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February 8, 2016

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

Re: WC Docket No. 12-375

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

Dear Ms. Dortch:

The Prison Policy Initiative respectfully submits additional information that we believe will aid the Federal Communications Commission as it reviews and considers regulation of video visitation¹ services in prisons and jails.

We have been keeping a close eye on research and news articles related to video visitation and wanted to share three facts in reply to iWebVisit and the other proponents of unregulated video visitation:

- Some video visitation companies already offer video systems that charge per-minute and do not require advanced scheduling.
- Some companies have not only used contract clauses to require the elimination of in-person visits but also to restrict free, onsite video visitation right in contracts.
- Video visitation in Westmoreland County, Pennsylvania has failed to meet both correctional administrators and users' expectations. A year after implementation, video visitation usage continues to be low.

I. There are various models of video visitation, and some companies have been successful with video systems that charge per-minute and do not require advanced scheduling.

iWebVisit claims that per-minute video visitation would be inefficient because it would be impossible to know when to schedule the next visit, but iWebVisit is assuming that all video visitation requires advanced scheduling. As we

¹ The Prison Policy Initiative published a comprehensive report on video visitation in prisons and jails in January 2015 titled, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails*. The report, accompanying exhibits, press coverage, and related research are available online at: <http://www.prisonpolicy.org/visitation/> and have been previously submitted to the FCC.

explain in our report, two companies: TurnKey Corrections and HomeWAV, charge per-minute and do not require advanced scheduling:



Figure 1. TurnKey charges per-minute and allows the visitor to call into the facility without an appointment.



Figure 2. HomeWAV charges per-minute and does not require appointments. The visitor says when he or she is available, and then the incarcerated person is able to make an outgoing video call.

From our conversations with family members of incarcerated people, a common complaint about video visitation is the requirement that visits be scheduled in advance. Many families find coordinating issues like transportation to the jail, childcare, and employment in advance difficult. When companies require visits to be scheduled in advance, families are then discouraged from attempting drop-in visits if time does open up in their schedule or if an emergency occurs.

Further, when we interviewed HomeWAV staff, they told us that the average length of a visit on their system is 5.79 minutes, significantly fewer than the standard visit blocks of 20 or 30 minutes. If more video visitation companies offered per-minute video visitation, it would be possible for families to use video visitation more often, without it being financially burdensome. For example, a daughter could say goodnight to her incarcerated father or a husband could use video visitation to ask if his wife has received her commissary money.

II. Video visitation companies sometimes use contract clauses to micromanage correctional decisions in order to stimulate demand for paid, remote video visitation.

While video visitation company iWebVisit recently told the FCC that the company's goal is to "increase family contact, not create barriers"² and, in a reply comment, that its clauses requiring the elimination of in-person visits "are considered void and are not being enforced,"³ our review of iWebVisit and Securus contracts reveals a disturbing trend of companies using contract clauses to explicitly require the elimination of in-person visits and restrict the availability of free, onsite video visits.⁴ We analyze the common clauses in Securus contracts in great detail in a section titled "How are Securus video contracts different from other companies?" in our January 2015 report, but we wanted to point out how iWebVisit also micromanages policy issues that rightly should be decided by elected and appointed correctional officials. Common clauses in iWebVisit contracts include:⁵

- "Limit on-site visitation for inmates in general population to the **minimum statutorily required** on-site visitation time or in accordance with Sheriff policy, whichever is greater;"⁶

This clause is problematic because prison and jail visitation has traditionally been provided to families of incarcerated people free of cost, but with the advent of video visitation, this is changing. When jails eliminate in-person through-the-glass or contact visitation, family members are generally left with two options to visit: free, onsite video visits or paid, remote video chats that can cost up to \$1.50 per minute. Restricting a correctional facility's ability to provide free, onsite visitation is one way that companies push families into purchasing remote video visits.⁷

- "Facility will make the System available to inmates seven days a week, during **not less than** the following agreed upon hours: Monday thru Sunday: 7:30am to 10:30pm subject to system outages. Inmates in general population shall be permitted to have **multiple remote visits per day**. However, Facility may limit visitation hours at its reasonable discretion for security/operational purposes and/or for punitive measures resulting from **individual inmate misbehavior** in accordance with Facility policy. Except as stated above, **Facility will not restrict**

² For iWebVisit's comment to the FCC, see: <http://apps.fcc.gov/ecfs/document/view?id=60001408820>.

³ For iWebVisit's reply comment to the FCC, see:

<http://apps.fcc.gov/ecfs/comment/view?id=60001390088>.

⁴ Though abolishing in-person visits is common in the jail video visitation context, Securus and iWebVisit are the only companies that explicitly require this harmful practice in their contracts. Notably, in May 2015, Securus announced that it would no longer explicitly require county jails and state prisons to replace in-person visits with video visits. It's unclear whether existing Securus video visitation contracts were amended to remove the contract clause that required the elimination of in-person visits.

⁵ For an example of an iWebVisit contract with these clauses, see:

<http://apps.fcc.gov/ecfs/document/view?id=60001408194>.

⁶ Emphasis added by the Prison Policy Initiative

⁷ In at least three counties, families cannot visit their incarcerated loved ones unless they are willing to pay for the visit. Lincoln County, Oregon and Adams County, Mississippi only provide paid, remote video visits, and Portsmouth County, Virginia charges visitors for both onsite and remote video visitation. See the section titled, "The way jails typically implement video visitation systems violates correctional and policy best practices" in our January 2015 report.

inmates from access to the System, including the number of visits, provided a visit is scheduled;”⁸

Notably, while the clause above encourages wide availability of paid, remote video visits, this clause restricts the availability of free, onsite video visits. While visitation in general should be expanded as much as possible, correctional facilities are responsible for setting policies related to movement and access to technology within a facility, not private companies.

These restrictive contract clauses are almost the opposite of those provided by TurnKey Corrections, which give correctional facilities far more flexibility:⁹

- “Provider wishes to minimize fees charged to inmate’s family and friends and allow revenue and efficiency to grow thus providing the County the maximum amount of revenue possible.”
- “Privileges may be revoked and suspended at any time for any reason for any user.”

This clause is important because while communication between incarcerated people and their families is critical for successful reentry, the authority on any restrictions on communication should be government officials, not private companies.

- “The communication of changes will be done a minimum of 15 days in advance of the change. Provider warrants to change prices no more than 3 times annually.”

While we were encouraged to learn in iWebVisit’s reply comment¹⁰ filed on February 1, 2016 that iWebVisit no longer requires correctional facilities to ban in-person visitation in its contracts, iWebVisit never says whether it has explicitly communicated to correctional facilities that these clauses are considered void. And we are still concerned about this general trend of companies using contract clauses to push correctional facilities to restrict free, onsite video visits in order to stimulate demand for paid, remote video visits. We would recommend that video visitation companies find other ways to stimulate demand such as by lowering the price of paid, remote visits and encouraging video visitation as a supplement to in-person visits. In fact, TurnKey told us that, in their experience, when correctional facilities offer both in-person and TurnKey video visitation, the average use of remote video visits is higher than when facilities only offer video visitation.¹¹

⁸ Emphasis added by the Prison Policy Initiative

⁹ For Lemhi County, Idaho’s contract with TurnKey Corrections that includes these clauses, see Exhibit 1.

¹⁰ For iWebVisit’s reply comment to the FCC, see: <http://apps.fcc.gov/ecfs/comment/view?id=60001390088>.

¹¹ See section titled “Video visitation can be a step forward” in our January 2015 report.

III. The experience of Westmoreland County Prison in Pennsylvania illustrates that, often times, video visitation fails to live up to the promises that companies make to correctional facilities.

In Westmoreland County, both the warden and incarcerated people and their families are unhappy with video visitation. Remote video visits brought in just under \$14,000 since being made available to incarcerated people and their families last January. This is \$86,000 less than correctional officials expected.¹² Warden John Walton has said of the revenues, “We thought it would be substantially higher.”

Furthermore, the county has averaged about 89 video visits each month. This is extremely low for a facility with an approximate population of 489.¹³ One reason why video visitation usage might be so low is because of technological malfunctions. Westmoreland County Prison Warden John Walton told the *Pittsburgh Tribune-Review* that three of the computers malfunctioned for several months. We know from our research and conversations with family members and incarcerated people that video visitation, especially remote video visitation, tends to be low quality. For example, Clark County, Nevada decided to upgrade its Renovo video system after “more than half of the average 15,000 visits a month were canceled because of tech issues.”¹⁴

Upon hearing about video visitation in Westmoreland County Prison, the editorial board of nearby newspaper, *York Daily Record*, encouraged York County Prison officials to “learn from Westmoreland’s mistakes and institute a less costly video visitation system.” The editorial board questions whether it was necessary for Westmoreland County to pay the hefty price tag of \$92,000 for a video visitation system and condemns the use of video visitation as a revenue source, calling \$15 per video session an “exorbitant” rate for families. The *York Daily Record* joins the editorial boards of the *Austin-American Statesman*, *The Boston Globe*, *The Dallas Morning News*, the *Houston Chronicle*, *The New York Times*, the *Press of Atlantic City* (Pleasantville, NJ), *Street Roots* (Portland, OR), and *The Washington Post*, which have all criticized correctional video visitation — as it is most commonly implemented — as a misguided rather than beneficial communication tool.¹⁵

Conclusion

While much of our January 2015 report, *Screening Out Family Time: The for profit video visitation industry in prisons and jails*, focused on the way that correctional video visitation has been a significant step backwards for families

¹² For the news articles that provide these figures and comments, see Exhibit 2.

¹³ This number is from the 2010 Census.

¹⁴ See Exhibit 3.

¹⁵ See Exhibit 4 for all referenced editorials.

and public safety, it is still theoretically possible that the technology *could*, with policy changes, be a beneficial communication option for families. For example, to give families more flexibility, video visitation could be charged on a per-minute basis without advanced scheduling. And video visitation companies could market their product as a positive *supplement* to traditional forms of visitation, most notably for families or lawyers who may live far away from their incarcerated loved ones or clients. Unfortunately, the most dominant form of video visitation is low quality and unaffordable, leaving families and even the correctional facilities, disappointed.

We hope that the Federal Communications Commission will regulate video visitation now, while the service is still evolving, without waiting for the worst practices to become fully entrenched.

Sincerely,

A handwritten signature in black ink that reads "Bernadette Rabuy". The signature is written in a cursive, flowing style.

Bernadette Rabuy
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