

# PRISON POLICY INITIATIVE

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December 20, 2013

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

Dear Ms. Dortch:

The Commission requested public comment on the future of correctional communication services in its August 9, 2013 Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.<sup>1</sup> We urge the Commission to consider non voice-based methods of electronic communication in future regulation of the prison and jail communications industry.

As the Commission noted in its Report and Order and Further Notice of Proposed Rulemaking, a growing number of correctional facilities are adopting video visitation technology that allows incarcerated people to communicate with people on the outside.<sup>2</sup> Given the unquestionable social benefits of allowing incarcerated people to maintain social ties,<sup>3</sup> increasing the options and modes for communication from prisons and jails is generally a positive trend. There is no question that remote video visitation can be more convenient for many people and could increase certain types of visits, and we do not necessarily oppose reasonable charges for that service. However, we see clear evidence that the video communications market is currently driven by the same perverse incentives that caused market failure in the correctional telephone industry.

In particular, we urge the Federal Communications Commission to address the following important considerations in future regulation:

1. We are concerned that some jails are using video visitation, which is often-fee based, to replace or reduce, rather than supplement, free in-person visits, and we believe this outcome is the direct result of the perverse incentives created by the commission system.<sup>4</sup> In many cases, banning in-person visits increases the use of — and therefore profit from — video communication, and also increases the sum paid to the

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<sup>1</sup> Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 at ¶ 165 (Adopted August 9, 2013).

<sup>2</sup> Id. at ¶74 n.485.

<sup>3</sup> See Drew Kukorowski, *The Price to Call Home: State-Sanctioned monopolization in the Prison phone Industry* (September 11, 2012), available at <http://www.prisonpolicy.org/phones/report.html>.

localities in the form of a site commission. For families, however, the consequences are serious. The Maricopa County, Arizona Sheriff's Office, for example, has just signed a new video visitation contract with Securus that requires a 10 to 20% site commission, and includes a provision that "County shall eliminate non-professional contact and non-contact visitation, and County shall use video visitation as the sole means to conduct non-professional visitation."<sup>5</sup> Equally alarming is Securus's current contract with the Shawnee County, Kansas jail, which requires that the "Customer will eliminate all face-to-face visitation through glass or otherwise at the Facility and will utilize video visitation for all non-professional on-site visitors."<sup>6</sup> The Washington D.C. and Travis County, Texas jails recently replaced all in-person visits with video visitation,<sup>7</sup> and the South Correctional Entity jail in Des Moines, Washington has offered video visitation exclusively ever since it was built in 2011.<sup>8</sup> Further, an official from Telmate informed us that they commonly require facilities that contract Telmate video visitation service to end free in-person visits.<sup>9</sup> Given the FCC's commitment to "promote the general welfare of our nation by making it easier for inmates to stay connected to their friends and families," this counterproductive trend merits attention.<sup>10</sup>

2. Like in the prison telephone industry, the video visitation market is rife with usability failures and poor service, including difficulty with account log-in, appointment cancelation, and grainy video quality.<sup>11</sup>

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<sup>5</sup> Contract between Securus and Maricopa County, AZ, *Contract for Web-Based Visitation/Communication Kiosk System Serial 13002-RFP* Exhibit A. It is also of note that while the system is being installed, the jail is reducing in-person visiting time from three hours per week to just 30 minutes. See, eg, JJ Hensley, *MCSO to allow video jail visits – for a price*, *The Republic*, (December 10, 2013). Accessed from <http://www.azcentral.com/news/articles/20131206mcs-to-allow-video-jail-visits-price.html>.

<sup>6</sup> Contract between Securus and Shawnee County, KS, *County Contract # C187-2013, First Amendment to Master Services Agreement Contract #C470-2012* at 1 (March 2013).

<sup>7</sup> In DC, the visits are free, but Travis County, Texas charges \$20 for 20 minutes. See District of Columbia Department of Corrections, *Video Visitation at the DC Jail* (August 30, 2012) accessed from <http://newsroom.dc.gov/show.aspx/agency/doc/section/4/release/23567> and Travis County Sheriff's Office, *Travis County Jail Visitation Is Now Video Visitation* (accessed December 19, 2013), accessed from <https://www.tcsheff.org/about/media-relations/press-releases/280-travis-county-jail-visitation-is-now-video-visitation>.

<sup>8</sup> Jessica Robinson, "Inmates' Families Say They're The Ones Punished By Switch To Video Visits," *Spokane Public Radio*, June 3, 2013. Accessed from: <http://www.spokanepublicradio.org/spr-news-feed-entry-502-inmates-families-say-they-re-the-ones-punished-by-switch-to-video-visits>

<sup>9</sup> Peter Wagner's conversation with Richard Torgersrud on July 10, 2013. Mr. Torgersrud explained that he saw banning in-person visits as the only way increase video call volume to recoup the investment. By contrast, we discovered during an interview with Patrick McMullan, Vice President of Turnkey Corrections that that company has a more subtle approach to encouraging customer adoption of its services: offering free or discounted calls on high-demand holidays like Thanksgiving or Mother's Day as a way to introduce people to the service. On December 20th Mr. McMullan reported to us that Turnkey's discount on Thanksgiving Day, 2013 resulted in the "busiest visitation and email day of the year."

<sup>10</sup> As the Sentencing Project recently concluded in a report on video visitation, "Children may benefit from video visitation if it increases opportunities for them to communicate with their parents. But video visitation is not a substitute for in-person contact visits, particularly for infants and young children."

Susan D. Phillips, Ph.D. The Sentencing Project, *Video Visits for Children Whose Parents Are Incarcerated: In Whose Best Interest?* at 3 (October 2012). Accessed from:

[http://sentencingproject.org/doc/publications/cc\\_Video\\_Visitation\\_White\\_Paper.pdf](http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf)

<sup>11</sup> E.g, Washington Post Editorial Board *D.C. prisoners deserve better than flawed video-only visitation policy* (August 12, 2013), accessed from [http://articles.washingtonpost.com/2013-08-12/opinions/41330386\\_1\\_video-visitation-prisoners-d-c-jail](http://articles.washingtonpost.com/2013-08-12/opinions/41330386_1_video-visitation-prisoners-d-c-jail) and Jessica Robinson, *Inmates' Families Say They're The Ones Punished By Switch To Video Visits*, *Spokane Public Radio* (June 3, 2013), accessed from <http://www.spokanepublicradio.org/spr-news-feed-entry-502-inmates-families-say-they-re-the-ones-punished-by-switch-to-video-visits>.

Such usability barriers are particularly troubling in facilities where in-person visits are no longer permitted.

3. In many cases, the families and friends of incarcerated people must bear similarly hefty charges for video visitation service as they do for telephone service, complete with fees and site commissions. The Maricopa County jail system charges \$12.95 for a 20-minute off-site video chat, for example.<sup>12</sup> In Travis County Texas, \$20 buys a video session of up to 20 minutes, 23% of which goes directly into the county's general fund. Some video visitation companies charge as much as \$8 to make a \$25 account deposit.<sup>13</sup> As the Commissioners have noted, some ICS companies are able to provide video visitation services at rates "significantly below the rates the large ICS provider charges for equivalent phone services."<sup>14</sup> Further investigation is necessary to determine the real cost of providing video visitation service, and future regulation should ensure that ICS customers are not subject to arbitrary video communication charges or unfairly high rates.
4. The failure to regulate prison and jail video communication charges will leave this industry with a ready method to instantly subvert the FCC's price caps on long-distance calls simply by replacing facilities' current telephones with video phones and labeling the verbal communications that take place as "video calls". In the August 9<sup>th</sup> Order, the Commissioners clearly stated why it was necessary to regulate both rates and ancillary fees, because "otherwise providers could simply increase their ancillary charges to offset lower rates subject to our caps." Regulating video communication service is a similarly necessary step to ensure that simple technology shifts do not render the FCC's efforts to provide meaningful relief to customers ineffective.

In addition, we believe that correctional email services also warrant FCC investigation. The burgeoning prison and jail email market has the positive potential to expand communication, similar to video communication, but is also unfortunately already exhibiting serious failures. For example, we have been closely tracking the counterproductive trend in local jails of banning letters from home, and we released a detailed report on the subject earlier this year.<sup>15</sup> In the course of our research, we discovered proposals to replace written mail exclusively with a jail email service. While a reasonably-priced email service may offer a more convenient or economically efficient method of communication for some people, it is inappropriate and harmful to use fee-based email technology to replace other modes of written communication.

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<sup>12</sup> JJ Hensley, *MCSO to allow video jail visits – for a price*, The Republic, (December 10<sup>th</sup>, 2013). Accessed from <http://www.azcentral.com/news/articles/20131206mcs0-to-allow-video-jail-visits-price.html>.

<sup>13</sup> Jessica Robinson, *Inmates' Families Say They're The Ones Punished By Switch To Video Visits*, Spokane Public Radio (June 3, 2013), accessed from <http://www.spokanepublicradio.org/spr-news-feed-entry-502-inmates-families-say-they-re-the-ones-punished-by-switch-to-video-visits>.

<sup>14</sup> Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 at ¶ 177 n. 553 (Adopted August 9, 2013).

<sup>15</sup> Leah Sakala, *Return to Sender: Postcard-Only Policies in Jails*, Prison Policy Initiative, 2013. Available at: <http://www.prisonpolicy.org/postcards/report.html>

The National Institute of Corrections stated that, "This report is required reading for policy makers and anyone working with individuals in jail custody" (<http://nicic.gov/Library/027412>).

Further, as we saw with phone communication, the inclusion of site commissions in prison and jail communication service contracts often results in arrangements that do not serve consumers' needs.

We strongly urge you to include non voice-based methods of electronic communication in your future regulation of the prison and jail communications industry. We thank you for your work to bring fairness to the prison and jail telecommunications industry.

Sincerely,

A handwritten signature in black ink, appearing to read "PW", with a stylized, sweeping flourish extending to the right.

Peter Wagner  
Executive Director

A handwritten signature in black ink, appearing to read "Leah Sakala", with a stylized, sweeping flourish extending to the right.

Leah Sakala  
Policy Analyst