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December 17, 2021



Chair Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: WT Docket 12-375

Dear Chair Rosenworcel, Commissioners Carr, Starks, and Simington:

On behalf of The Leadership Conference on Civil and Human Rights and the 33 undersigned organizations, we appreciate this opportunity to provide reply comments in the above-captioned rulemaking.

The Leadership Conference is a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil rights of all persons in the United States. We have been an active participant in the Federal Communication 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. These reforms are important because inadequate communications policy for carceral communications has a disproportionate impact on the communities The Leadership Conference represents. Access to affordable and accessible communications is a fundamental right. Maintaining regular communication, such as through telephone calls, is often essential to vindicate other civil and human rights. Without information about what is happening to people in prison, jail, or detention centers, their counsel, clergy, friends, and family members cannot safeguard these rights—such as the rights to physical safety and just adjudication.

High costs and inaccessible technology place an unfair financial burden both on people who are incarcerated as well as on their families and loved ones. As discussed in these comments, we call on the FCC to ensure that communication services are accessible, affordable, and transparent. We urge the FCC to complete this proceeding swiftly and adopt fundamental changes to ensure people with disabilities have access to communications while incarcerated, as well as to further lower the rates incarcerated people and their families pay to communicate.

Our Current Carceral System Is Fundamentally Unjust. The criminal-legal system disproportionately incarcerates Black and Latino people and people who are economically disadvantaged. Black Americans are incarcerated in state prisons at nearly five times the rate of White Americans, while Latinos are incarcerated in state prisons at 1.3 times the rate of White Americans.¹ The Prison Policy Initiative found that incarcerated people had a median annual income of \$19,185 prior to their incarceration, 41 percent less than non-incarcerated people of similar ages.²

The FCC Must Ensure Accessible Communications for Incarcerated People with Disabilities.

People with disabilities require reliable and effective communications tools that are currently not provided while they are incarcerated. Nearly 4 in 10 state prisoners (40 percent) and 3 in 10 federal prisoners (29 percent) reported having a disability.³ As the record shows, more accessible communications tools would help prisoners with disabilities utilize their right to counsel, communicate with families and communities, and obtain an equitable opportunity to plan for their future to reintegrate into society.⁴ The experience of Senette and Jerald Jenkins, described during meetings with Commissioners Simington and Carr, is instructive.

When their family needed to communicate tragic news to their son, they could not communicate directly, rather they spent considerable time interacting with the interpreter instead. On a 15-minute call only about 3-5 minutes might be spent on actual communication. Not only does using an interpreter take time, but different signing customs—like regional accents in spoken language—can lead to incorrect interpretations and misunderstandings.⁵

Incarcerated people are entitled to access services provided by correctional facilities. Department of Justice (DOJ) regulations implementing the Americans with Disabilities Act (ADA) state that public entities, including prisons and jails, “must provide auxiliary aids and services where necessary to afford an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity.”⁶ The FCC

¹ Nellis, Ashley. “The Color of Justice: Racial and Ethnic Disparity in State Prisons.” *The Sentencing Project*. Oct. 13, 2021. <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

² In 2019, the median Black household earned just 61 cents for every dollar earned by median White households, while the median Latino household earned 74 cents. Semega, Jessica, et al. “Income and Poverty in the United States: 2019.” *United States Census Bureau*. Sep. 2020. <https://www.census.gov/data/tables/2020/demo/income-poverty/p60-270.html>. Rabuy, Bernadette, and Kopf, Daniel. “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned.” *Prison Policy Initiative*. July 9, 2015.

<https://www.prisonpolicy.org/reports/income.html>.

³ Maruschak, Laura M., et al. “Survey of Prison Inmates, 2016 Disabilities Reported by Prisoners.” *U.S. Department of Justice Bureau of Justice Statistics*. March 2021. <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>.

⁴ “Comments of HEARD et al., In the Matter of Rates for Interstate Calling Services WC Docket No-12-375.” Sep. 27, 2021. Pgs. 9-10.

<https://ecfsapi.fcc.gov/file/10927245844157/2021.09.27%20Accessibility%20Coalition%20Carceral%20Comms%20Fifth%20FNPRM%20Comments%20final.pdf>.

⁵ Leanza, Cheryl, et al. “WC Docket No. 12-375, notice of ex parte communication.” May 14, 2021.

<https://ecfsapi.fcc.gov/file/105141900713329/Impacted%20People%20Ex%20Parte%20filed%205-14-21.pdf>.

⁶ See “Reply Comments of National Disability Rights Network (NDRN), et al., In the Matter of Rates for Interstate Inmate Calling Services WC Docket No. 12-375.” Sep. 27, 2021. Pg. 4.

has both the authority and the responsibility to address accessibility issues with electronic messaging and VoIP.⁷

The FCC must be sure its rules account for the reality that many deaf individuals who use American Sign Language often have limited proficiency in written English. Because many individuals who are deaf cannot easily communicate in written English, text-based communications tools are insufficient.⁸ The FCC should ensure that direct video services are available to incarcerated people who are deaf or hard of hearing. Direct video services are critical for incarcerated people with disabilities because they offer a direct mode of communication that does not rely on a third party, and they are necessary to facilitate communication with other people whose primary language is also sign language.⁹

Furthermore, the costs for communication for people with disabilities must be affordable. The FCC should prohibit Inmate Calling Service (ICS) providers from charging for all forms of telecommunications relay service (TRS) calls. Section 276 provides express legal authority to prohibit carceral facilities from charging for these calls.¹⁰ The FCC should also expand its annual reporting requirement to include all TRS and direct video and text communications, as well as any accessibility-related complaints. Including all TRS and direct video and text communications in annual reports will substantially expand the transparency and accountability of ICS providers.¹¹

The FCC Must End Predatory Rates. ICS providers charge extremely high rates for families to call one another. This practice puts many people in debt, and risks recidivism for those inside carceral facilities by limiting communication for people who would be more likely to succeed through the maintenance of community ties during their incarceration.¹²

No family should have to choose between paying for essential needs such as meals, electricity, or water, or speaking with a loved one who is incarcerated.¹³ Regular communication with family and loved ones

https://ecfsapi.fcc.gov/file/10927279044528/2021_09_27%20Comments%20Docket%20No.%2012-375%20National%20Disability%20Rights%20Network.pdf.

⁷ “When read together, Sections 225 and 276 require the Commission to ensure the provision of accessible communications in carceral facilities” (HEARD at 3).

⁸ NDRN at 5 (citing Heyer v. United States Bureau of Prisons, where the Fourth Circuit held that BOP violated the appellant’s right to effective communication in denying him videophone access, saying, “[Heyer’s] ability to say ‘hello, how are you,’ does not equate to the ability to effectively communicate with his community.” Pg. 6. *See also* the District Court for the District of Columbia concluded in Pierce v. District of Columbia that ASL has its own syntax and grammar, and that the vast majority of Deaf people lack the ability to communicate effectively in English” (NDRN at 6-7).

⁹ HEARD at 16.

¹⁰ HEARD at 15.

¹¹ HEARD at 18.

¹² “Comments of United Church of Christ et al., In the Matter of Rates for Interstate Inmate Calling Services WC Docket No. 12-375.” Sep. 27, 2021.

<https://ecfsapi.fcc.gov/file/109280241828760/2021.09.27%20Comments%20of%20Joint%20Advocates%20WC%20Docket%20No.%2012-375.pdf>.

¹³ See, e.g., Tenneriello, Bonita, and Matos, Elizabeth. “The Telephone is a Lifeline for Prison Families. And Calls are Outrageously Expensive.” WBUR. Jan. 27, 2021. <https://www.wbur.org/cognoscenti/2020/01/27/cost-of-phone-calls-prison-bonita-tenneriello-elizabeth-matos>.

helps lower recidivism rates and assists with re-entry.¹⁴ Formerly incarcerated persons are much more likely to be unhoused and unemployed,¹⁵ both of which lead to higher recidivism rates. More affordable and more accessible communications can help alleviate these harms.

The FCC's vote earlier this year to bring down rates was welcome, but it did not address the needs of the vast majority of people who are incarcerated in jails. The FCC must do more to alleviate high costs, including addressing ICS rates in "small" jails with populations of less than 1,000 incarcerated persons; lowering ancillary fees and not including them in rates; ensuring that costs of surveillance and security are not represented in rates; regularly collecting data; and preempting commissions or unjust rate elements.¹⁶

Moreover, the FCC should change its methodology with respect to jails with a daily population of fewer than 1,000 incarcerated persons. The Prison Policy Initiative has highlighted the many complaints regarding high rates and confusing or unreasonable payment provisions in jails of less than 1,000 incarcerated persons.¹⁷ For example, callers in jail spend 16 percent less time on the phone but pay twice as much for calls because of inflated jail rates that are due "at least in part to the nature of incentives and bargaining power related to bidding and procurement processes at local jails."¹⁸ Analysis from the Prison Policy Institute also highlights the fact that facility size does not correlate to costs and should be considered by the FCC as a rebuttal to the ICS providers' argument that size impacts costs.¹⁹

The FCC should lower ancillary service charge caps and not include them in rates.²⁰ The ancillary charges inflate the price of ICS services and effectively price out incarcerated persons and their families from affordable communications. The FCC must quickly address ancillary service charge abuses by ICS

¹⁴ See, e.g., The Urban Institute. "Families and Reentry: Unpacking How Social Support Matters." *Illinois Criminal Justice Information Authority*. June 2012. <https://www.urban.org/sites/default/files/publication/24921/1001630-Families-and-Reentry-Unpacking-How-Social-Support-Matters.PDF>.

¹⁵ See, e.g., Couloute, Lucius. "Nowhere to Go: Homelessness among formerly incarcerated people." *Prison Policy Initiative*. Aug. 2018. <https://www.prisonpolicy.org/reports/housing.html> (finding that formerly incarcerated people are almost ten times more likely to be unhoused than the general public); Couloute, Lucius, and Kopf, Daniel. "Out of Prison & Out of Work: Unemployment among formerly incarcerated people." *Prison Policy Initiative*. July 2018. <https://www.prisonpolicy.org/reports/outofwork.html> (finding that formerly incarcerated people are unemployed at a higher rate than the total U.S. unemployment rate during any historical era).

¹⁶ See "Petition for Reconsideration by United Church of Christ, OC Inc. and Public Knowledge, In the Matter of Rates for Interstate Inmate Calling Services WC Docket 12-375." Aug. 27, 2021.

<https://ecfsapi.fcc.gov/file/10827182190354/Final%20ICS%20Petition%20for%20Reconsideration%20UCC%20PK%208-27-21.pdf>.

¹⁷ "Reply Comments of Wright Petitioners et al., In the Matter of Rates for Interstate Inmate Calling Services WC Docket 12-375." Jan. 15, 2021.

[https://ecfsapi.fcc.gov/file/10115182951844/ICS%20FNPRM%20Reply%20Comments%20\(1-15-21\)%20Redacted.pdf](https://ecfsapi.fcc.gov/file/10115182951844/ICS%20FNPRM%20Reply%20Comments%20(1-15-21)%20Redacted.pdf).

¹⁸ Wright Petitioners at 4-5.

¹⁹ Peter Wagner & Alexi Jones. "State of Phone Justice: Local jails, state prisons and private phone providers." *Prison Policy Initiative*. Feb. 2019.

https://www.prisonpolicy.org/phones/state_of_phone_justice.html#consolidation.

²⁰ "Reply Comments of Wright Petitioners et al., In the Matter of Rates for Interstate Inmate Calling Services WC Docket 12-375." Jan. 15, 2021.

[https://ecfsapi.fcc.gov/file/10115182951844/ICS%20FNPRM%20Reply%20Comments%20\(1-15-21\)%20Redacted.pdf](https://ecfsapi.fcc.gov/file/10115182951844/ICS%20FNPRM%20Reply%20Comments%20(1-15-21)%20Redacted.pdf).

providers. Moreover, the costs of surveillance and security do not belong in rates associated with ICS. The FCC should also cap these rates since “observation of incarcerated people is a function of jail and prison facilitates, not a function specific to ICS.”²¹

In addition to imposing caps, the FCC should take steps to reduce the economic burdens created by ancillary service charges and limit the fees that can be collected. The FCC should prohibit revenue sharing agreements with ICS providers for fee collection and require all carriers to provide full contracts with any entity that receives or processes payments from end-users on the carrier’s behalf, as well as require a detailed accounting of all consideration the carrier has received from such entities.

By taking the above steps, the FCC will help make prison communications more accessible and just for those who are incarcerated and their families. Those in prison must be able to maintain contact with their loved ones and important contacts outside of prison in order to facilitate re-entry and social support. Given the disparate impact of the prison system on communities of color, the civil rights community considers ensuring affordable and accessible communications a priority.

If you have any questions about the issues raised in this letter, please feel free to contact Media/Telecommunications Task Force Co-Chair Cheryl Leanza, United Church of Christ Media Justice Ministry, at cleanza@alhmail.com, or Bertram Lee, The Leadership Conference Counsel for Media and Technology, at lee@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
Asian Americans Advancing Justice | AAJC
Autistic Self Advocacy Network
Center for Democracy & Technology
Center for Disability Rights
Center for Law and Social Policy (CLASP)
Center for Responsible Lending
Common Cause
Communications Workers of America
Defending Rights & Dissent
Disability Rights Education & Defense Fund
Disciples Center for Public Witness
Drug Policy Alliance
Electronic Frontier Foundation
Hispanic Federation
Institute for Intellectual Property & Social Justice

²¹ “Comments of Worth Rises, In the Matter of Rates for Interstate Inmate Calling Services WC Docket 12-375.” Sep. 27, 2021. <https://ecfsapi.fcc.gov/file/10927020702448/2021.09.27%20-%20Worth%20Rises%20Fifth%20NPRM%20Comment%20vFINAL.pdf>.

MediaJustice
Muslim Advocates
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Consumer Law Center (on behalf of its low-income clients)
National Council of Asian Pacific Americans
National Council of Churches
National Employment Law Project
National Hispanic Media Coalition
National Organization for Women Racial Justice Committee
National Urban League
New Jersey Muslim Lawyers Association
Public Citizen
Robert F. Kennedy Human Rights
Sojourners
Southern Poverty Law Center Action Fund
Tayba Foundation
United Church of Christ Media Justice Ministry