

Georgia Tech  **Center for Advanced Communications Policy**

500 10th Street, NW
Atlanta, Georgia 30332

VIA ECFS

October 27, 2021

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington D.C. 20554

Re: Inmate Calling Services for People with Disabilities [WC Docket No. 12-375]

Dear Ms. Dortch:

Enclosed for filing in the above-referenced Fifth Further Notice of Proposed Rulemaking are reply comments of Georgia Tech's Center for Advanced Communications Policy.

Should you have any questions concerning this filing, please do not hesitate to contact me via email at salimah@cacp.gatech.edu.

Respectfully submitted,



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Enclosure

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

In the Matter of)	
)	
Rates for Interstate)	WC Docket No. 12-375
)	
Inmate Calling Services)	

Reply to comments made by HEARD and the Joint Advocates

The Georgia Institute of Technology's Center for Advanced Communications Policy (CACP) hereby submits reply comments to the above-referenced Fifth Notice of Proposed Rulemaking seeking comment on Rates for Inmate Calling Services, emphasizing equitable access released on May 24, 2021. CACP is recognized at the state and national level as a neutral authority that monitors and assesses technical developments, identifies future options, and provides insights into related legislative and regulatory issues. CACP engages in several broad approaches to explore the impact of technology on society. A key overarching objective of CACP is to understand the social impact of digital technologies, domestically and internationally, by conducting objective, evidence-based research, analysis, and development. Center activities provide the foundation for assessing and analyzing issues that inform our contribution to federal rulemaking, input into public sector policy-making processes, and generation of technical guidance for business and industry.

Research activities range from foundational social science research, providing evidence-based input for policy formation and regulatory filings, to applied policy research analysis and innovation studies to inform the development, implementation, and adoption of a wide range of information and communication technologies. Lab-based studies focus on the intersection of technology and the user: accessibility and usability studies, user testing and human factors analysis, all of which help industry better understand the needs of a wide range of users, especially the aging and people with disabilities.

Regarding the latter, over the past 20 years, subject matter experts at CACP have been involved with research and regulatory issues concerning accessible technologies and services, conducting research and development in the domain of communications access, equity, and inclusion. Including our work with the Wireless RERC (2001 – 2021) and other projects. The comments respectfully submitted below are based on subject matter expertise developed over the past 20 plus years.

Legality

(A) Does section 225 authorize the Commission to require that inmate calling services providers provide access to an appropriate form of TRS, as well as to regulate how such access is provided?
(B) Whether it is appropriate to even permit providers to recover those costs from end-users of inmate calling services. If they are recovered through other means, how best can the Commission account for that fact so as to ensure there is no double recovery at the expense of incarcerated people and their families?

In response to the Federal Communications Commission (FCC) 's request for comments on their statutory authority to require inmate calling services providers to offer access to TRS, CACP argues that Section 225 of the Act provides statutory authority. Moreover, the FCC record sets precedence for providing free equivalent access for inmates who are deaf and hard of hearing. In the Second Report and Order and Third Further Notice of Proposed Rulemaking [WC Docket no. 12-375], the FCC provided a reminder to ICS providers "of their obligations to ensure the availability and provision of these forms [TTY-based TRS and speech-to-speech (STS)] of TRS" (p. 113). Furthermore, this report also established the Commission's stance on Section 276(b)(1)(A) to mean "that TRS calls are not subject to the per-call compensation framework adopted herein" (p. 117).

We agree with HEARD (2021) that the Commission has ancillary authority to ensure that providers of advanced communications services and manufacturers of equipment used for advanced communications services offer accessible and usable services and equipment for individuals with disabilities, as stated in Section 716. By ancillary authority, the Commission is authorized to take action and mandate compliance to Section 716, even if the statute does not explicitly give them the ability to do so, as long as the action advances the Commission's responsibilities. Section 716 authorizes the FCC to require inmate calling services providers to provide access to appropriate forms of TRS. If the inmate calling service provider offers

advanced communications services including interconnected VoIP service; (2) non-interconnected VoIP service; (3) electronic messaging service; and (4) interoperable video conferencing service, they are required to ensure these services are "accessible to and usable by individuals with disabilities [if readily achievable]."¹ Moreover, federal legislation requires TRS service providers to offer *functionally equivalent* telephone services for people with communication disabilities (such as deaf and hard-of-hearing individuals).² Incarcerated people with hearing disabilities who require these services must also receive functionally equivalent telephone services to communicate. These incarcerated individuals' rights are protected under Title II of the ADA (Section 504).³

Moreover, in *Pennsylvania DOC v. Yeskey*, the Supreme Court asserted that the ADA applies to incarcerated individuals.⁴ Title II of the ADA defines "public entity" to include "any department, agency, special purpose district, or other instrumentality of a State or States or local government."⁵ In Justice Scalia's opinion on *Yeskey*, he stated that "the text of the ADA provides no basis for distinguishing these programs, services, and activities from those provided by public entities that are not prisons." Regulatory policies must remain in alignment with federal legislation. As such, the FCC is obliged to ensure people with communication disabilities have access to functionally equivalent telephone services in prisons and jails. This Supreme Court decision supports the Commission requiring inmate calling service providers (ICS) to offer access to appropriate forms of TRS.

Additionally, the ADA asserts that reasonable accommodations are the financial responsibility of the agency or employer. Therefore, in the setting of prisons, accessible communications are reasonable accommodations. As such, it is not appropriate for ICS providers to recover site commission payments from users of inmate calling services, especially not people with communication disabilities. Beyond protections under the ADA, it is not legal for providers

¹ CG Docket No. 10-213, Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

² 47 U.S.C. § 225

³ This legislation states "no otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. 12132)

⁴ 524 U.S. 206 (1998) [PLN, Sept. 1998, p.1],

⁵ 42 U.S.C. § 12131(1)(B).

to recover telecommunications costs from end-users of inmate calling services because the Commission has caps on "per minute rates charged for TTY-to-TYY calls [at] no more than 25% of the rates the providers charge for traditional ICS."⁶ Therefore, we support HEARD's assertion that the FCC should "require inmate calling service (ICS) providers to facilitate access to all current and future forms of TRS, including video relay service (VRS), Internet Protocol captioned telephone service (IP CTS) or captioned telephone service (CTS), Internet Protocol relay service (IP Relay), and speech-to-speech relay service (STS), as well as direct video and text communications services, including direct video calling and real-time text (RTT)."⁷ We further assert that ICS providers should not attempt to recover these costs from incarcerated people with disabilities nor their families as it is a service to which they are reasonably entitled.

The precedence set by the FCC in the Second Report and Order and Third Further Notice of Proposed Rulemaking [WC Docket no. 12-375] addresses existing questions related to whether there should be other TRS-Fund supported relay services available to inmates with communication disabilities. The FCC stated that they "agree with commenters that limiting all inmates with communication disabilities to one form of TRS, particularly what many view as an outdated form of TRS that relies on TTY usage, may result in communication that is not functionally equivalent to the ability of a hearing individual to communicate by telephone" (p. 114). Therefore, the Commission previously stated, "we strongly encourage correctional facilities to work with ICS providers to offer these other forms of TRS" (p. 114). In that Report and Order, the Commission established that TTY calls take longer and are more expensive than non-TTY calls.⁸ Thereby, limiting people with communication disabilities to this form of TRS is discriminatory. In this request for comments, the FCC asked whether Title II of the ADA or any other federal legislation allows them to compel an inmate calling service provider to make

⁶ Rates for Interstate Inmate Calling Services, Order on Reconsideration, WC Docket No. 12-375, FCC 16-102, 31 FCC Red. 9300, 9304, fn. 29 (2016)

⁷ HEARD. (2021). Comments submitted in response to the Fifth Further Notice Of Proposed Rulemaking In the Matter of Rates for Interstate Inmate Calling Services [WC Docket No. 12-375]. Federal Communications Commission: Washington, D.C.

⁸ The full text in the Report and Order by the Commission states that "TTY calls take significantly longer than voice conversations, due to factors that include the longer time it takes the TTY user to type – rather than speak – his or her part of the conversation; the time delays that occur while the text is transmitted; and the technical difficulties that appear to affect TTY calls disproportionately compared to voice calls. TTY calls through TRS can take even longer than calls between two TTY users, because of the need for such calls to be set up before the communications assistant can connect the TTY user to the voice telephone user, and the need for the communications assistant to transcribe the spoken part of the call and relay it to the TTY user."

additional forms of TRS available in a particular facility. CACP asserts that inmate calling service providers must make additional forms of TRS available in a particular facility since not doing so violates the anti-discriminatory mandate in Title II of the ADA.

Benefits

Second, we seek additional comment on the benefits of making VRS, IP CTS, IP Relay, and CTS available in correctional facilities where they are not currently available. As noted above, the record to date strongly suggests that TTY-based TRS and STS, by themselves, are insufficient to ensure that incarcerated people with communications disabilities have access to functionally equivalent communications. We seek additional, specific information on how and to what extent each of the other TRS-Fund-supported relay services would enhance communications for incarcerated people with communications disabilities. Where available, what specific benefits do these services offer that TTY-based TRS and STS cannot?

We agree with HEARD's statement that "Access to communications is a basic human and civil right of incarcerated people with disabilities that is critical to their ability to navigate and survive the carceral system and to communicate with their families, attorneys, and organizations that provide resources and support. Moreover, the same reasons that lead the Commission to provide each of these programs—including TTY, VRS, and others—to people not living in carceral facilities also apply to people within carceral facilities."⁹ One of the long-standing goals of providing people with disabilities with accommodations and increasing accessibility in society is to contribute to their dignity and independence.¹⁰ Independence for people with disabilities means "having choice and control of their life and their environment."¹¹ While there is a loss of choice and control by virtue of being incarcerated, should all human dignity be stripped away? The ADA has already established that the answer is no.

The benefits of making VRS, IP CTS, IP Relay, and CTS available in correctional facilities where they are not currently available align with the long-standing legal objectives of a more accessible country. Public Law No. 98-221, Section 401a (1987) sought to "assess the extent to which [Federal] programs provide incentives or disincentives to the establishment of community-based services for handicapped individuals, promote the full integration of such individuals in the

⁹ HEARD. (2021). Comments submitted in response to the Fifth Further Notice Of Proposed Rulemaking In the Matter of Rates for Interstate Inmate Calling Services [WC Docket No. 12-375]. Federal Communications Commission: Washington, D.C.

¹⁰ Public Law No. 98-221, Section 401a <https://ncd.gov/publications/1986/February1986>

¹¹ Rock, P. (1988) Independence: What it means to six disabled people living in the community. *Disability & Society*, 3(1), pp27-35

community, in schools, and in the workplace, and contribute to the independence and dignity of such individuals ... [and] recommend to the President and Congress legislative proposals for increasing incentives and eliminating disincentives in Federal programs based on the assessment made." As hard as it may be to conceive of the desire to be "fully integrated" in a prison environment, obtaining phone privileges while in prison provides a critical link to family and attorneys. With phone privileges being fairly standard across facilities, it would be a gross indignity to inhibit inmates with disabilities from having equal access to the same privileges.

Secondly, inmate calling services via VRS, IP CTS, IP Relay, and CTS offer privacy benefits to the incarcerated person with hearing disabilities. The concept of "functional equivalence" extends to modes of communication. For people without hearing disabilities or relevant forms of disabilities, there is no Communications Assistant (CA) present when they speak to their legal representation. Although bound by confidentiality, the FCC should consider whether TRS offers functional equivalence related to the right to privacy and free speech rights to private conversations with their attorneys. In practice, VRS, IP CTS, IP Relay, and CTS are better forms of communication to ensure that inmates' rights to privacy and free speech to private conversations with their attorneys are maintained.

Thirdly, the FCC has on record that VRS, specifically, costs less money than text-based TRS because the "conversation flows more naturally back and forth between the parties, [thus] the conversation can take place much more quickly than with text-based TRS."¹² By requiring these alternate forms of telecommunications, the FCC can reduce the average cost of phone calls for people with hearing disabilities who are imprisoned and mitigate the undue financial burden that these TRS calls often place on the families of incarcerated people. For these reasons, CACP recommends expanding accessible telecommunication services such as VRS, IP CTS, IP Relay, and CTS to people with disabilities who are incarcerated to provide functional equivalence, maintain independence, and provide accommodations that offer comparable services.

¹² <https://www.hSDL.org/?view&did=780388>

Finally, research indicates that there is a positive relationship between inmate communication access on family health. Family contact during incarceration reduces recidivism.¹³ Research also shows that strong familial support networks strengthened through visitations and regular communication during the incarceration period reduce the likelihood of reoffending¹⁴ and offer messages of reform to the children and families of incarcerated persons' that discourage them from going down the same path that led to imprisonment.¹⁵

Inmate communication access extends to family health as well as the mental health and overall well-being of the incarcerated individual. Thus, we agree with and support the evidence offered by HEARD that inmate communication access is imperative to language continuity for people with disabilities. In their filing, they highlight that "upon release, previously incarcerated people with disabilities have reported decreased proficiency in their signed language or loss of fluency, and needed to relearn how to sign."¹⁶ Substantial evidence also supports that "language deprivation may lead to mental health consequences, including "language dysfluency, fund of knowledge deficits, and disruptions in thinking, mood, and/or behavior."¹⁷

In closing, these reply comments reiterate and support HEARD's assertions that the FCC has the ancillary authority to mandate providers offer accessible communications to inmates with disabilities. We also affirm that the benefits of offering various modes of accessible communications extend far beyond quantifiable constructs. Rather, the benefits of these accessible communications for people with disabilities may be the qualitative difference of becoming voiceless and isolated or remaining connected to the world around them, thereby reducing

¹³ De Claire, K., & Dixon, L. (2017). The effects of prison visits from family members on prisoners' well-being, prison rule breaking, and recidivism: A review of research since 1991. *Trauma, Violence, & Abuse, 18*(2), 185-199.

Brunton-Smith, I., & McCarthy, D. J. (2017). The effects of prisoner attachment to family on re-entry outcomes: A longitudinal assessment. *The British Journal of Criminology, 57*(2), 463-482.

¹⁴ Folk, J. B., Stuewig, J., Mashek, D., Tangney, J. P., & Grossmann, J. (2019). Behind bars but connected to family: Evidence for the benefits of family contact during incarceration. *Journal of Family Psychology, 33*(4), 453.

¹⁵ Tasca, M., Mulvey, P., & Rodriguez, N. (2016). Families coming together in prison: An examination of visitation encounters. *Punishment & Society, 18*(4), 459-478.

¹⁶ HEARD. (2021). Comments submitted in response to the Fifth Further Notice Of Proposed Rulemaking In the Matter of Rates for Interstate Inmate Calling Services [WC Docket No. 12-375]. Federal Communications Commission: Washington, D.C.

¹⁷ Wyatt C. Hall, Leonard L. Levin & Melissa L. Anderson, *Language Deprivation Syndrome: A Possible Neurodevelopmental Disorder with Sociocultural Origins*, 52:6 *Social Psychiatry and Psychiatric Epidemiology* 761–776 (2017), <https://link.springer.com/article/10.1007/s00127-017-1351-7>.

recidivism chances. Furthermore, as aptly stated by the Joint Advocates, "Undertaking these actions will help remedy the long-standing injustices faced by incarcerated disabled people and vindicate their human, constitutional, and other civil rights, including rights to communication found within and protected under the Americans with Disabilities Act and Rehabilitation Act."¹⁸

Respectfully submitted,

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Dated this 27th day of October 2021

¹⁸ Joint Advocates. (2021). Comments submitted in response to the Fifth Further Notice Of Proposed Rulemaking In the Matter of Rates for Interstate Inmate Calling Services [WC Docket No. 12-375]. Federal Communications Commission: Washington, D.C.