



January 6, 2017

Commission Mignon Clyburn
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Lawyers' Committee for Civil Rights Under Law Comment Supporting
Commissioner Mignon Clyburn's #Solutions2020 Call to Action Plan**

Dear Commissioner Clyburn:

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) appreciates the opportunity to submit this public comment in support of the Federal Communication Commission's (FCC) #Solutions2020 Call to Action Plan. The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure equal justice under law, particularly in the areas of criminal justice, community development, employment, educational opportunities, fair housing and fair lending, immigration, and voting rights.

The Lawyers' Committee commends the FCC's efforts to deliver robust, affordable connectivity to all persons, and strongly supports its proposal to ensure reasonably priced calls to the incarcerated, and affordable access to communications for all persons, especially those in economically distressed areas. Access to communication is considered a fundamental human right by many,¹ and is widely accepted as "deeply rooted in the established right to freedom of expression, [which is] a fundamental human right on its own, key to the fulfilment of other rights, and an essential underpinning of democracy."² The FCC plays a critically important role in protecting and promoting this right. To continue to do so, we recommend that the FCC take action to efficiently and effectively implement Lifeline, eliminate digital redlining, ban prison phone kickbacks, and regulate video visitation at detention centers in furtherance of its #Solutions2020 Call to Action Plan.

¹ Human Rights Council Res. 32/L.20, 32d Sess., June 27 2016, U.N. GAOR, A/HRC/32/L.20 (June 30, 2016), https://www.article19.org/data/files/Internet_Statement_Adopted.pdf (declaring that "online freedom" is a human right).

² *Statement on the Right to Communicate*, Article 19: Global Campaign for Free Expression (Feb. 2003), <https://www.article19.org/data/files/pdfs/publications/right-to-communicate.pdf>.



Affordable Access to Communications

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The disparity between those who have access to telecommunications and information technology and those who do not, commonly referred to as the digital divide, is becoming increasingly significant in this digital age.³ Studies indicate a strong correlation between an online presence and economic and social success, largely due to online government services, the growing role of technology in education, and the increasing reliance on online job-search technology.⁴ For those with low incomes and little education, the primary barriers to broadband adoption relate to the affordability and pricing (i.e., they do not own a computer or cannot afford internet service).⁵ In 2016, 73% of whites were home broadband users, compared to 55% of African-Americans and 47% of Hispanics.⁶ Additionally, 97% of households with incomes exceeding \$75,000 report Internet usage, whereas the same is true only 74% of the time for households earning less than \$30,000.⁷

The digital divide has especially far-reaching consequences related to education, employment and financial success.⁸ Classrooms are increasingly becoming digital learning environments, allowing students to connect to international learning opportunities, develop valuable research skills, and access to supplemental online learning materials to complement their in-school experience.⁹ In addition, teachers are increasingly assigning homework that requires access to broadband.¹⁰ Children with inadequate access to technology are

³ See Emily Badger, *The Most Revealing Broadband Adoption Maps We've Ever Seen: In the Era of Google Fiber, There's More Reason than Ever to Confront America's Digital Divide*, Citylab, <http://www.citylab.com/tech/2014/02/most-revealing-broadband-adoption-maps-weve-ever-seen/8517/>.

⁴ *Id.*

⁵ Aaron Smith, *Statement of Aaron Smith – Broadband Adoption: The Next Mile*, Pew Research Center (Oct. 29, 2013), <http://www.pewinternet.org/2013/10/29/statement-of-aaron-smith-broadband-adoption-the-next-mile/>.

⁶ Andrew Perrin & Maeve Duggan, *Americans' Internet Access: 2000-2015*, Pew Research Center (June), <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/>.

⁷ *Id.*

⁸ Mark Goldich, *Getting Ahead of the Digital Divide: How State Laws Ensuring Equal and Adequate Access to Education Technology Across School Districts Will Benefit Both Students and Legislatures*, University of Illinois (Nov. 15, 2016), http://illinoisjltip.com/timelytech/getting-ahead-of-the-digital-divide-how-state-laws-ensuring-equal-and-adequate-access-to-education-technology-across-school-districts-will-benefit-both-students-and-legislatures/#_ftn5.

⁹ *Id.*

¹⁰ Claire McLaughlan, *The Homework Gap: The 'Cruellest Part of the Digital Divide'*, National Education Association (Apr. 20, 2016), <http://neatoday.org/2016/04/20/the-homework-gap/>.



becoming victims of the “homework gap” and this barrier is inevitably causing them to lag behind in the classroom.¹¹ The Internet is also becoming an increasingly important resource with regard to employment.¹² A Pew Research Center survey found that two-thirds of Americans believe that people without broadband are at a disadvantage with regard to job opportunities or learning career skills.¹³ Their study demonstrated that, of those who have recently searched for jobs, 90% conducted online research and 84% applied for jobs online.¹⁴ As a result, technology’s increasing role in modern society is actually aggregating existing patterns of inequality, primarily among racial and socioeconomic groups and creating permanently marginalized individuals who lack the skills and tools to navigate successfully in an increasingly globalized, knowledge-based society.¹⁵

The Lawyers’ Committee commends the FCC’s decision to modernize Lifeline, a program that aims to defray the costs of acquiring high-speed Internet for low-income households. We look forward to the efficient and effective implementation of the program, especially in those states that received an extension for their projected effective date.¹⁶ Additionally, all efforts should be made to promulgate “commercially reasonable” standards to govern the conduct of broadband providers, which target wealthy neighborhoods (where the immediate demand and potential for profit is highest) to the detriment of poorer ones, otherwise known as “digital redlining.”¹⁷ The FCC should address such issues, and ensure that advanced telecommunications connectivity is deployed to all Americans in a timely fashion and take immediate action to accelerate deployment where it is disparate.

Inmate Telephone Service

While the nation’s unprecedented rate of imprisonment continues to deprive individuals of their freedom, the for-profit prison industry continues to

¹¹ *Id.*

¹² Aaron Smith, *Searching for Work in the Digital Era*, Pew Research Center (Nov. 19, 2015), <http://www.pewinternet.org/2015/11/19/1-the-internet-and-job-seeking/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Era Dabla-Norris et al., *Causes and Consequences of Income Inequality: A Global Perspective*, International Monetary Fund, 18-19 (June 2015), <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf>.

¹⁶ Amy Gross, *States Rush to Implement FCC Lifeline Changes*, Technologies Management, Inc. (Dec. 13, 2016), <http://www.tminc.com/blog/states-rush-to-implement-fcc-lifeline-changes>.

¹⁷ Zenitha Prince, *Is Digital Redlining Causing Internet Caste System?*, The AFRO-American Newspapers (Feb. 5, 2015), <http://www.afro.com/is-digital-redlining-causing-internet-caste-system/>.



thrive.¹⁸ The latest benefactors are private telephone companies who dominate the market for calls from detention facilities.¹⁹ The prison phone industry permits each prison system or local jail to enter into a contract granting a telephone company a monopoly in the state prisons or local jail.²⁰ These telephone companies pay a large portion of the revenue collected back to the correctional facility, thereby increasing the per-minute calling rates, otherwise known as “commissions.”²¹ To recover the money lost through commissions,²² the telephone companies tack on fees, which places the burden on prisons and their families and can nearly double the price of a call.²³ At present, call rates in prisons, jails and other detention facilities are so excessive that families are often forced to decide between accepting a loved one’s call from prison and meeting basic budgetary needs.²⁴ Moreover, these profit-driven practices create perverse incentives to increase prison and jail populations, and profit from individuals who are by-definition disadvantaged.

Because prisoners are incarcerated an average of 100 miles from their families, phone calls or written communication are the only feasible form of contact for many.²⁵ However, prisoners who are functionally illiterate or have been diagnosed with mental illness cannot rely on written correspondence,²⁶ and

¹⁸ Vicky Peláez, *The Prison Industry in the United States: Big Business or a New Form of Slavery?*, Global Research (Aug. 28, 2016), <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.

¹⁹ Drew Kukorowski, Peter Wagney & Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, Prison Policy Initiative (May 8, 2013), <https://www.prisonpolicy.org/phones/pleasedeposit.html>.

²⁰ *Id.*

²¹ *Id.*

²² See, e.g., *Inmate Telephone Services Agreement with Baldwin County, Alabama*, Inmate Calling Solutions, LLC (Jan. 16, 2013), https://www.prisonpolicy.org/phones/Exhibit_2.pdf (demonstrating that commissions can be up to 84%).

²³ Kukorowski, Wagney & Sakala, *supra* note 19.

²⁴ Margaret Higgins et al., *Phone Calls Creating Lifelines for Prisoners and their Families: A Retrospective Case Study on the Campaign for Prison Phone Justice in Minnesota*, University of St. Thomas Community Justice Project, <https://www.stthomas.edu/media/interprofessionalcenter/FinalListeningSessionReport140318.pdf>.

²⁵ Nancy Lavigne et al., *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents*, Urban Institute Justice Policy Center 4 (Feb. 2008), http://www.urban.org/UploadedPDF/411616_incarcerated_parents.pdf.

²⁶ *Statistics*, Literacy Project Foundation, <http://literacyprojectfoundation.org/community/statistics/> (stating that three out of five people in American prisons cannot read (citing the National Institute for Literacy, National Center for Adult Literacy, The Literacy Company, and U.S. Census Bureau)).

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the same barrier exists for inmates' children who are unable to read or write.²⁷ Thus, for many families, phone calls are the primary means of maintaining relationships during their incarceration.²⁸

To further inhibit communication, a hundreds of sheriffs and jail administrators across the country are taking steps to restrict mail correspondence,²⁹ as well as in-person visitation.³⁰ The New Hampshire Department of Corrections, for one, imposed a ban on children's drawings and greeting cards.³¹ In lieu of in person visitation, some detention facilities are requiring prisoners' friends and families to use expensive remote video visitation, increasing the companies' profits and the commissions they pay the jails.³² This practice creates new and quite literal barriers between prisoners and their families, while imposing completely unnecessary costs.

There are well-known societal benefits to enabling incarcerated people to maintain their personal and professional affairs, namely lower recidivism rates³³

²⁷ David Murphy & P. Mae Cooper, *Parents Behind Bars: What Happens to Their Children*, Child Trends (Oct. 2015), <http://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf> (noting that more than five million children have had a parent who lived with them go to jail or prison).

²⁸ Bernadette Rabuy & Daniel Kopf, *Separation by Bars and Miles: Visitation in State Prisons*, Prison Policy Initiative (Oct. 20, 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html>.

²⁹ Corey Frost, *Protecting Written Family Communications in Jails: A 50-State Survey*, Prison Policy Initiative (May 19, 2016), <https://www.prisonpolicy.org/postcards/50states.html>.

³⁰ Bernadette Rabuy & Peter Wagner, *Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails*, Prison Policy Initiative (Jan. 2015), <https://www.prisonpolicy.org/visitation/report.html>.

³¹ Jeremy Blackman, *Prison tightens mail policy in effort to curb drug influx*, Concord Monitor (Apr. 13, 2015), <http://www.concordmonitor.com/home/16462117-95/prison-tightens-mail-policy-in-effort-to-curb-drug-influx>; see also Leah Sakala, *Return to Sender: Postcard-only Mail Policies in Jails*, Prison Policy Initiative (Feb. 7, 2013), <http://www.prisonpolicy.org/postcards/>.

³² Matthew Clarke, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price*, Texas Criminal Justice Coalition (Oct. 2014), <http://grassrootsleadership.org/sites/default/files/uploads/Video%20Visitation%20%28web%29.pdf>.

³³ *The Effects of Prison Visitation on Offender Recidivism*, Minnesota Department of Corrections (Nov. 2011), <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf> (finding that a single visit reduces recidivism by 13% for new crimes and 25% for technical violations); Higgins et al., *supra* note 24. See also Gary C. Mohr, *An Overview of Research Findings in the Visitation, Offender Behavior Connection*, Ohio Department of Rehabilitation and Correction (2012), <http://www.asca.net/system/assets/attachments/5101/Mohr%20-%20OH%20DRC%20Visitation%20Research%20Summary.pdf?1352146798> (finding that more visits were associated with fewer rule violations).

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and the elimination of the associated costs of reincarceration.³⁴ The support network maintained through regular communication enables prisoners to obtain shelter upon their release, and strengthen connections that assist in successfully completing probation and parole.³⁵ The notion that communication with family, in particular, reduces recidivism rates and promotes successful re-entry has been endorsed by Congress, the American Bar Association, the American Correctional Association, the Federal Bureau of Prisons, state legislatures, and state regulatory agencies.³⁶

The Lawyers' Committee commends the FCC's effort to impose new rate caps for local and long-distance inmate calling.³⁷ Although the lawsuit resulting from that initiative is pending judicial review, we ask that the FCC continue its vigorous defense of its proposed prison phone caps until the new standards are implemented. Charges for communications should ultimately be cost-based or subsidized entirely as an effective method of promoting successful rehabilitation and reentry; thus, all efforts should be made to ban prison phone kickbacks entirely.³⁸ Additionally, the Lawyers' Committee recommends that the FCC consider regulating video visitation. The use of video visitation and other communications services in prisons and jails should increase, not reduce, contact between prisoners and their families.

For the foregoing reasons, the Lawyers' Committee endorses the FCC's efforts to reform inmate calling services, streamline access to Lifeline services, deploy next-generation communications services, and, in doing so, "narrow the gaps [and] shrink the divides." We thank you for this opportunity to offer feedback on the #Solutions2020 Call to Action Plan.

Sincerely,

Kim Tignor
Director of Public Policy

³⁴ Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*, Vera Institute of Justice (Jan. 2012), [price-of-prisons-updated-version-021914.pdf](https://www.vera.org/reports/price-of-prisons-updated-version-021914.pdf) (finding that reincarcerating ex-prisoners who commit new offenses costs, on average, \$31,286 per prisoner annually).

³⁵ Creasie Finne Hairston, *Family Ties During Imprisonment: Do They Influence Future Criminal Activity?*, 52 Fed. Probation 48, 49-50 (1988).

³⁶ Kukorowski, Wagney & Sakala, *supra* note 19.

³⁷ *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

³⁸ *Facts*, Campaign for Prison Phone Justice, <https://nationinside.org/campaign/prison-phone-justice/facts/> (listing the eight states that have banned prison phone kickbacks entirely: Nebraska, New Mexico, New York, Rhode Island, Michigan, South Carolina, California and Missouri).

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