

September 21, 2022

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



Re: WC Docket No. 12-375

Dear Chair and Commissioners:

The undersigned groups write to support the Commission's draft order addressing carceral communications, to recommend several modifications before the final vote and to augment the record where needed.¹ We are extremely pleased with the Commission's action and the quick action since the FCC's FNPRM last year. We appreciate the steps you have taken to improve consumer protection by the draft order and the improved definitions that will clarify the expansive application of the Commission's rules to a wide range of facilities. We particularly welcome the long-awaited action to affirm the rights of people with disabilities who are incarcerated. The Commission's action this month will go a long way toward clarifying the obligations of communications providers and the rights of people who are deaf and disabled, and will give incarcerated people and their loved ones a means to retain their humanity, their dignity and their sanity during incarceration.

Sixteen months ago a group of directly impacted people came to speak to Commissioners Simington and Carr and their staff. They told of the horrific experience of being incarcerated while deaf, disabled, hard of hearing, or, of being deaf or hard of hearing and wanting to connect with an incarcerated non-disabled family member or loved one. When you are deaf and incarcerated, you are essentially in solitary confinement. For example, Alphonso Taylor described his experience. His only opportunity to communicate was with the outside world; and the incarcerating institution did not comply with the law, which required it to provide him access to those communications. His mental and physical health declined, as anyone's would if they were deprived of all meaningful human interaction.² Shortly after Alphonso shared his story at the FCC, he was reincarcerated and then passed away just days after he was once again released. Hopefully, his story will live on, not only in the memories of his

¹ As detailed below, this letter also serves to document two oral *ex parte* meetings some advocates held with FCC staff to discuss this material today.

² Directly Impacted People *ex parte* letter, WC Docket 12-375 (filed May 14, 2021).

friends and family, but also in new Commission policy that will minimize the number of future similar tragedies until they stop altogether.

As such, we fully support the Commission's proposed requirement that all ICS providers provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support, plus American Sign Language direct, or point-to-point, video communication. We believe this should be required in any correctional facility where broadband is available. Point-to-point video is vastly preferable as it enables two parties to use sign language with each other without an intermediary or cumbersome last-century technology that relies on specialized equipment and keyboards designed for use with that older technology.³ In addition, we also strongly support the Commission's decision to prohibit the imposition of charges on any party to an ICS call for the use of relay services because federal law requires that people with hearing and speech disabilities have access to telephone services that are functionally equivalent to voice telephone services.⁴

In addition to these major steps forward, we urge the Commission to:

- Decline to deprive incarcerated people with disabilities in small jurisdictions (with fewer than 50 average daily population) of point-to-point video⁵ in facilities that have broadband service. There is no cost burden for small jurisdictions because relay providers generally deliver equipment at no cost, the TRS funds cover the service costs, and the law makes no distinction on size of facility.⁶
- Revise the proposed rule imposing unprecedented fees on relay access,⁷ which will have the practical effect of barring incarcerated individuals with disabilities access to services the law requires. This proposed decision ignores the extreme surveillance and strict controls that apply to incarcerated people every day and other systems that would prevent fraud; would subject more people than necessary to predatory rates; and would unnecessarily place another barrier in

³ TTY is the oldest technology that takes place over the traditional network and uses specialized, dedicated keyboard equipment. TTY-to-voice relay service uses an operator (called a communications assistant or CA) to speak what the TTY user types and type what the voice telephone user speaks. Video Relay Service is a similar service but with a specialized dedicated video link enabling use of ASL by the party to the call who signs. Captioned Telephone Service (CTS) enables people who are hard of hearing to speak directly with another party on a telephone call and to both listen to and read captions of what that party is saying, in real-time, on a captioned telephone. Newer forms of each of these technologies now can occur using broadband, internet protocol (IP) and more versatile computers, tablets, smartphones and other devices—these are called IP Relay (like TTY) and IP CTS.

⁴ Draft Order at ¶¶37-39.

⁵ Draft Order at ¶28.

⁶ Letter from Prof. Blake Reid, Samuelson-Glushko Technology Law & Policy Clinic, Colorado Law to Marlene Dorch, Secretary, Federal Communications Commission at 2-3 (filed Sept. 21, 2022) (“Disability ex parte letter”).

⁷ Draft Order at ¶¶42-43.

the way of people who already must fight unconscionable burdens to receive access to disability services while incarcerated.⁸ For example, burdening people who sign from communicating with people who sign unnecessarily burdens someone like one of HEARD’s clients who was preparing to come and home and looking for deaf-run housing and employment.

- Issue clear and concise plain-language guides in multiple languages and ASL for incarcerated people and their families and loved ones that include information about filing complaints for violations; announce that the Commission will emphasize enforcement of these rules; and seek comment on improving the complaint process in the FNPRM.
- Adopt its proposed rules preventing companies from seizing consumers’ funds in inactive accounts to stop companies from stealing their customers’ funds in violation of state law.⁹ The Commission should focus on enforcement of these rules as well.
- Adopt the proposed lower ancillary fee caps,¹⁰ but also immediately prohibit ICS providers from imposing two duplicative fees on one transaction rather than seeking comment on this practice.¹¹ As Prison Policy Initiative convincingly demonstrated, “four companies collect substantial sums through the automated payment fee. Then, *on top* of that revenue, the companies reap additional ‘pass through’ fees equal, on average, to 21% of the automated-payment-fee revenue.”¹² It makes no sense to permit ICS providers to impose a third-party pass-through on top of an automated payment fee—these are two fees for the same thing.
- Seek comment on the pending UCC Media Justice/Public Knowledge Petition for Reconsideration which provides a detailed analysis of why the Commission must reconsider its prior decision to permit double recovery for ancillary fees in the rates and in separate fees; explains why the Commission must change its previous decision to include site commissions and surveillance in the rate caps because of the “prudent investment” standard; and urges uniform preemption of state and local commissions inconsistent with FCC rules.¹³ Many of these issues are highly relevant to the FNPRM and the draft order.
- Adopt the proposed expanded definitions of the term “jail” to explicitly include facilities of Immigrant and Customs Enforcement (ICE) and the federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, as well as the terms “juvenile detention facilities” and “secure mental health facilities.”¹⁴ We agree with the disability advocates who requested that

⁸ Disability ex parte letter at 3-6.

⁹ Draft Order at ¶¶ 67-77.

¹⁰ Draft Order at ¶80 (reducing the maximum third-party fees for single-call services and third-party financial transactions to \$3.00 when the fee is paid through an automated payment system and \$5.95 when the fee is paid through a live agent).

¹¹ Draft Order at ¶136.

¹² Letter from Stephen Raher, General Counsel, PPI to Marlene Dortch, WC Docket 12-375 at 1, 3 (filed Sept. 12, 2022) (emphasis original).

¹³ United Church of Christ, OC Inc. and Public Knowledge, Petition for Reconsideration (filed August 27, 2021).

¹⁴ Draft Order at ¶¶ 84-87.

“jail” include those who have been involuntarily committed to a facility for substance abuse or other reasons.¹⁵ The changes would accurately capture the Commission’s previous intent to apply its safeguards broadly and include a variety of settings where people are confined and do not have choices with respect to their communications providers.

- We further support the detailed requests made this week by disability advocates.¹⁶

Advocates met via video conference with following FCC staff to discuss the contents of this letter on September 21, 2022: Carmen Scurato and Ramesh Nagarajan with Chair Rosenworcel’s office and Morgan Bodenarain and Justin Faulb in Commissioner Starks’ office. Present in the meeting were: Cheryl A. Leanza, UCC Media Justice; Talila “TL” Lewis and Roxanne Zech, HEARD; Zainab Alkebsi, Esq., National Association of the Deaf; Thomas Horejes, TDI; Prof. Blake Reid and Wesley Smith, Colorado Law; and Rebekah Goodheart and Greg Capobianco, Jenner & Block and Davina Sashkin, Baker Hostetler on behalf of the Wright Petitioners.

We strongly appreciate the Commission’s efforts to bring this portion of the proceeding to a conclusion and urge the Commission to adopt these proposed changes to give the full benefit of the Commission’s proposed changes maximum effect. If you have any questions or concerns, do not hesitate to contact Cheryl A. Leanza, policy advisor to UCC Media Justice at 202-904-2168 or cleanza@alhmail.com.

Sincerely,

Benton Institute for Broadband and Society
Color Of Change
National Consumer Law Center (on behalf of its low-income clients)
National CURE
Prison Policy Initiative
Public Knowledge
United Church of Christ Media Justice Ministry
Wright Petitioners
Worth Rises
Voqal

¹⁵ Disability ex parte letter at 6-7.

¹⁶ Disability ex parte letter.