



## PRISON LAW OFFICE

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VIA ELECTRONIC SUBMISSION

<http://fjallfoss.fcc.gov/ecfs2>

March 20, 2013

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-B204  
Washington, DC 20554

RE: FCC Proceeding: 12-375: In the Matter of Rates for Inmate Interstate Calling Services  
Comments on Paragraph 42: "Disabilities Access"

Dear Ms. Dortch:

The Prison Law Office hereby submits its comments on Paragraph 42 of the Notice of Proposed Rulemaking for FCC proceeding 12-375. For more than thirty years, the Prison Law Office has engaged in class action and other impact litigation to improve the conditions of prisons and jails for adults and children, including prisoners with disabilities and serious medical concerns. We have successfully argued before the U.S. Supreme Court in *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998) (unanimously holding the Americans with Disabilities Act applies to state prisoners), and *Brown v. Plata*, 563 U.S. \_\_\_, 131 S. Ct. 1910 (2011) (holding the court-mandated population limit for California prisons was necessary to remedy violations of prisoners' constitutional rights to adequate medical and mental health care). In 1994, we filed *Armstrong v. Wilson*, 124 F.3d 1019 (9th Cir. 1997), a statewide class action on behalf of disabled California prisoners, including hearing-impaired and Deaf prisoners, under the Americans with Disabilities Act and the Rehabilitation Act. We continue to monitor California's provision of accommodations to prisoners with disabilities, and have observed and been informed by deaf prisoners of the challenges they face in staying in contact with their attorneys loved ones.

Communication between prisoners and their families outside of prison keeps families strong, reduces recidivism, and improves a prisoner's chances of successfully re-entering society. The rates charged for inmate calling services are often prohibitively high. The high rates for inmate calling services place a heavy financial burden on families because families

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are the ones that typically bear the burden of paying for the calls. For a variety of reasons discussed below, the financial burdens are even greater on prisoners who are Deaf or hearing impaired. The introduction of videophones to prisons and jails would greatly reduce the disparity in cost between Deaf prisoners and their hearing counterparts.

California prisons limit Deaf prisoners to the use of TDD/TTYs. TDD/TTY technology is rapidly becoming obsolete. Most people in the Deaf community communicate using videophones and do not have TDD/TTY devices. This means that prisoners who are restricted to TDD/TTY use often are unable to communicate with their families because their families do not have TDD/TTY devices. Most in the Deaf community are not significantly fluent in written English. Because TDD/TTYs rely on typed messages, many prisoners report to us that they are not able to have any contact with their families or lawyers at all.

Regrettably, only a handful of prisons are equipped with videophones (e.g., Vermont, Virginia, and Wisconsin) and no prison or jail is known to have installed captioned telephones, many using security as an excuse for discrimination. Below are comments and recommendations for new regulations regarding the inmate calling services afforded to Deaf and hearing impaired people in prisons.

### **1. Videophones Are Necessary Because ASL, Not English, Is the Primary Language for Many Deaf People**

Video phones are necessary to allow Deaf prisoners equal access to inmate calling services. Most individuals in America who grow up deaf use American Sign Language (“ASL”). These deaf individuals, who are often born deaf or lose their hearing before they acquire language, are sometimes referred to as Deaf, with a capital D, to distinguish them from those deaf individuals who do not use ASL. ASL is not a manual form of English. ASL is its own language, with its own grammar and its own syntax. There is not a one-to-one correspondence between English words and signs in ASL. ASL’s grammar and syntax is quite different from English.

Most Deaf people are not fluent in written English. According to the Gallaudet Research Institute, the median reading comprehension scores for deaf people corresponds to about a 4.0 grade level. This means that half of the deaf and hard of hearing students scored below the typical hearing student at the beginning of fourth grade. Of course there is variation among members of the Deaf community, but as a whole, the literacy level is much lower than it is for comparable hearing populations. These Deaf people, as a group, cannot depend on written English as an effective means of communication. This means that TDD/TTY devices, which require the user to type out their communications, are often an

inadequate and ineffective means for Deaf prisoners to communicate with their families. The introduction of videophones to correctional institutions would enable Deaf prisoners to use ASL and sign language interpreters during calls, greatly improving their ability to communicate.

Many people who lose their hearing later in life, after learning a spoken language, often do not become fully fluent in ASL. These people may still prefer to use TDD/TTYs which rely upon English or other written languages. Thus, TDD/TTYs must remain available for prisoners falling into this category.

## **2. TDD/TTY Calls Cost Significantly More than Standard Voice Calls**

The inherent limitations of TDD/TTY technology mean that TDD/TTY calls take longer to complete than voice calls, and thus Deaf prisoners must pay significantly more than their hearing counterparts to communicate with their families. TDD/TTYs use a language or communication code called Baudot to transmit signals over phone lines at the speed of 25 words per minute. The TDD/TTY translates typed messages into signals and sends them through the phone lines to the receiving party's TDD/TTY machine. That machine then converts the signals back into letters and displays them on the screen. No matter how fast a person types, the TDD/TTY transmits tones at the rate of 45 characters per minute. Thus 300-400% more time is needed when using a TDD/TTY device as opposed to making a voice call.

In some facilities, where TDD/TTYs are available on the general phones, prisoners are charged the same per minute charge as hearing prisoners, resulting in what is in effect a surcharge for the TDD/TTY user. In other facilities, where TDD/TTYs are available on phones not connected to the general phones, prison administrators charge an arbitrary fee. Furthermore, for security reasons, most prisons and jails block access to toll-free numbers with no exception for calling relay numbers. This prevents Deaf residents from using relay and thus prevents them from communicating with friends, family, attorneys, and court personnel.

## **3. Prisons and Jails Frequently Limit Access to TDD/TTYs**

Although some facilities have TDD/TTYs available on the general phones accessible to all prisoners, many facilities keep TDD/TTY equipment in a staff member's office or some other generally inaccessible location. In contrast, pay phones for hearing prisoners are located in public areas such as dayrooms or recreation yards. As a result, many Deaf prisoners can only get access to TDD/TTY machines during working hours, during

weekdays, and when staff members are available and don't have other pressing duties. This means that Deaf prisoners cannot contact friends and family who are out of their homes during the work day. It also means that Deaf prisoners are limited to far fewer possible hours of communication than hearing prisoners have. In states where rates are cheaper during the evenings and on the weekends, deaf prisoners cannot take advantage of these rates because staff may be unavailable during those times.

#### **4. Videophones Are the Preferred Method of Communication in the Deaf Community Because They Rely on Visual Communication**

Videophones and captioned telephones are the better telecommunication option for many deaf people. Typewritten communication is not the equivalent of voice communication for individuals who communicate in sign language, and prisoners with residual hearing can follow telephone conversations on their own with some assistance. With the advent of new technology and relay services, including internet-based relay services and videophone technology that allows sign language users to communicate in sign language in real-time, most TDD/TTY users have migrated to other forms of communication to access the telephone network.

Many Deaf prisoners report to us that their families do not have TDD/TTY devices at all, having migrated to videophones. According to the FCC's TTY Transition Subgroup, TDD/TTY use is declining on average 10% per year and has dropped by half over the last seven years.<sup>1</sup> Because there is no way to call a videophone from a TDD/TTY, Deaf prisoners are left with no way to communicate with their families at all. The introduction of videophones to correctional facilities would enable these prisoners to have the same access to inmate calling services that hearing inmates have.

#### **Recommendations**

For the foregoing reasons, the Prison Law Office recommends that the FCC mandate the following:

1. Prisoners need access to both video phones and TDD/TTYs to ensure that deaf and hard of hearing prisoners have adequate and equal access to inmate calling services. This is because prisoners who have a late-in-life hearing impairment and were not born deaf may not sign well, or prisoners whose families do not sign, will still need to use TDD/TTYs.

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<sup>1</sup> <http://eaac-recommendations.wikispaces.com/file/view/EAAC+TTY+transition+report+Dec-10-2012.pdf>

2. Time limits on telephone calls should be longer for deaf prisoners using videophones or TDD/TTYs.
3. Because it takes longer to complete a TDD/TTY call, the rates charged for videophones and TDD/TTY calls should be reduced to at least one half or one quarter, respectively, of the charges for voice calls.
4. Relay numbers should be accessible from all inmate calling services.

We thank you for the opportunity to comment on this issue.

Sincerely yours,

/s/

Corene Kendrick, Staff Attorney  
Sheena Green, Law Clerk