

DAY ONE PROJECT

**Improving Outcomes for
Incarcerated People by
Reducing Unjust
Communication Costs**

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Summary

Providing incarcerated people opportunities to communicate with support networks on the outside improves reentry outcomes. As the COVID-19 pandemic continues to limit in-person interaction and use of electronic communication grows, it is critical that services such as video calling and email be available to people in prisons.¹ Yet incarcerated people — and their support networks on the outside — pay egregious prices for electronic-communication services that are provided free to the general public. Video chatting with a person in prison regularly costs more than \$1 a minute, and email costs are between \$0.20 and \$0.60 per message. A major reason rates are so high is that facilities are paid site commissions as a percentage of the amount spent on calls (ranging from 20% to 88%)².

The Federal Communications Commission (FCC) has explicit authority to regulate interstate prison phone calls (called Inmate Calling Services, or ICS). However, the DC Circuit Court ruled in 2015 that video calls and emails are not covered under the definition of ICS and hence that the FCC does not have authority under the 1996 Telecommunications Act (47 U.S. Code) to regulate video calls or emails. They separately ruled that the FCC does not have authority under §276 of the Telecommunications Act to regulate site commissions. The DC Circuit Court ruling creates an imperative for Congressional action. Congress should revise the Telecommunications Act to clearly cover email and video calls in prisons and jails, capping costs of these communications at “just and reasonable” levels. In the interim, the FCC should try again to eliminate site commissions for telephone calls by relying on §201 of the Telecommunications Act.

Challenge and Opportunity

Numerous studies suggest that closer contact with family and outside support networks reduces rates of recidivism or violating parole.³ In a paper specifically on video calls, the Minnesota Department of Corrections found that a single video call yielded a 22% reduction in reconviction and that each additional video call further reduced recidivism by around 3%.⁴

However, many families can't afford to communicate with their loved ones. One in three families with an incarcerated member go into debt to pay for communication with them.⁵ On average, families of incarcerated individuals “spend \$63 each month [on communication], with a handful estimating their expenditures at \$400 to \$500 a month.”⁶

¹ Many of the issues described herein apply to jails as well.

² Federal Communications Commission. (2013). Report and Order and Further Notice of Proposed Rulemaking In the Matter of Rates for Interstate Inmate Calling Services. WC Docket No. 12-375. Page 19.

³ Friedmann, A. (2014). Lowering Recidivism through Family Communication. Human Rights Defense Center. Prison Legal News, April 15.

⁴ Duwe, G.; McNeeley, S. (2020). Just as Good as the Real Thing? The Effects of Prison Video Visitation on Recidivism. Minnesota Department of Corrections, June.

⁵ deVuono-powell, S.; et al. (2015). *Who Pays? The True Cost of Incarceration on Families*. Ella Baker Center, *Forward Together, Research Action Design*.

⁶ Lockwood, B.; Lewis, N. (2019). Can You Hear Me Now? The Marshall Project, December 19.

People in prisons and jails also pay incredibly high amounts to communicate with the outside, much higher than the amounts that people on the outside pay for identical services. Because video calling and email services are essentially unregulated for prisons, good data does not exist on the costs of those services. Interested parties must uncover the costs by sifting through state and county contracts with prison telecom providers. Investigations by *WIRED* magazine and the Prison Policy Initiative (PPI) found that a JPay stamp (which allows an incarcerated individual to send or receive one page of emailed text) costs between 20 and 60 cents.^{7,8} The cost to email an image is typically double the cost to email a page of text. The PPI also found that video calling rates for some prisons exceed \$1 a minute.⁹ Such egregious rates persist because the prison telecom market is shockingly misaligned with the interests of the people it ostensibly serves.

Prisons receive substantial kickbacks (called “site commissions”) for telecom services, whereby they retain a large percentage of the per-minute rates that incarcerated persons (and their families) pay to communicate. Site commissions are typically 25-50% but can rise as high as 96%.¹⁰ By giving prison operators a percentage of every dollar spent on telecom services, the prison telecom system provides operators with a perverse incentive to keep service costs high — at the expense of their captive market.

Compounding the problem is that on the supply side, the prison telecom system is largely a duopoly. The prison telecom companies Securus and Global Tel*Link together service 94% of the largest jails in the United States and 95% of the prison systems of the largest states in the United States.¹¹ Although these companies do bid against each other on individual contracts, there is not sufficient competitive pressure to yield reasonable service prices for incarcerated people and their families.

These issues can only be corrected by regulation and oversight. Yet there is no federal governing body with the authority to cap rates for electronic prison telecom services like video calling and email. The 1996 Telecommunications Act gives the FCC the authority to regulate communication via payphone in prisons and jails. Now that an ever-growing share of communication is happening electronically, though, the Act is hopelessly outdated. The FCC has already tried once to address this regulatory gap on its own. In 2015, the FCC proposed rate caps for video calls as well as for site commissions on traditional telephone calls. But in 2017, the DC Circuit Court ruled that the FCC’s proposals were unlawful, writing in its decision that the FCC may neither regulate video calls (because video calls aren’t mentioned in the Telecommunications

⁷ Law, V. (2018). Captive Audience: How Companies Make Millions Charging Prisoners to Send aAn Email. *WIRED*, August 3.

⁸ Raher, S. (2016). You’ve Got Mail: The promise of cyber communication in prisons and the need for regulation. Prison Policy Initiative, January 21.

⁹ Rabuy, B.; Wagner, P. (2015). *Screening Out Family Time: The for-profit video visitation industry in prisons and jails*. Prison Policy Initiative, January.

¹⁰ Petro, L.G. (2014). RE: *Ex Parte Notice, Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375. DrinkerBiddle&Reath LLP, August 16.

¹¹ Wagner, P.; Raher, S.; Fenster, A. (2021). Comments of Prison Policy Initiative, In. on Fifth Further Notice of Proposed Rulemaking. WC Docket No. 12-375, September 27.

Act) nor site commissions (because the Act includes a provision that every call be “fully compensated”).¹²

The court’s ruling creates an imperative for Congressional action to address the regulatory gaps around prison telecom services and calls for a different approach by the FCC in the interim.

Plan of Action

Congress should revise §276 of the Telecommunications Act to give the FCC explicit authority to regulate video calling and email services in prisons. Congress should also give the FCC broad authority to regulate digital and other types of communication services provided to incarcerated individuals generally, in anticipation of future technological developments. The current Congress could achieve these goals simply by supporting [H.R. 2489](#) (The Martha Wright Prison Phone Justice Act) and [S. 1541](#) (The Martha Wright-Reed Just and Reasonable Communications Act of 2021). H.R. 2489 was discussed in a 2021 hearing in the Subcommittee on Communications and Technology of the Committee on Energy and Commerce of the House,¹³ but neither bill has yet advanced further.

Enacting these provisions would not impose any new direct costs on the federal government or on taxpayers. Rather, these provisions would cut back excessive profits currently enjoyed by prison telecom services and prison administrators — profits that currently come at the expense of some of the most vulnerable members of our society (incarcerated people and their support networks). It is worth noting that the Telecommunications Act requirement that “all payphone service providers are fairly compensated for each and every completed intrastate and interstate call” ensures that legislative reforms designed to eliminate excessive profits will not fundamentally undermine the viability of the prison telecom business model. Evidence to this end comes from Nebraska, which eliminated site commissions statewide to “mak[e] inmate calling as affordable as possible.”¹⁴ Rates for telephone calls made to and from Nebraska state prisons are 5–10 cents per minute (roughly half of the FCC rate cap for interstate calls) — and yet the prison telecom industry continues to service the state.

Separately from Congressional action, the FCC can and should try again to regulate site commissions, albeit via a different approach. The DC Circuit Court ruling cited above was fairly narrow and left open the possibility that the FCC could regulate site commissions under §201 of the Telecommunications Act, which states that charges for prison telecom services must be “just and reasonable”. As stated in public comments in response to FCC rulemaking on rates for interstate inmate calling services, “the court found the Commission failed to coherently explain its reasoning

¹² Global Tel*Link v. FCC. (2017). D.C. Circuit, No. 15-1461.

¹³ House Committee on Energy & Commerce. (2021). Strengthening Our Communications Networks to Meet the Needs of Consumers. October 6.

¹⁴ ACLU Nebraska. (2017). Profiting Off Lifelines – Nebraska County Jail Phone Systems Lead to High Costs and Unfair Trials. November 30.

for excluding a separate site commission charge”,¹⁵ not that “excluding a separate site commission charge” was inherently illegal. As such, the FCC should try again to regulate site commissions, this time using the “just and reasonable” standard for rate-setting established under §201 of the Telecommunications Act rather than the explicit authority over ICS established under §276.

Frequently Asked Questions

1. Who are the largest players in the prison telecom market?

The companies Securus and Global Tel*Link (GTL) dominate the prison telecom market. The nation’s top 25 biggest contracts for telecom services in jails cover about 160,000 people. Securus has 14 of these contracts, covering 105,000 incarcerated people (66%). GTL has 9, covering 45,000 incarcerated people (28%). The largest state Departments of Corrections also overwhelmingly use GTL and Securus to provide state prison telecom services. 23 states have a population of over 5 million. GTL holds the prison telecom contract with 14 of these states, and Securus holds the contract for the other 9. GTL also has contracts with facilities owned and/or operated by the Federal Bureau of Prisons, the Army and Air Force, and Puerto Rico.

2. What is in §201 and §276 of the 1996 Telecommunications Act (47 U.S. Code)? What prison telecommunication (telecom) services can the FCC regulate under the Act (i.e., without new legislation)?

§276 of the Act gives the FCC explicit authority to regulate interstate prison phone calls (called ICS or Inmate Carrier Services). §276 allows the FCC to “establish a per call compensation plan to ensure that all payphone service providers are fully compensated for each and every completed intrastate and interstate call using their payphone”. New legislation is needed to expand this explicit authority to include video calls, emails, and intrastate prison phone calls.

§201 of the Act is broader, stating that “all charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” §201 may give the FCC implicit authority to regulate site commissions for additional prison telecom services (under the argument that the practice of obtaining site commissions for any prison telecom service is not “just and reasonable”), but this legal theory has yet to be tested in court.

3. Did the DC Circuit Court ruling referenced in the memo eliminate the possibility of FCC regulation of site commissions?

No. The ruling provided two possible avenues by which FCC regulation of site commissions could still occur. First, the FCC could provide additional explanation for

¹⁵ Federal Communications Commission. (2020). Comments of the Wright Petitioners, Prison Policy Initiative, and Public Knowledge – In the Matter of Rates for Interstate Inmate Calling Services. WC Docket No. 12-375, November 23.

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why it has authority to regulate site commissions under §276 of the Telecommunications Act. The court deemed the FCC's 2015 order attempting to regulate site commissions under §276 to be "arbitrary and capricious", meaning that the FCC's legal reasoning was not clearly supported by the terms of the Administrative Procedure Act. As explained above, the FCC could argue that §201 of the Telecommunications Act gives the FCC implicit authority to regulate site commissions for additional prison telecom services.

Second, the FCC could try to assess which portion of the site commissions genuinely relate to provision of telecom services and only allow that portion. This is clearly within the FCC's regulatory authority under §276. As the DC Circuit Court wrote in its ruling: "We also leave it to the Commission to assess on remand which portions of site commissions might be directly related to the provision of ICS and therefore legitimate, and which are not."

4. How will eliminating or reducing site commissions affect incarcerated individuals?

A common argument made by prison facilities and prison telecom companies is that money from site commissions goes into Inmate Welfare Funds that support enrichment programs for incarcerated people. The facilities and telecom companies contend that if site commissions are eliminated or sharply reduced, incarcerated individuals would suffer as enrichment programs are eroded. But this argument has not been borne out in places (like the state of Nebraska) that have eliminated site commissions. What happens instead is that telecom rates drop substantially and usage of prison telecom systems goes up commensurately, improving the wellbeing and outcomes of incarcerated individuals by making it affordable to stay in touch with loved ones.

About the Author



Benj Azose is the Product Analyst Lead for Google Chrome, improving the world's most popular web browser with data-driven insights. In his almost 14 years at Google, he has played a pivotal role in analysis for Android, Google Play, and Google Search. He has been involved in advocacy in prison communication for the past two years and attended the Aspen Institute Tech Executive Leadership Institute based on that work. He recently served on the San Mateo County Lines District Lines Advisory Commission to help re-draw San Mateo's county lines after the 2020 census. Benj holds a Bachelor's degree in Mathematics from Harvey Mudd College.

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