



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

June 19, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

**Re: Comment on Report and Order and Further Notice
of Proposed Rulemaking, GN Docket 13-111**

Dear Chairman Pai:

The Human Rights Defense Center (HRDC), which publishes *Prison Legal News*, respectfully submits this Comment for GN Docket No. 13-111 in response to the Further Notice of Proposed Rulemaking: Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, issued by the Federal Communications Commission (FCC or the Commission).¹

HRDC supports the legitimate efforts of correctional agencies to promote public safety, and we are aware of an isolated number of incidents where cell phones utilized by prisoners have resulted in injuries or death, including the attempted murder of Captain Robert Johnson. We cannot, however, support initiatives that are implemented due to the corruption and wrongful acts of correctional employees who are allowed to willfully create those potentially dangerous situations when prisoners' families are expected to pay for the "solution" through higher phone rates or fees for using the prison phone system. This is especially true when little effort has been made to curtail corruption and misconduct by detention facility staff, who are the primary purveyors of contraband cell phones.

The Perceived Problem

Detention facilities and the FCC have identified cell phones as a danger to society because crimes can be committed using wireless devices. Certainly, some tragic incidents have been documented that were facilitated with contraband cell phones. The reality, however, is that

¹ FCC Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 13-111, adopted March 23, 2017.

prisoners with the intent to harm others are going to do so whether they have access to cell phones or not. For example, a special review of the Bureau of Prisons (BOP) conducted by the

Office of the Inspector General found “a significant number of federal inmates use prison telephones [i.e., the BOP’s own phone system] to commit serious crimes while incarcerated – including murder, drug trafficking, and fraud.”² Further, prisoners can order “hits,” arrange drug deals or make escape plans by sending letters through the U.S. mail, since outgoing letters are typically not read or inspected by staff in most state prison systems.

The Real Problem

The government and for-profit companies that offer services to detect or disable wireless devices are attempting to resolve the contraband cell phone problem by penalizing prisoners and creating products designed to generate profit instead of dealing with the real problem – the failure of corrections officials to effectively deal with employees who smuggle cell phones into prisons and jails.

On this Docket, the CTIA recommends “criminalizing under state law the possession of an unauthorized phone in a correctional facility,”³ but does not mention investigating, much less prosecuting, the source of such unauthorized cell phones. In a Comment filed by the Arizona Department of Corrections (AZ DOC), that agency notes they have dealt with this issue in part by making possession of contraband wireless devices a Class 5 felony,⁴ though they do not focus on how the devices were smuggled into state prisons. And while combating contraband cell phone use in detention facilities may have “clear public safety implications,” as stated in a Comment filed by the Florida Department of Corrections, HRDC disagrees that this problem is “within the authority of the Commission to regulate.”⁵

Even more disturbing than the lack of focus on the underlying problem – staff who smuggle cell phones to prisoners – the Association of State Correctional Administrators (ASCA) blames the FCC for allowing “this threat to public safety to grow, as potential solutions have languished for want of FCC action, for well over a decade.”⁶ As the Commission is aware, the implementation of video calling services in prisons and jails has increased dramatically over the past few years. The Prison Policy Initiative reported in March 2015 that more than 500 facilities in 43 states and the District of Columbia were experimenting with video calling,⁷ and that number has grown since then. With the elimination of in-person visits in 74% of jails that implement video calling (*Id.*), it stands to reason that if visitors are a primary source of contraband cell phones, then the opportunity to smuggle such devices into detention facilities should be going down. Yet the ASCA further attempts to deflect blame by telling the FCC that “your regulated carriers have proven largely disinterested in solving this critical public safety problem.”⁸

² <https://oig.justice.gov/special/9908/exec.htm> at page 1.

³ CTIA *Ex Parte* Letters, GN Docket No. 13-111, filed March 2, 2017.

⁴ Arizona Department of Corrections Comment, GN Docket No. 13-111, filed April 18, 2017.

⁵ Florida Department of Corrections Comment, GN Docket No. 13-111, filed May 3, 2017.

⁶ The Association of State Correctional Administrators Comment, GN Docket No. 13-111, filed May 30, 2017.

⁷ <https://www.prisonlegalnews.org/news/2015/mar/5/screening-out-family-time-profit-video-visitation-industry-prisons-and-jails>

⁸ The Association of State Correctional Administrators Comment, GN Docket No. 13-111, filed May 30, 2017.

While there may be an increase in disciplinary actions taken against correctional employees who smuggle cell phones to prisoners, published reports of staff members being prosecuted are not equal to the scope of the problem as described by the Commission and corrections officials, and more research must be done to establish the extent of smuggling by correctional staff and how it contributes to the problem of contraband cell phones.

Consider that prison and jail employees have 24/7 access to detention facilities, and in some cases are not subject to metal detector or pat-down searches when they report to work. Staff are also familiar with security protocols and are thus better informed with respect to circumventing those protocols. Visitors to detention facilities, on the other hand, have limited times when they can visit, are subject to pat-down searches and metal detectors, and are closely watched by staff during visitation. Thus, it is apparent that prison and jail employees have greater access and opportunity to smuggle cell phones, and are incentivized with sizeable bribes.

In fact, three major incidents involving smuggling by staff members were reported last month alone: an Indiana prison guard was accused of smuggling 100 cell phones (**Attachment 1**); a corrections officer in Montgomery County, Ohio was convicted of smuggling cell phones, with the judge saying “a message needs to be sent” to law enforcement (**Attachment 2**); and five Alabama prison guards were arrested in a corruption probe that included smuggling drugs and cell phones to prisoners (**Attachment 3**).

As an example of what can happen when the issue of staff corruption is addressed, according to Christopher Acosta, spokesman for the California Department of Corrections and Rehabilitation (CDCR), who was quoted in a 2011 article published by California Watch, cell phones aren't much of a concern at Pelican Bay, the state's highest security lockup. “We haven't had a big problem with the phones like other institutions have, he said.” (**Attachment 4**). Fewer than 12 cell phones were confiscated in the five-year period between 2006 and 2011. *Id.* The location of the prison and the volume of visitors may play a role, but it is more likely that “a series of court rulings that forced Pelican Bay to clean up all aspects of its operations, including security and staff disciplinary rules,” contributed to the lack of contraband cell phones – including random staff searches conducted at the facility. *Id.*

The Proposed Solution

Another article published by California Watch described both the risks and potential problems associated with managed access systems (**Attachment 5**), as reported in a study by the non-partisan California Council on Science and Technology.⁹ The study recommends “having private carriers identify and disable illicit phones and establishing airport-style screening systems” in detention facilities. *Id.* The union that represents state prison guards responded, saying contract negotiations to add to the “walk time” it takes correctional officers to get to their work stations could “cost the state millions,” and CDCR spokeswoman Dana Simas remarked that “proposals requiring staff to submit to airport-style security screenings were ‘shortsighted’ and failed to attack the root of the problem.” *Id.*

⁹ <https://www.documentcloud.org/documents/355647-2012cell.html>

HRDC disagrees, and we are not alone in our concerns. As noted by the California Office of the Inspector General in a Special Report regarding contraband cell phones in state prisons, released in May 2009:

According to the Department, inmates are paying those involved in smuggling cell phones into California prisons between \$500 and \$1,000 per phone. There are currently no criminal consequences for the introduction or possession of cell phones in prison, making this activity merely an administrative violation. Furthermore, current security entrance procedures provide ample opportunities for staff and visitors to bring contraband into prison facilities without fear of discovery. Therefore, the introduction of cell phones into state prisons is a low risk, high reward endeavor. **(Attachment 6 at 1).**

And while two of the nine recommendations made in the report call for cell phone detection solutions and jamming devices, the majority of the recommendations are directed at employees, including legislative changes to make the introduction of cell phones in all detention facilities a criminal offence (in addition to possession), airport-style security screenings, restriction of the size of carrying cases brought into secure areas of prisons and a requirement that staff place all personal items in see-through plastic containers.¹⁰

It is worth mentioning that prison and jail employees apparently do not believe that cell phones jeopardize their safety, or they would not smuggle them in for prisoners – even for large bribes. Comparatively, we do not see regular news reports about guards smuggling guns to prisoners, unlike cell phones. The *Los Angeles Times* reported in 2011 that a state investigation revealed a guard had made \$150,000 in one year smuggling cell phones to prisoners, and another had 50 phones in his car in a prison parking lot, labeled with the names of convicts. **(Attachment 7).**

Even the FBI has provided prisoner informants with cell phones, indicating such devices are not inherently dangerous. A March 2017 article detailing the conviction of former Los Angeles County Sheriff Lee Baca for “obstructing an FBI investigation into corrupt and violent guards who took bribes to smuggle contraband into the jails he ran and savagely beat inmates” stated the federal probe began in 2011 “when Baca’s jail guards discovered an inmate with a contraband cellphone was acting as an FBI mole to record jail beatings and report what he witnessed.” In another case in Mississippi, a prison official at the Adams County Correctional Center reportedly allowed a prisoner informant to keep a cell phone so he could relay information to security staff. If contraband cell phones create such a public safety risk, why have the FBI and prison officials allowed prisoner informants to keep and use them? **(Attachment 8).**

This nation’s detention facilities are charged with ensuring public safety, and if they fail to perform that critical function, the Commission, wireless carriers, prisoners and their families are not responsible for picking up their slack. For this reason, HRDC does not believe the

¹⁰ Note that in 2011, California enacted a law that criminalizes the smuggling of cell phones to prisoners. The law provides that “a person who possesses with the intent to deliver, or delivers [to prisoners] any cellular telephone or other wireless communication device or any component thereof ...” is subject to a misdemeanor charge punishable by a six-month jail sentence or a \$5,000 fine, or both. See: www.prisonlegalnews.org/news/2012/jan/15/california-criminalizes-cell-phone-smuggling-seeks-technology-to-block-cell-phone-calls-from-prisons.

Commission should proceed with this Proposed Rulemaking, but if it elects to do so, any order that allows contraband wireless devices to be disabled in detention facilities through managed access systems or other means should 1) only allow that practice in facilities that allow contact visits (where an opportunity exists for visitors to smuggle contraband cell phones); 2) only allow that practice in facilities that have taken necessary steps to prevent smuggling by staff, including hard screening through metal detectors, which has proven effective in New Jersey (**Attachment 9**); 3) only allow that practice in facilities that prosecute staff members who smuggle contraband to prisoners; and 4) ensure that prisoners and their families are not required to pay the costs for managed access systems through non-transparent contract bundling with other services offered by the same Inmate Calling Service (ICS) provider, such as phone calls, video calling, money transfer services, etc. that effectively hide the true costs of cell phone interdiction.

Any system that disables wireless devices should be funded through legislatively-appropriated funds or existing correctional agency budgets. Prisoners' families should not be required to pay for the corruption and misconduct of prison and jail staff, and the failure of corrections officials to hold them accountable through disciplinary actions and criminal prosecutions.

It should be noted that Global Tel*Link (GTL), the largest prison telecom provider in the U.S., does not attempt to hide the source of funding for its managed access system in California; the company pays for all equipment, installation and operating costs for providing managed access in state prisons. As a result, corrections officials describe the deal as “‘risk-free’ for taxpayers,” while “company officials expect to offset those costs through increased demand for the pay phones.”¹¹ Increased diligence and transparency will be required on all fronts to ensure that the cost of prison phone calls does not increase to offset the cost of managed access systems by ICS providers. Many managed access systems are brought to us by the same companies that have price-gouged prisoners and their families for decades – we cannot trust them to be fair, just and reasonable in any dealings with detention facilities where prisoners and their families pay the actual costs. Indeed, GTL and other telecom companies do not invest millions of dollars in cell phone interdiction systems at their own expense without expecting to recoup their investment, and historically such costs have been paid by prisoners' family members.

In a March 21, 2017 press release, Securus Technologies envisions a future where prisoners are “able to use our device OR THEIR DEVICE to communicate with approved individuals ... over a centralized platform with a low per minute rate....” (**Attachment 10**, emphasis in original). Apparently, cell phones behind bars are fine if an ICS provider is able to make a profit. And we should not forget that one of the major reasons for the increase in the number of contraband cell phones was exorbitant ICS rates that went unregulated for decades – prisoners primarily used cell phones so they could afford to stay in touch with their families. The New York Department of Corrections and Community Supervision (NY DOCCS) noted in its July 2013 filing on FCC Docket WC 12-375, with respect to the outcome of eliminating kickback commissions paid to the agency and a subsequent reduction in ICS rates, that “The Department believes that a lower calling rate has also contributed to a lower rate of illicit cell phone use by inmates in New York. In 2012, the Department confiscated less than 100 cell phones, compared to over ten thousand annual seizures in comparably-sized correctional systems.” (**Attachment 11**). In short, contraband cell phone usage is directly tied to high ICS phone rates.

¹¹ See Attachment 5.

Conclusion

HRDC is not opposed to the implementation of security measures in detention facilities that promote public safety; however, without dealing with the crux of the contraband cell phone problem – corrupt correctional employees – the FCC’s initiative to promote technological solutions to combat contraband wireless devices will not be successful. The Commission is attempting to regulate a natural result that stems from the long-standing practice of failing to prevent prison and jail staff from padding their wallets by selling contraband cell phones to prisoners. A technological solution will not be effective until the supply chain is cut off.

Detention facilities should be able to stop contraband smuggling by their own employees, and the proposed solution described above will insure that prisoners, their family members and other taxpayers do not pay the price for the failure of correctional authorities to police and discipline corrupt staff members. We respectfully request that the Commission not undertake any action that promotes managed access systems which could result in increased costs to prisoners and their families through higher ICS phone rates, video calling rates or other services as a way to offset the cost of managed access systems. Contraband cell phones can be largely eliminated through efforts to address smuggling by staff, including increased security screenings, routine discipline and prosecution of employees who smuggle cell phones, as well as affordable ICS rates that reduce the demand for contraband wireless devices.

Thank you for your time and attention to this important matter.

Sincerely,



Paul Wright
Executive Director, HRDC

Attachments

/s/
Center for Media Justice
www.mediajustice.org

/s/
Illinois Campaign for Prison Phone Justice,
a project of the Urbana-Champaign Independent Media Center
<https://nationinside.org/campaign/illinois-for-prison-phone-justice/>

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International CURE
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