



February 8, 2016

Chairman Thomas Wheeler
Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Rates for Inmate Calling Services, WC Docket No. 12-375

Dear Chairman Wheeler and Commissioner Clyburn:

We represent a diverse coalition of civil rights and public interest organizations that have participated in the Federal Communications Commission's multi-year, long-overdue effort to cap predatory rates for communications services used in prisons, jails, and immigration detention centers across the country. Thanks to your leadership, these practices are finally being addressed, with new rules about to take effect that cap both local and long distance telephone rates between inmates and their friends, family, counsel, and clergy.

In the most recent effort, the Commission is now taking on the most important remaining issues impeding communication in incarcerating institutions. As is evident in most of the examples below, communications is a tool that is often essential to vindicate other civil and human rights. Without information about what is occurring to people in prison, jail, or detention centers, their friends and family members cannot safeguard their rights, such as a right to physical safety or just adjudication. While exorbitant costs are a matter of economic justice, the disparate impact of these costs on the segments of our society critically concerned with those rights and often least able to address them is a matter of fundamental social justice that is ripe for continued Commission action.

We therefore encourage the Commission to exert its authority to safeguard consumers both inside and outside prisons by addressing the following issues put forward in the most recent *NPRM*: 1) advanced communications, including video visitation; 2) international calling rates; 3) the communications rights of deaf, hard of hearing, and disabled inmates; 4) ensuring the limits on ancillary fees are effective for all communications; and 5) regular data collection in the prison communications industry.

Address pricing abuses in advanced communications and video visitation. While video visitation could be an excellent way to augment connections between inmates and families, in some cases video visitation has replaced in-person visitation.¹ As noted in the record by HRDC and others, both the Department of Justice and the American Bar Association oppose the replacement of in-person visits with video visitation. The Department of Justice's National Institute of Corrections' December 2014 report states that "Video visiting cannot

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replicate in-person visiting,” and notes that the relative benefits of video visits as a replacement for in-person visits is unknown.² The Commission asked about rates, but as with phone rates, these data are difficult to assemble based on public information. Martha Wright et al. collected much of this information and highlighted a wide range of rates, such as Securus charge of “\$5.00 for a 20-minute remote session for friends and family located in Boone County, Illinois,” but a charge of “\$20 for that same length of time in Adams County, Illinois.”³ While these per-minute rates may seem comparatively low in a proceeding in which per-minute phone rates routinely shocked the conscience, and with the \$6 per-minute rates paid by deaf inmates as described below, this is comparable to a service that is widely available for free for all other people through products like Skype or FaceTime. As noted by Martha Wright et al. and others, the FCC has ample jurisdiction to address this issue.⁴

Similarly, written electronic communication tools also deserves attention. As Prison Policy Institute has explained, electronic mail in prisons, jails and other incarcerating institutions bears little resemblance to commercial e-mail.⁵ Electronic inmate communication typically incurs per-message charges and character limits between 1,500 and 6000 characters; some systems accept inbound-only communications. Furthermore, the messaging systems rely on proprietary software and often make it difficult for users outside of prison (let alone inside prison) to save and track messages, making critical record-keeping difficult. While email in prison typically costs 50 cents per email, in some cases, it is as much as \$1.25, with attachments or photos costing more, and with ancillary fees that are just as shocking as the fees previously associated with prison phone calls. For example:

InmateCanteen.com (operated by Turnkey Corrections) requires advance deposits, which are subject to a flat \$8.95 “convenience fee.” After a user makes a deposit, her available balance is subject to a \$1 per-month “maintenance fee.” Securus charges a \$1.95 fee for a deposit of \$5 (with larger deposits subject to higher fees).⁶

The transition to video visitation and email-type communications could have a disparate impact on communities of color and low-income communities, which have lower access rates to broadband Internet, a problem with which the Commission is very familiar.⁷

Further, as explained by Martha Wright, et al., the prison services industry is consolidating. The same companies that offer phone service are moving into new sectors, such as video, email, and even possibly financial services.⁸ Therefore, it is extremely likely that as the Commission addresses abuses in some product lines, such as phone calls, other products will be used to replace lost revenue using similar, predatory techniques.

Cap international calling rates. As New Jersey Advocates for Immigrant Detainees, NYU Immigrant Rights Clinic, LatinoJustice PRLDEF (LatinoJustice), and the American Immigration Lawyers Association (AILA) explained in their comments, Commission action on the last major category of high-priced phone calls is urgently needed. The abuses are appalling. As these organizations note, for international calling, as is the case with local and long-distance calling, the same call can incur dramatically different pricing. One facility identified in their comments charges \$45 for a 15-minute international call, twenty times the cost of the same call from other facilities,⁹ and thirteen hundred times the hourly wage for an immigrant detainee working in detention.¹⁰ Reasonably priced calls are critical for



individuals held in immigrant detention, as “[t]here is no right to government-paid or appointed counsel in immigration proceedings, and pro se immigrant detainees heavily rely on phone communication with family, friends, and experts to gather evidence and testimony.”¹¹ U.S. Immigration Customs and Enforcement noted in a FCC workshop that it has a policy that “all detention facilities provide reasonable and equitable access for reasonably priced telephone services.” The FCC should exercise its authority to be sure that all U.S. residents receive access to “just and reasonable”¹² telecommunications, and adopt the 16-cent per minute cap proposed by New Jersey Advocates, NYU Immigrant Rights Clinic, LatinoJustice and AILA.¹³

Address the communications rights of deaf, hard of hearing, and disabled inmates. The Commission has continued to receive comments and analysis about the severe impact on deaf and disabled inmates, and there is strong support for action, even among industry members.¹⁴ One of the most alarming elements of the record is HEARD’s analysis demonstrating that such inmates are often the target of sexual and other abuse because “they have very little recourse with respect to filing written grievances and obtaining outside support and advocacy.”¹⁵ HEARD produced jaw-dropping examples of TTY to TTY intrastate calls in 2015 that totaled \$720 for 120 minutes and \$385 for 65 minutes,¹⁶ or approximately \$6 per minute. As HEARD points out, many American Sign Language users speak ASL as their first language and use written English as a second language. HEARD also notes that in many cases, though VRS could be available to prisons, jails, and immigrant detention centers *free of cost*, these technologies are still not being used.¹⁷ Given the state of information and significant need, we suggest that the Commission convene a new workshop focused only on the needs of deaf and disabled inmates, to further explore the various technologies, cost structures, use of Commission resources to aid in the submission of complaints at the FCC, and barriers that are preventing simple solutions in the case of urgent need.

Ensure the limits on ancillary fees are effective for all communications. As Prison Policy Institute (PPI) has discovered, the previous limitations adopted by the Commission have not been adequate to eliminate a second form of kickback scheme between prison phone companies and third-party financial institutions like WesternUnion and MoneyGram. Currently, PPI has documented how these third-party institutions share extremely high transaction fees with prison phone companies like Securus. As PPI explains, a customer using WesternUnion to transmit money to Securus might pay WesternUnion an \$11.95 transaction fee to submit \$50 for calls, which WesternUnion shares with Securus.¹⁸ Similarly, PPI explains how prison phone vendors use third-party contracts to charge unacceptably high fees for single-call products. In that case, “an allegedly ‘third party’ company charges the consumer an unreasonable fee set by the ICS provider and then passes the unreasonable profits on to the ICS provider.”¹⁹ In one price structure, for example, “the call is billed as two separate charges: a ‘transaction fee’ of \$13.39 and a ‘call fee’ of \$1.80, but the third-party vendor is in some cases owned, and typically controlled, by the prison phone company.”²⁰ The Commission should ensure these abuses are ended.

Regular data collection in the prison communications industry is essential. Finally, we support, as do many other commenters, regular data collection from the prison phone industry. Without data, the Commission cannot adequately monitor an industry that still is not subject to competition. Perhaps once competition is introduced, which would be ideal, regular data reporting will be less necessary. Until that



time, we endorse the proposed annual filing requirement and a 2017 data submission, as articulated by Martha Wright, et al.

In conclusion, we commend the Commission for the improvements to date in costs for phone calls. At the same time it is important to point out, as did the American Council of Chief Defenders, that “even under the new regulation a 15-minute call will cost more than the Supplemental Nutrition Assistance Program (SNAP) benefit provides on average per person/per meal (\$1.41).”²¹ The incarcerated are among the lowest-income people in the United States.²² Given that reality, the additional possible harm to families and inmates that can accrue through the use of other technologies, high international rates, unjust costs for disability communications services, and ancillary fees should be stopped. In addition, regular data monitoring and collection is essential. Thank you for your consideration of these views.

Sincerely,

The Leadership Conference on Civil and Human Rights

18MillionRising.org	Line Break Media
AFL-CIO	Media Action Grassroots Network
Alliance of Baptists	Media Alliance
American Baptist Churches, USA	Media Mobilizing Project
American Baptist International Ministries	Ms. Tillman
American Civil Liberties Union	NAACP
Appalshop	Nation Inside
Asian Pacific American Labor Alliance (APALA)	National Association of Criminal Defense Lawyers
Center for Media Justice	National Center for Transgender Equality
Color Of Change	National Consumer Law Center, on behalf of its
Common Cause	low-income clients
Communications Workers of America	National Council of La Raza
CURE (Citizens United for Rehabilitation of Errants)	National Employment Law Project
Deep Dish TV	National Hispanic Media Coalition
Demand Progress	National Immigration Law Center
Disability Rights Education & Defense Fund	National Organization for Women
The Ella Baker Center for Human Rights	New America’s Open Technology Institute (OTI)
FedCURE.org	New Jersey Advocates for Immigrant Detainees
Free Press	New Sanctuary Coalition of NY
Generation Justice	New York University School of Law Immigrant
Global Action Project	Rights Clinic
The Greenlining Institute	OCA - Asian Pacific American Advocates
Helping Educate to Advance the Rights of the Deaf (HEARD)	Open Access Connections
Illinois Campaign for Prison Phone Justice of the Urbana Champaign Independent Media Center	Peace Alliance
LatinoJustice PRLDEF	Public Knowledge
	Southern Poverty Law Center
	United Church of Christ, OC Inc.
	Voices for Racial Justice

¹ See Prison Policy Initiative Video Visitation Comments; Prison Policy Initiative, *Screening Out Family Time* 2016.

² HRDC Comments at 6, citing 12 U.S. Department of Justice, National Institute of Corrections, Video Visiting in Corrections: Benefits, Limitations and Implementation Considerations, at 21; *available at*: <http://nicic.gov/library/029609>

³ Martha Wright et al. Comments at 10.

⁴ Id. at 10-15.

⁵ Prison Policy Institute, You've Got Mail at 1-2.

⁶ Id. at 14.

⁷ See, e.g., Leadership Conference Comments on Lifeline, WC Docket 11-42 (filed Aug. 31 2015); June Lifeline Principles Letter, WC Docket 11-42 (filed June 10, 2015).

⁸ Comments of Martha Wright et al. at 3-4.

⁹ New Jersey Advocates for Immigrant Detainees NYU Immigrant Rights Clinic Comments and LatinoJustice and AILA comments at 4. LatinoJustice and AILA note that some studies have shown up to 63% of immigrant detainees do not have counsel, and thus must rely on family and friends, and experts overseas, to develop factual records and otherwise respond to deportation and other proceedings. Id. at 4.

¹⁰ New Jersey Advocates for Immigrant Detainees NYU Immigrant Rights Clinic Comments at 4.

¹¹ Id. at 2.

¹² 47 U.S.C. § 201.

¹³ New Jersey Advocates for Immigrant Detainees NYU Immigrant Rights Clinic Comments at 2; LatinoJustice and AILA Comments at 6-7.

¹⁴ Verizon Comments at 2-4 (citing in part Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, ¶ 160 (2011)).

¹⁵ HEARD Comments at 8-9. See also McCay Vernon. The Horror of being Deaf and In Prison, *American Annals of the Deaf*, Vol. 155, No. 3 (2010).

¹⁶ HEARD Comments at 4-5.

¹⁷ Id. at 8.

¹⁸ Prison Policy Initiative Third Party Financial Transaction Comments.

¹⁹ Prison Policy Initiative Single Call Comments at 1.

²⁰ Id. at 5.

²¹ American Council of Chief Defenders Comments at 2-3 (citing Center for Budget and Policy Priorities (2015), A Quick Guide to SNAP Eligibility and Benefits (<http://www.cbpp.org/research/a-quick-guide-to-snap-eligibility-and-benefits>)).

²² 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. Prison Policy Institute Video Visitation Comments at 5 (citing Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned* (Easthampton, MA: Prison Policy Initiative, July 9, 2015))