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January 11, 2016

Mignon Clyburn, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: #Solutions2020 Comment on Prison Phone and Video Rates by New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic, Public Notice #342689

Dear Commissioner Clyburn,

Members of the New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic¹ have commented on the Federal Communication (FCC) docket #12-375 and at a New York City listening tour forum you conducted since early 2013. Our first comments addressed interstate phone rates in New Jersey prison and jails, followed by intrastate phone rates and, finally, international rates. In the current comments, we will update you with information concerning: 1) the recent New Jersey law capping phone rates and banning commissions in the state, 2) changes in phone rates and commissions in two county jails, 3) the closure of two facilities that we previously reported on and the recent surge in immigration detention, and 4) issues related to video visitation.

When we started our New Jersey Phone Justice Campaign, the state prisons charged a 33-cent flat fee for calls, and took a 41% commission. New Jersey county jails were charging even higher rates for non-local calls and taking commissions between 50% and 70%. Today, most facilities in New Jersey are charging 4.384 cents per minute², the rate negotiated in the current five-year state contract, and no commissions.

¹ The views expressed herein represent the views of the Immigrant Rights Clinic and not necessarily those of New York University or its affiliates. NJAID Coalition Members include American Friends Service Committee (AFSC) Immigrant Rights Program; Casa de Esperanza; the Episcopal Immigration Network; First Friends of NJ & NJ; Lutheran Office of Governmental Ministry in NJ; NJ Forum for Human Rights; Pax Christi NJ; Middlesex County Coalition for Immigrant Rights; People's Organization for Progress- Bergen County Branch; the Reformed Church of Highland Park; Sisters of St. Joseph of Chestnut Hill ESL; and Unitarian Universalist Congregation at Montclair.

² Facilities have the option of choosing from three different additional security features that can bring the per-minute rate to slightly above 5 cents under state contract #88935, April 27, 2015 to April 30, 2022.

1. A New Jersey Bill Capping Phone Rates & Banning Commissions Becomes Law

We are pleased to report that on June 27, 2016, New Jersey legislation on prison and jail phone rates, S. 1880³, passed with bipartisan support and a super-majority in both houses of the Legislature. The legislation caps domestic rates at 11 cents per minute, international calls at 25 cents and bans commissions.⁴ It was signed into law by Governor Christie on August 31, 2016⁵.

2. Phone Rate and Commission Changes in Two Counties: Bergen and Passaic

We are also pleased to report that since we commented last on intrastate rates on October 15, 2015, two counties that held independent contracts for phone service have substantially lowered their rates and dropped commissions. Bergen County joined the state contract, and Passaic County renegotiated their contract to comply with current New Jersey law.

A. Bergen County

On June 30, 2015, we commented on Bergen County's attempt to raise rates and increase their commission from 60.5% to 65%. At that time, the new state contract eliminating commissions for county jails had not yet gone into effect. Its implementation date was in August 2015. We informed the County Freeholders that they were free to join the state contract, and they voluntarily did so in February 2016, selecting security features that bring the per minute rate to 5.084 cents per minute. Their 60.5% commission was thereby eliminated. The table below shows the dramatic drop in domestic rates and commissions in Bergen County.

Comparison of Previous and Current (February 2016) Bergen Rates & Commissions

Distance	Previous 15 Minutes	Previous Commission	Current 15 Minutes	Per Minute	Current Commission
Local Debit	\$1.65	60.5%	\$0.76	\$0.05	0%
Local Collect	\$1.75				
IntraLATA Debit	\$4.80				
IntraLATA Collect	\$4.95				
InterLATA Debit	\$7.30				
InterLATA Collect	\$7.50	0%			
Interstate Debit	\$3.15				
Interstate Collect	\$3.75				

³ http://www.njleg.state.nj.us/2016/Bills/PL16/37_.HTM

⁴ The law is effective when the county enters a new contract or renegotiates a contract. Counties that held independent Inmate Calling Service contracts prior to the state's August 2015 contract with expiration dates in March, 2018 and July, 2020 are Cape May and Salem, respectively. They charge \$4.25 and \$3.75 for 15 minute intrastate calls, respectively. Cape May receives a 70.1% commission from Securus and Salem, approximately 70%, GTL (90% administrative fee minus a monthly deduction of \$4,550, p. 157 June 5, 2015 Global Tel*Link bid).

⁵ New Jersey P.L.2016, c.37.

B. Passaic County

Prior to June 2016, Passaic County was receiving a \$2 surcharge on all calls. On June 28, 2016, following the June 20, 2016 implementation of the FCC's Second Order eliminating surcharges, Passaic County established new rates with Securus Technologies, Inc. The new rates included a high first minute rate, apparently designed to offset the loss of the \$2 surcharge.

On December 13, 2016, a few months after we contacted the Freeholder Board concerning the recently passed law, the Board passed a resolution bringing the county into compliance with the current New Jersey rate cap of 11 cents and eliminating their commission. The table below shows the significant changes following the County Resolution in December.

Comparison of Previous (June 2016) and Current Passaic Rates & Commissions

Distance	Previous First Minute	Additional Minute	Previous Commission	Current Per Minute Rate	Current Commission
Local and Intrastate	\$2.55	\$0.25	53%	\$0.11	0%
Interstate Debit	\$0.21	\$0.21	0%		
Interstate Collect	\$0.25	\$0.25			

3. The Closure of Two Facilities and Recent Surge in Immigration Detention

A. Gloucester County

In 2013, Gloucester County jail was closed because of high operating costs. Despite allegedly saving the county \$10 million dollars the year after it shut down, the jail closure also resulted in criticism and lawsuits.⁶ Inmates from Gloucester County are housed through regional agreements in Burlington, Salem, Cumberland, and Essex county jails.⁷

B. Delaney Hall

In 2016, ICE detention at Delaney Hall, a privately-run facility subcontracted with Essex County, ended after the U.S. Department of Labor sued the county and the operator, Community Education Centers, Inc. for underpaying corrections officers by mislabeling

⁶ http://www.nj.com/gloucester-county/index.ssf/2014/07/gloucester_county_officials_reflect_on_jail_closure_one_year_later.html

⁷ *Id.*

them as ‘counselors.’⁸ A \$4.8 million settlement was reached. Although Essex County jail still houses immigrant detainees who allegedly have serious criminal histories, former Delaney Hall detainees, those with no criminal history or only minor crimes, have been moved to other facilities, including other county jails in the region⁹.

C. Recent Surge in Immigration Detention

Changes in immigration law in 1996 drastically increased the number of people subject to mandatory detention and deportation for violations of civil immigration law. Prior to the 1996 reforms, approximately 8,000 detention beds were designated for non-citizens through ICE contracts. Over the past few years, an estimated 34,000 people are held in Immigration and Customs Enforcement (ICE) custody on any given day, as mandated by the U.S. Congress. In recent months, the number has surged to more than 42,000 people in detention centers—more than have ever been in ICE custody. Homeland Security officials expect the overall number of individuals who are in jail awaiting deportation to balloon to 45,000 in the coming weeks and months. One internal projection calculates the figure could reach 47,000 by next June.¹⁰

In NJ, the number of immigrants detained in three county jails with long-term detention contracts and the privately-run Elizabeth Detention Center has also drastically increased by 750 in the last few months.

Immigration Detention Population Surge in Late 2016

Facility	Rough Average 2015	December 2016
Hudson County Correctional Facility	450	920
Essex County Correctional Facility	500	800
Bergen County Jail	150	230
Elizabeth Detention Center	300	300
Total	1,400	2,250

As more and more immigrants are being detained by ICE, it is vitally important that those in detention have access to affordable phone calls. As we noted in our January 10, 2015 comments, detainees face significant barriers in defending their deportation cases due to lack of access to legal support and evidence. For those detainees who do succeed in their cases, their reintegration is made more difficult by the months or years of separation immigrant detainees experience from their families during their detention. Both of these concerns make access to reasonably-priced phone calls a necessity. Although immigration detention is not meant to be punitive, detainees are held in jails and prisons and are

⁸ Mazzola, Jessica, NJ Advance Media, Oct 5, 2016 “122 workers at immigration detention facility get \$4.8M settlement,”

http://www.nj.com/essex/index.ssf/2016/10/48m_in_backpay_will_go_to_immigrant_detention_faci.html

⁹ *Id.*

¹⁰ Barrett, Devlin, Wall Street Journal, October 2016, available at: <http://www.wsj.com/articles/record-immigrant-numbers-force-homeland-security-to-search-for-new-jail-space-1477042202>

subjected to the same phone rates as other people in prison and jails, while lacking the right to counsel. Contact with family and community is all the more important because they depend on them for evidence and testimony in order to fight their cases.

4. Video Visitation in New Jersey Prisons and Jails

Video visitation is on the rise in correctional facilities across the country¹¹ and is being offered in at least five New Jersey county jails, as well as the state prison system. Rates and commissions vary widely, as do quality and reliability. In addition to providers taking advantage of the lack of regulation and generating revenue from exorbitant rates, at least four of the five New Jersey counties offering video visitation are taking commissions. Below is a table providing information on the facilities we are aware of that provide off-site video visitation. These facilities also provide on-site video visitation for free, except Passaic which charges after two free 30-minute visits. An additional area of concern is Salem County’s practice of charging professionals, which include attorneys and clergy.¹²

Off-Site Video Visitation in New Jersey Correctional Facilities

Facilities	Cost	Per Minute Cost	Commission	Provider	Contract Date	Period
NJ DOC	none	none	none	NJ DOC	none	none
Camden County jail	\$8/20 min.	.40	Not available ¹³	Global Tel*Link	Not available	Not available
Cape May County jail ¹⁴	\$10/20 min.	.50	46%	Securus	1/26/2016	5 years
Cumberland County jail	\$9/20 min.	.45	85%	Southern Folger	11/2012	none ¹⁵
Passaic County jail	\$12/30 min. ¹⁶	.40	55%	Renovo	4/3/2014	3 years ¹⁷
Salem County jail ¹⁸	\$9/20 min; \$15/20 min. professional visits ¹⁹	.45, .75 professional	25%	iWebVisit	8/18/2011	5 years (expired Aug. 17, 2016)

¹¹ *Screening Out Family Time*, Rabuy, Bernadette and Wagner, Peter, Prison Policy Initiative, January 2015, <http://www.prisonpolicy.org/visitation/report.html>.

¹² Professionals may request “confidential status.” All non-professional visits are monitored and recorded.

¹³ Camden County has not responded to our OPRA request for the contract with Global Tel*Link Inc.

¹⁴ Cape May revenues on iWebVisit contract initiated in the Spring of 2011, first installed February 2010 (p. 15) 2011: \$8,506.69 (3/4 of a year), 2012: \$13,655.17, 2013: \$11,497.70, 2014: \$15,687.00, 2015: \$13,997.80 (3/4 of a year).

¹⁵ Either party can end the contract with thirty days notice.

¹⁶ Two free on-site visits per week, after that \$12 for 30 minutes. Special consideration for extended visits can be requested, including for out-of-state and long-distance visitors.

¹⁷ The contract allows for two one-year renewals following the initial 3-year period. (p. 4)

¹⁸ Salem County recovers \$77,207.56 from visitors’ “fees” before the (25%) revenue sharing.

Cumberland County rejected a bid from the company offering the lowest rates in order to secure an 85% commission.²⁰ Most troubling of all, the company iWebVisit, which originally contracted with Cape May and Salem to provide video visits, included in their contracts a requirement that the facilities eliminate face-to-face family visits.²¹ This is contrary to a recommendation issued in a December 2014 report by National Institute of Corrections and the U.S. Department of Justice that facilities retain in-person visits²², yet four of the five New Jersey counties with video visitation have eliminated in-person visits.²³

We believe strong video visitation regulation should do the following:

1. Require facilities to provide face-to-face visit for families under reasonable conditions.²⁴
2. Cap video visitation rates at 11 cents per minute.
3. Require per minute charges, which are fairer than charging per 20-30 minute visit.
4. Ban commissions and ancillary fees.
5. Require the states and localities to choose as the 'lowest responsible bidder,' the company that offers the lowest rates for users.
6. Require contracts to impose monetary penalties for vendors who do not maintain consistent and reliable quality of service.
7. Ensure refunds for visits that are cancelled through no fault of the visitor and for visits in which the communication is impaired by low quality audio or video.
8. Ban charges for professional visits.
9. Require facilities to implement reasonable visiting hours.

We urge the FCC to take the above actions on video visitation as soon as is practicable.

5. Conclusion

We urge the Commission to continue to consider the human impact of its rulemaking. Previous rulemaking on phone rates has led to positive developments in New Jersey. We are grateful for the opportunity to provide these comments on the #Solutions2020 Action Plan related to achieving just phone rates for incarcerated individuals held in New Jersey,

¹⁹ Two visitors are allowed at on-site terminals and inmates are limited to one on-site visit per calendar week and two off-site visits per day. See: <http://www.salemcountysheriff.com/wp-content/uploads/2014/01/videovisit.pdf>

²⁰ Woods, Don, "Cumberland County to Install New Video Visitation System," *South Jersey Times*, Nov. 29, 2012 http://www.nj.com/cumberland/index.ssf/2012/11/cumberland_county_jail_to_inst.html

²¹ In a letter to the Federal Communications Commission, iWebVisit stated that it is no longer enforcing this requirement in its contracts. However, it is unclear whether iWebVisit informed Cape May and Salem of this change. For iWebVisit's letter to the FCC, see:

<https://www.fcc.gov/ecfs/filing/60001390088/document/60001421001>

²² Video Visiting in Corrections: Benefits, Limitations, and Implementation Considerations, Department of Justice and National Institute of Corrections. NIC accession number 029609, available at:

<https://s3.amazonaws.com/static.nicic.gov/Library/029609.pdf>

²³ As of June 2015, Cumberland County was the exception, offering both in-person and video visits.

²⁴ At least Hudson and Essex county jails, and probably several more, require strip searches of inmates after contact visits as a routine practice.

including the ever-increasing number of immigrant detainees. We look forward to action by the FCC to regulate video visitation. Finally, we thank you for your leadership and for helping to bring about change that has had significant, positive impacts on the people we serve.

Sincerely,

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