging service. Typically the level of service, automation, security, increased inmate communication, and other benefits to both facility and those who are incarcerated are the driving considerations. High commissions to the facilities are not artificially inflating the price of electronic messaging as was seen in telephone rates. The up-front costs to implement the service and a desire to provide better value than postal mail make inflated commissions unrealistic.

## **Pre-Purchase Requirements and Refunds**

An area of concern raised by the report focuses on pre-purchase requirements. At present, there is no economically reasonable way for an online merchant to process payments for 50 cents at a time. Online purchases are typically made by credit or debit cards which carry a host of fees and surcharges for which the merchant is responsible for paying. Smart Communications allows for purchases as low as \$5.00 at a time (subject to a 50 cent processing fee for all transactions less than \$20 which applies to both online and mailed payments). We believe that many of the high “deposit fees” and “account maintenance” fees charged by some other vendors who provide electronic messaging to be indefensible, and we believe our pricing model is sound and reasonable given our costs to provide the service and the great value it provides to all parties involved.

Likewise, refunds are an important topic to discuss and clarify. First, when someone makes a purchase they are purchasing “message credits” which can be applied to the sending and receiving of electronic messages. These credits represent a promise made by Smart Communications that they can send a message (or photo) to another user on the service that has agreed to communicate with them. Unlike some competing services, our credits do not expire. Credits can be used to send or receive messages, and can be transferred to an incarcerated contact for their own use. For security purposes, credits may not be transferred out of an inmate’s account once they have been received. If an individual has credits remaining on their account at the time of release, those credits are retained on their account for future use in the unfortunate event that they return to the facility. Likewise, all of their contacts, messages, photos, etc. are also retained in the event that they return.

The average purchase price of the credits remaining on a free-world account at the time of release of all of their contacts is about \$4. The costs associated with issuing refunds on unused message credits would be prohibitively expensive given the small amounts involved.

To offset the value of these unused credits, Smart Communications offers every incarcerated individual covered by our service two free message credits every week for the life of the account. The value of the



message credits we distribute in this manner is about \$4 per inmate per month and vastly outweighs the revenue we retain in unused message credits. This practice also helps to ensure that all of our incarcerated users have an opportunity to communicate with their friends and family members each week regardless of their ability to pay.

## **Privileged Communications**

Regarding privileged communications, the report says that “Smart Communications directs attorney users to apply for a designated attorney account, although it does not provide specific policies for how it will protect privileged communications.” As previously mentioned in this report, we apply the same data security standards to all of the content placed in our custody. In the case of privileged communication, these same security standards apply and all privileged content is specifically marked as such for easy identification. Privileged communication is effectively “invisible” to the correctional facility and does not appear on any of their monitoring tools nor is it subject to keyword or other methods of searching the messages. From the standpoint of the correctional facility, these messages effectively do not exist.

Electronic messaging helps incarcerated individuals communicate more quickly and effectively with their attorneys and has the potential to provide better legal representation and lower attorney fees. An attorney can communicate safely with an inmate via electronic messaging in a matter of minutes where a personal visit can take hours.

If an attorney is concerned about the safety or security of an electronic messaging service, they can always stick with postal mail and in-person visits with their client. Electronic messaging does not remove or impair these options.

## **Regarding the Recommendations**

Smart Communications can only speak for itself, but we believe that we already go above and beyond many of the recommendations put forth by the report.

First, regarding price, we believe our rates are reasonable, fair, in line with comparable services such as postal mail, and provide a superior value all around. While we cannot discuss the details regarding the costs of our operations, we believe the 50 cent per message rate is fair compensation given the costs we incur to provide all of the equipment, hardware, network infrastructure, wiring, installation material and labor, and ongoing Internet service and maintenance materials and labor on the facility side necessary to bring the service to those who are incarcerated. This represents a substantial investment made back 50 cents at a time over a period of several years.

Regarding Terms of Service, the report does raise some interesting points. We believe that the intellectual property rights to the contents of the messages should be retained by the author of the

message, but a perpetual license to freely use that content is necessary in order to provide for the ongoing storage of those messages at our servers and for the facilities to be able to freely access those messages for monitoring, security, and investigations. Allowing children supervised use accounts opened by adults is also something we had not previously considered, and we are updating our Terms of Service to reflect that scenario.

Regarding the “Stored Communication Act”, like a college campus or e-mail servers operated at a private business, our services are not available “to the public at large.” Electronic messaging services at correctional facilities can only be used to communicate with those incarcerated individuals at a correctional facility that has specifically contracted for our services. Unlike public free-world e-mail services offered by Google or Yahoo, one cannot create an account with our service for general purpose communication between themselves and anyone else on the Internet. As has been previously noted, the electronic messaging system is a proprietary, closed system designed for a specific purpose and is not a general-purpose communications service. For these reasons we firmly believe that this market falls under the “nonpublic” definition and is therefore not subject to the privacy restrictions that the SCA imposes. Further, our users are advised in our Terms of Service, Privacy Policy, and at the point of communication that all information is subject to monitoring and sharing with the correctional facility housing those that they communicate with. Our users do not have an expectation of privacy when using our services.

Regarding compliance with unclaimed property laws, as discussed earlier, the message credits we sell represent a promise to deliver a message at some point in the future. Usually that promise is called in within a short period of time, such as a few days or weeks. In other instances we keep that promise at a later time when called upon to do so. In some cases we see the same incarcerated individuals back in custody after a period of months or years, and their account with all of the message credits and other content are still there waiting for them. Like a “forever” postage stamp, it can be used at any time in the future to deliver a message, but you can’t get a refund if you decide not to use them right away or don’t have anyone to write to. We agree that message credits and equivalents should not have an expiration date, however.

Regarding the agencies taking responsibility for user data, we believe that asking them to review the Terms of Service and Privacy policies of their vendors is sound advice. The report found our own minimal privacy policy lacking and we have taken steps to address that concern. We believe our data protections are the best in the industry and welcome administrators to ask difficult questions and scrutinize our operations before choosing us as a provider.

Regarding ensuring that a provider installs adequate equipment to provide for the number of inmates being services, it would be in any provider’s financial interests to do so already. Fortunately, Smart Communications operates at a scale larger than any single correctional facility and can provide guidance to administrators in this area as to the capacity that will be required to service those under their custody.

Regarding interoperability, the proprietary nature of the systems designed by each vendor makes interoperability difficult to impossible. Unfortunately, there is no standardized data format for correctional electronic messages. This recommendation calls for application of a standard which, frankly, doesn't exist.

Finally, the report asks for correctional facilities to dip into their own budgets to purchase these systems rather than rely on outside contractors:

“If electronic messaging is as efficient as its supporters claim, then it would make sense for facilities to pay the costs of the system out of their operating budgets, without extracting fee revenue from families who already pay a financial toll when a loved one is incarcerated.”

“Because of the potential cost savings arising from electronic messaging, when state legislatures or local governments are exercising their budget-making authority, they should ensure that electronic messaging is paid for by the contracting agency, with no user fees.”

Given the enormous up-front costs to purchase, install, and maintain a technology platform of this nature, it is simply not possible for many correctional facilities to consider operating their own messaging services. The correctional facilities do see savings in reduced mail handling, do see efficiencies in handling of inmate requests, and do see fewer errors when processing commissary orders. These savings are usually hard to quantify, however, and on their own do not provide enough incentive to budget for the up-front costs associated with providing the necessary equipment to operate such services. The free market is best equipped to operate these kinds of services in a centralized, contracted manner.

## Conclusion

In conclusion, we applaud the FCC's recent actions to reign in an industry that has long been fraught with problems such as high fees and calling rates, among other issues. The FCC has called for comments regarding areas it should consider for further regulation to close loopholes and provide better communications among incarcerated individuals and their friends and family members. We believe the FCC should be diligent in its efforts, but at this time we do not believe that electronic messaging for correctional facilities poses the same problems that brought increased regulations to the telephone providers. Increased regulation on electronic messaging would likely cause most providers to simply eliminate it as an option, resulting in fewer communications options for those who are incarcerated. Electronic messaging providers like Smart Communications offer a great service at a fair price while providing a long list of benefits to those who are incarcerated, their friends and family members, as well as the correctional facilities that contract for our services. We do so while saving taxpayer dollars and adding to the safety and security of correctional facilities and communities across the country.

We thank you for your time and attention.

## How to Contact Us

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Published online: <https://www.smartjailmail.com/ppi-response.cfm>