

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/fcc-lowers-rates-for-interstate-phone-calls-from-jails-and-prisons>

Public Facing Advocacy Writing

Lee G. Petro, lead attorney from Drinker Biddle & Reath LLP on a groundbreaking case on prison phone call rates, sat down with the Family Justice Program to discuss the implications of a recent ruling by the Federal Communications Commission that dramatically lowered interstate phone call rates from prisons and jails.

What exactly did the Federal Communications Commission rule last week about interstate phone call rates from prisons?

The [Federal Communications Commission \(FCC\)](#) ruled that the protections under the Communications Act for just and reasonable rates for phone providers must be extended to consumers. The FCC confirmed that they have the statutory obligation to step in when there are unreasonable rates and fees levied against consumers.

Generally, in the past, decisions under Section 201 of the Telecommunications Act related to intercarrier disputers (i.e., a phone company versus a phone company). In this Order, the FCC confirmed that the competitive aspects that typically protect consumers are not present in the prison payphone industry, and that the FCC was therefore obligated to step in and make sure the rates consumers are being charged are just, reasonable, and fair.

The FCC petition was filed by Martha Wright, an 86-year-old blind grandmother from Washington, DC, who could not afford to keep in touch with her grandson serving a prison term in Arizona. How will this ruling impact family members like Ms. Wright in the future?

It will have a tremendous impact. First of all, as FCC Chairwoman and Commissioner Jessica Rosenworcel noted, there are 2.7 million children with at least one incarcerated parent. Lowering the [interstate phone] rates will mean parents and children will have additional opportunities to stay in contact. Increasing contact with family while incarcerated aids in the reentry process and helps reduce recidivism. In fact, if all we do is lower recidivism rates by one percent, states and local governments will save \$250 million per year in costs associated with incarceration. There are at least nine states where families will save more than nine dollars per fifteen-minute call, including Alabama, Alaska, Minnesota, and Georgia (\$15.20 in savings), Idaho (\$14.45), Mississippi (\$12.45), Maine (\$11.25), and Tennessee (\$10.70). For pre-paid and debit calls in Alabama, Alaska, and Georgia, families will save \$15.50 per fifteen-minute call with the new rate. In Nevada, they will save \$10 per call, and in Delaware and Tennessee, families will save more than \$9.70 per fifteen-minute call. Many of these families are close to the poverty line or stretching to make one income meet the needs of an entire family. So, on the human level and the family level, these lower rates makes the difference for someone like Martha Wright, who had to decide whether to pay for her medication or take a phone call from her grandson.

What are implications of the ruling?

The FCC established a safe harbor benchmark rate cap and an absolute rate cap. They established a safe harbor rate cap which they believe fairly compensates phone companies that are providing the service. If a company is charging the safe harbor rate or lower, it doesn't need to get approval from the FCC. The Safe Harbor rate is 12 cents per minute for pre-paid and debit calls and 14 cents for collect calls, and the absolute cap is 21 cents per minute for prepaid and debit calls and 25 cents for collect calls. Section 201 of the Telecommunications Act says that phone service providers must charge rates and fees that are just and reasonable.

The FCC recognized that in certain facilities, 12 and 14 cents wouldn't fairly compensate companies who are serving more rural facilities or facilities with a small number of beds. If companies need to charge above the safe harbor cap, they can charge up to 21 cents for pre-paid and debit calls and 25 for collect calls, but they need to come in and justify why they need to charge more than the safe harbor rates. It is a safety mechanism for the FCC and for phone companies. If those companies can't come in under the safe harbor cap, and they can justify their higher costs, they can charge up to the absolute cap.

The numbers for the rates are based on comparable rate information we provided and that companies are providing now along with regulatory actions and state proceedings that places have adopted. For example, in places like New Mexico, companies are competing for rates that are lower than the safe harbor rates.

Not only did the FCC adopt the rates, they also established a reporting requirement, which is really important. We've been arguing for the past 12 years that only phone companies know their real costs and these companies have been determined not to provide the real cost of providing service to the FCC. Now, these companies will be required to complete an annual certification that the rates they are charging are below the safe harbor rate or that they sought a waiver for rates above the safe harbor rates, and provide information to justify the rates being charged consumers. Basically, it forces the phone companies to fill in the record where they have flatly refused to do so in the past.

Given that the phone companies maintain that the costs of providing phone service are higher for prisons, how much of a risk exists that some companies might back away from the business, leaving prisoners without adequate avenues for communication with family and friends?

There is minimal risk that the companies will go away. There are a couple of tiers of companies. One tier of companies actively compete for state departments of correction agreementsSecurus, CenturyLink, Global Tel*Link. They arent going anywhere. Another tierNCIC, Telmate, Pay-Telmostly deal with local and county jails and compete hard for those contracts. What we saw in Alabama was a perfect case of their ability to offer lower rates. Telmate signed a contract where they will give over 82 percent commission to Covington County and are charging a standard rate across all types of calls of 16 cents per minute. In the Florida Department of Corrections contract, Florida said they cant charge more than \$2.10 per 15-minute call (or nine cents per minute). All the top-tier companies said they would meet that. [In addition,] the winning company said they wouldnt charge any ancillary charges and other companies offered to throw in free goodies such as extra video visitation and free minutes beyond what was required. The other companies had offered other value added benefits free of charge, such as a medical prescription service for DOC staff. In sum, these companies arent going anywhere. There are enough small companies willing to take on big contracts, but they are [currently] being underbid and cant compete with the value-added benefits provided for free by the big companies.

You mentioned video visitation is provided by many of the same companies that offer phone services. Video visitation is a relatively new and fast-expanding service in correctional facilities. Given that many administrators justify video visitation charges as cheaper relative to phone costs, how do you think this ruling might affect video charges?

What Ive seen recently in various request for proposals is that correctional facilities are requiring video visitation services as part of the phone contract. It is good to the extent that video visitation is considered a service to be required under contract and, if the [phone] rate is low enough, it may mean that video visitation has to be provided at a lower amount.

What we have to be careful about is that once [we] address phone rates, there will be other charges well have to look out for. Its like a game of whack-a-mole. Michigan got rid of commissions, but they have a technology fee paid to them by the phone company. California has a contract administration fee of \$800,000 being paid to the state corrections department for administering the contract, even though the state legislature prohibited the payment of commissions. Whether or not the FCC took action in our case, the phone companies have consistently found new opportunities to provide reimbursement to the correctional authorities.

What are the next steps for FCC with regard to this issue?

The ruling focused on interstate call rates, which are much higher. They will look to extend these same rates to intrastate calls. If the FCC extends its ruling to intrastate calls, it wouldnt cause much disruption. The development and use of Voice Over Internet Protocol (VOIP) technology renders the difference between inter and intrastate calls irrelevant. Fundamentally, there should be no difference in service when a call goes across the street or across the county since the call is being transferred to a calling center somewhere across the country before it is delivered to the call recipient, even if that recipient is across the street from the jail. The FCC is looking at whether to apply the same or lower rate to intrastate calls. They are looking at disability issues as well and exploring whether there might be additional costs to provide phone service for people with disabilities. Lastly, in the future, the FCC will review data from the recertification process and see whether they can further reduce the rates.

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