

PRISON POLICY INITIATIVE

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Commissioner Mignon Clyburn
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: #Solutions2020 Call to Action Plan

Dear Commissioner Clyburn:

First off, we would like to thank you for your continued leadership on behalf of incarcerated people and their families. We were glad to see reform of video visitation included in your #Solutions2020 Call to Action Plan. As you know, in January 2015, we published a Prison Policy Initiative report on video visitation in prisons and jails nationwide, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails*.¹ Our most troubling research finding, which you address in your draft #Solutions2020 plan, was that jails are increasingly using video visitation as a replacement for in-person visits. Fortunately, since the report, a national consensus has developed acknowledging that the growing trend of video visitation replacing traditional in-person visitation is a major step in the wrong direction for both correctional facilities and for families. However, this has not stopped sheriffs, wardens, and video visitation companies from using video technology as an opportunity to take away much needed human contact.

As you finalize your plan, we encourage you to revisit our 33-page report and accompanying 29 exhibits as well as the comments we submitted to the Federal Communications Commission last year.² Since our last update to the Federal Communications Commission in February 2016, it has become even more obvious that video visitation, as it is currently used, threatens family ties while providing little, if any, convenience or benefit to incarcerated people and their loved ones. Correctional facilities continue to adopt video visitation while the technology has become increasingly unpopular with families:

¹ This report was originally submitted to the Federal Communications Commission on January 12, 2015, but for the FCC's convenience, we have attached the report in Exhibit 1. And the report, accompanying exhibits, our collection of press coverage, and related research are available online at: <http://www.prisonpolicy.org/visitation/>.

² We submitted a comment to the Federal Communications Commission on January 19, 2016: <https://www.fcc.gov/ecfs/filing/60001379401> and a reply comment on February 8, 2016: <https://www.fcc.gov/ecfs/filing/60001393973>.

- **Correctional facilities continue to adopt video visitation.** At the time of our report, we had identified 511 correctional facilities using video visitation in some form. We now know of approximately 631 facilities using video visitation, an increase of 23% in the past two years.
- **Video visitation continues to be more popular in local jails than in state or federal prisons.** Most of the correctional facilities using video visitation (469) are local jails. Even though video visitation could be a particularly beneficial visitation *option* for people imprisoned in prisons, which can easily be located over 100 miles away from a person's home community and loved ones, video visitation is much more common in local jails rather than in prisons. Virtually no prisons replace in-person visitation with video visitation³ while 74% of jails that adopt video visitation eliminate in-person visits.

Further, there is evidence of state prison systems experimenting with video visitation but ultimately finding that the technology available is not ready to be useful or beneficial. South Carolina Department of Corrections discontinued a video visitation pilot program that allowed visitors to visit people incarcerated in Columbia, South Carolina from a visitation center in Charleston, South Carolina after barely any incarcerated people and their families used the video system.⁴ The Department of Corrections hoped that the ability to visit from Charleston would be helpful to families that live closer to Charleston than Columbia but found that only 132 visits occurred from December 1, 2014 to October 1, 2015. Three incarcerated people received 40% of those visits.

- **State campaigns strive to protect in-person visitation.** A bill in California that would have required every local jail to provide in-person visits passed the state Senate and Assembly with bipartisan support. Despite expressing concern about the impact that the elimination of in-person visits could have on rehabilitation and family ties, California Governor Jerry Brown vetoed the bill.⁵ Because of a law called Realignment that shifted people with nonviolent, nonserious, and nonsexual offenses from state prisons to local jails, people are spending more time in California jails than ever before.⁶ This means that families

³ The one state prison exception that uses video visitation and bans in-person visitation, Milwaukee Secure Detention Facility in Wisconsin, considers itself to be very similar to a jail, writing on its website that it "functions in a similar manner to that of a jail operation." See: Wisconsin Department of Corrections, "Milwaukee Secure Detention Facility," Wisconsin Department of Corrections Website. Accessed on December 2014 from: <http://doc.wi.gov/families-visitors/find-facility/milwaukee-secure-detention-facility>.

⁴ See page 5: <http://www.doc.sc.gov/research/AccountabilityReportFY2016.pdf>.

⁵ In his veto message, Governor Brown said that the bill did not provide adequate flexibility, however he expressed concern about jails eliminating in-person visits and the impact that this practice could have on rehabilitation: https://www.gov.ca.gov/docs/SB_1157_Veto_Message.pdf. He also directed the Board of State and Community Corrections, the agency that regulates local correctional facilities' visitation policies, to evaluate video visitation.

⁶ While, generally, people serve sentences under a year in local jails and longer sentences in prisons, this doesn't really hold true in California. See Magnus Lofstrom and Brandon Martin, "California's County Jails" (Public Policy Institute of California, August 2016): http://www.ppic.org/main/publication_show.asp?i=1061.

can go *years* without having the opportunity to touch one another.

Fortunately, New Jersey may soon protect in-person jail visits. New Jersey Assemblyman Gordon Johnson has introduced a bill, A4389, that would require that New Jersey jails provide face-to-face visits.⁷ The bill will be heard in a legislative committee in the near future.

While we are encouraged by state campaigns to protect in-person visitation from video visitation, only Federal Communications Commission regulations can bring consistency nationwide, and regulating video visitation would be a natural extension of the important work the Federal Communications Commission has already done to reduce the cost of telephone communication home from prisons and jails. A failure to regulate correctional video technology would allow correctional officials to use video technology as an end run around the Federal Communications Commission's existing regulations of phone rates.

- **Federal legislators are calling on the Federal Communications Commission to regulate video visitation.** U.S. Representative (and now U.S. Senator) Tammy Duckworth recently introduced legislation⁸ that would require the Federal Communications Commission to regulate video visitation and only permit the Bureau of Prisons to use video visitation as a supplement to in-person visitation.
- **There is overwhelming public support for protecting in-person visitation.** Almost 22,000 people have signed a Care2 petition in support of protecting in-person jail visits and the Federal Communications Commission regulating the predatory video visitation industry.⁹ Through the California campaign to protect in-person visits from video visitation, many family members of incarcerated people and other members of the public spoke out about the importance of in-person visits in recognizing and respecting the humanity of incarcerated people and their loved ones.¹⁰
- **The media continues to be drawn to correctional video visitation, a rare example of technology being used to separate — rather than connect — people.** We are attaching some of the most powerful stories to this comment as Exhibit 2.¹¹ The stories range from describing the

⁷ The bill text is available at: http://www.njleg.state.nj.us/2016/Bills/A4500/4389_11.HTM.

⁸ The bill text is available at: <https://www.congress.gov/bill/114th-congress/house-bill/6441/text>.

⁹ The petition is available here: <http://www.thepetitionsite.com/729/366/174/help-me-make-it-easier-to-visit-loved-ones-like-my-sister-in-jail/>.

¹⁰ Video testimony can be found at: <https://www.facebook.com/pg/SB1157/videos/> and photos are available at:

https://www.facebook.com/pg/SB1157/photos/?tab=album&album_id=295184257528229.

¹¹ In addition to Exhibit 2, the Federal Communications Commission should review Jack Smith IV's powerful article for *Mic* on video visitation and a recent article in *The Times-Picayune* about prison and jail visitation in Louisiana, both of which are best viewed online rather than in print:

<https://mic.com/articles/142779/the-end-of-prison-visitiation#.PseEnFuhZ> and

http://www.nola.com/crime/index.ssf/2017/01/parental_incarceration_visits.html#incart_push as well as listen to Natasha Haverty's radio story for *New Hampshire Public Radio* at:

<http://nhpr.org/post/one-nh-jail-inmate-visits-dont-look-how-you-might-think-they-look>.

technical failures of video visitation systems to allowing families of incarcerated people a forum to speak about their firsthand experiences with video visitation.

While the video visitation industry has largely continued to follow the same path, there are a couple reasons that the need for the Federal Communications Commission to address video visitation is more urgent today:

- **Securus Technologies announced a multi-state advertising campaign to persuade people to use its video visitation product.**¹² As a part of the campaign, Securus has produced a series of television commercials, which it hopes will persuade people to use its product and further normalize profiting off of incarceration. The commercials paint the product as a technology that will bring families together while making no mention of the fact that Securus Technologies used to contractually *require* that correctional facilities eliminate in-person visits when adopting Securus video visitation.¹³
- **The rates continue to be cost-prohibitive for families.**¹⁴ Our research in California revealed that in some jurisdictions, video visitation companies continue to charge \$20 for a 20-minute visit (\$1 per minute). Elsewhere in California, video visits are more affordable at \$7.50 for a 30-minute visit (\$0.25 per minute). See Exhibit 3. Even these lower rates can be cost-prohibitive since incarcerated people and their loved ones are disproportionately low-income.¹⁵ And, like in the phone context, this tremendous pricing disparity raises questions about the true cost of providing video visitation.

¹² Securus' press release about its campaign is available at: <http://www.prnewswire.com/news-releases/securus-technologies-announces-multi-state-campaign-to-promote-awareness-and-benefits-of-video-visitation-300367611.html>. For examples of the videos Securus has created to promote its product, see: <http://www.securustechnologies.com/en/social-responsibility>.

¹³ Though abolishing in-person visits is common in the jail video visitation context, Securus and iWebVisit are the only companies that explicitly required this harmful practice in their contracts. Notably, in May 2015, Securus announced that it would no longer explicitly require correctional facilities to replace in-person visits with video visits. See: <https://www.prisonpolicy.org/blog/2015/05/06/securus-ends-ban/>. iWebVisit also submitted a reply comment to the Federal Communications Commission saying that it no longer required correctional facilities to ban in-person visitation in its contracts. See: <https://ecfsapi.fcc.gov/file/60001421001.pdf>. However, it's unclear whether Securus and iWebVisit amended existing video visitation contracts to remove the contract clauses that required the elimination of in-person visits or whether they explicitly communicated to correctional officials that these clauses wouldn't be enforced.

¹⁴ For video visitation rates submitted to the Federal Communications Commission by the Wright Petitioners, the D.C. Prisoners' Legal Services Project, and Citizens United for Rehabilitation of Errants in January 2016, see Exhibit B at: <https://www.fcc.gov/ecfs/filing/60001379585/document/60001408397>.

¹⁵ Our report, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, found that, in 2014 dollars, people in prison had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages. See: <https://www.prisonpolicy.org/reports/income.html>. People in local jails are even poorer. For a report focused on people detained in local jails for their inability to pay money bail, we found that, in 2015 dollars, people in jail had a median annual income of \$15,109 prior to their incarceration, which is less than half (48%) of the median for non-incarcerated people of similar ages. See: <https://www.prisonpolicy.org/reports/incomejails.html>. The appendix of the report provides the median monthly incomes (prior to incarceration) for people in local jails *in general* rather than for people in jails detained for their inability to meet bail.

To be sure, the Prison Policy Initiative is not against video visitation. We believe that video technology *can* be used to benefit families, especially when it expands, rather than limits, opportunities for human interaction. However, the notable positive exceptions demonstrate that the norm is for this technology to be used in a harmful and exploitative way. A recent announcement by the New York City Council about its innovative video visitation program demonstrates what video visitation *could* be like but almost never is.¹⁶ The New York City Council is funding a program that provides video visitation from the City's libraries at no charge. The video visitation services will be a supplement to traditional, in-person visitation.

It is for all these reasons that we hope that Commissioner Clyburn will include the following in her final #Solutions2020 plan:

- Correctional facilities should not use video visitation to eliminate or restrict in-person visits.
- Video visitation providers should not, in their contracts, dictate correctional policies.
- Federal legislation like Senator Duckworth's Video Visitation in Prisons Act should be adopted.
- The Federal Communications Commission, policymakers, and correctional officials should set reasonable rates for video visitation.

We hope that even if the Federal Communications Commission is unable to prioritize regulating video visitation that it will consider creative ways to encourage video visitation companies, correctional officials, and policymakers to use video visitation as a positive supplement to in-person visits, whether through sharing relevant research or providing guidance on best practices.

We thank you for your longstanding leadership.

Sincerely,



Bernadette Rabuy
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¹⁶ The announcement is available at: <http://labs.council.nyc/press/2016/11/30/153/>.