

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:)
Rates for Interstate Inmate Calling) WC Docket No. 12-375
Services)

Comments of

HEARD

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
American Association of the DeafBlind (AADB)
American Deafness and Rehabilitation Association (ADARA)
Association of Late-Deafened Adults (ALDA)
California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)
Cerebral Palsy and Deaf Organization (CPADO)
Communications Service for the Deaf (CSD)
**Conference of Educational Administrators of
Schools and Programs for the Deaf (CEASD)**
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Summary

Incarcerated people with disabilities are routinely denied equitable access to communications services. To remedy this systemic injustice, we again call on the Commission to require inmate calling service (ICS) providers to facilitate access to all current and future forms of TRS, including video relay service (VRS), Internet Protocol captioned telephone service (IP CTS) or captioned telephone service (CTS), Internet Protocol relay service (IP Relay), and speech-to-speech relay service (STS), as well as direct video and text communications services, including direct video calling and real-time text (RTT). The Commission should adopt the necessary changes to the associated registration schemes to facilitate the deployment of these services in carceral facilities and ensure that incarcerated people with disabilities are able to use these services without charge.

Section 225 and Section 276 of the Communications Act vest the Commission with broad authority to enact these requirements, supplemented by ancillary authority flowing from the Commission's obligations to make all communications services accessible under Section 255 and Section 716 of the Act. Requiring equitable access to communications, including TRS and direct video and text services, will vastly improve the quality of life, the mental and physical well-being, and access to information of incarcerated people with disabilities and help ameliorate the impacts of incarceration more generally. To ensure that ICS providers are complying with their obligations, the Commission should expand the reporting requirements for ICS providers to include all TRS and direct video and text communications. The Commission has a lengthy record before it underscoring the widespread need for these requirements, and now is the time to act.

Table of Contents

Summary	v
Discussion	1
I. The Commission has the legal authority to require ICS providers to provide access to TRS. (¶¶ 271–273)	3
II. Making modern forms of TRS available in carceral facilities would provide substantial benefits to incarcerated people with disabilities and society more generally. (¶¶ 274–276)	6
A. Few carceral facilities currently deploy accessible communication services.....	6
B. Testimonials from formerly incarcerated people with disabilities recount systemic injustices in carceral facilities stemming from lack of equitable access to communications and information.	7
C. Implementing modern forms of TRS will provide incarcerated people with disabilities more equitable communication of information and help facilitate their successful reintegration into society.	9
III. The Commission should alter current TRS registration and related rules to the extent necessary to guarantee incarcerated people with disabilities equitable access to communication (¶¶ 284–287).....	13
IV. The Commission should prohibit ICS providers from charging for all forms of TRS calls (¶¶ 288–293).....	14
V. The Commission should require ICS providers to provide access to direct video and text communication at no charge. (¶¶ 294–299)	16
VI. The Commission should expand its annual reporting requirement to include all TRS and direct video and text communications. (¶¶ 300–301).....	18

Discussion

The above-signed incarcerated deaf/disabled people and their advocates, consumer groups, and accessibility researchers comment on the Commission’s Fifth Notice of Proposed Rulemaking (“Fifth FNPRM”) in the above-referenced docket.¹ The Fifth FNPRM seeks to remedy the dire state of access to communications services for incarcerated people with disabilities.²

The Commission must require ICS providers to provide access to all current and future communications systems designed for incarcerated people with disabilities. Advocates—particularly HEARD, together with incarcerated people with disabilities and their loved ones—have urged the Commission on numerous occasions over the past decade to update its rules to ensure basic access to telecommunications services and equipment for incarcerated people with disabilities.

As we have extensively documented in our prior filings, and as the Commission reiterates here, the injustice perpetuated by the refusal of ICS providers and facilities to provide access to modern communications services and equipment to incarcerated people with disabilities is pervasive, multifaceted, and unlawful.³ Some ICS providers are

¹ *Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, WC Docket No. 12-375, ¶¶ 206–208, 263–301 (2021) (“Third R&O” and “Fifth FNPRM”), <https://www.fcc.gov/document/fcc-lowers-interstate-and-international-prison-phone-rates-0>.

² This document uses the general term “incarcerated people with disabilities” to refer to all incarcerated people who identify as disabled or as having disabilities and all deaf and hard of hearing incarcerated people. We urge the Commission to take note of the particularly pernicious consequences of a lack of equitable access to communications on both incarcerated people and their families, friends, and other non-incarcerated contacts who are deaf, hard of hearing, DeafBlind, speech disabled, deafdisabled, late deafened, autistic, or elderly, who have sensory, processing, psychosocial, cognitive, intellectual, or developmental disabilities, and those with multiple disabilities.

³ See, e.g., Third R&O at ¶ 206 & n.627 (citing Ex Parte of United Church of Christ, OC Inc., et al. at 1–2 (May 14, 2021), <https://www.fcc.gov/ecfs/filing/105141900713329>); Comments of HEARD, TDI, et al. at parts I-II (Nov. 23, 2020),

providing no accessible communications services at all, while others provide outdated and often unusable communication devices to carceral facilities. Consequently, incarcerated people with disabilities are routinely denied the human and civil right of communication.

We commend the Commission for its important commitment to “using all of its authority to ensure that incarcerated people with speech and hearing disabilities have access to functionally equivalent telecommunication services to communicate with their families, loved ones, and other critical support systems.”⁴ We further commend the Commission for its specific “acknowledge[ment of] the injustice facing the scores of incarcerated people with disabilities who lack access to functionally equivalent communications.”⁵

Against the backdrop of the Commission’s commitment to remedying the injustices incarcerated people with disabilities experience as a result of inadequate access to communications, we urge the Commission to require ICS providers to provide access to all current and future TRS modalities. More specifically:

- The Commission has the requisite plenary legal authority to require the provision of access under Section 225 and Section 276 of the Communications Act and additional authority flowing from the Commission’s broader accessibility obligations under Section 255 and Section 716.

<https://www.fcc.gov/ecfs/filing/1123290918519>; Reply Comments of HEARD, TDI, et. al., at part I (Jan. 15, 2021), <https://www.fcc.gov/ecfs/filing/10116150044158>; Ex Parte of HEARD, TDI, and NAD at 1-4 (Feb. 4, 2021), <https://www.fcc.gov/ecfs/filing/102050847721606>.

⁴ See Third R&O at ¶ 206.

⁵ See *id.* at ¶ 206 & n.627 (quoting Ex Parte of HEARD, TDI, NAD, and TAP at 2 (Mar. 24, 2021), <https://www.fcc.gov/ecfs/filing/1032455797667>).

- Extending TRS access to carceral facilities would create a wide range of benefits to incarcerated people with disabilities, carceral facilities and their staff, and society more generally.
 - The Commission should alter TRS registration rules to the extent necessary to guarantee incarcerated people with disabilities equitable access to communication.
 - The Commission should prohibit ICS providers from charging for all forms of TRS calls.
 - The Commission should take similar steps to require ICS providers to provide direct video communication and real-time text (RTT) at no charge.
 - The Commission should expand its annual reporting requirement to include all calls using TRS and direct video and text services.
- I. The Commission has the legal authority to require ICS providers to provide access to TRS. (¶¶ 271–273)**

The Commission seeks comment “on the extent of [its] statutory authority to require inmate calling services providers to provide access to TRS.”⁶ In particular, the Commission asks about the extent to which Sections 225, 276, 255, and 716 of the Communications Act grant legal authority.⁷

Section 225 and Section 276 of the Act, read together, require the Commission to ensure the provision of accessible communications in carceral facilities. More specifically, Section 225 authorizes the Commission to regulate interstate and intrastate relay telecommunication services to ensure that “telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals [sic] in the United States.”⁸ The purpose of Section 225

⁶ *Fifth FNPRM* at ¶ 271.

⁷ *See id.* at ¶¶ 271-73.

⁸ 47 U.S.C. § 225(b)(1).

is “to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation.”⁹ To achieve this purpose, section 225 grants jurisdiction to the Commission to ensure that people with disabilities have access to adequate communication services in order to communicate with the general public.¹⁰

Because the purpose of section 225 is to ensure that “*all* individuals in the United States”¹¹ have access to a rapid communication network, the carceral status of individuals does not affect the Commission’s obligation to ensure they have access to adequate forms of communications. If the Commission did not ensure the accessibility of communication services within carceral facilities, the Commission would be unable to fulfill its obligation to a significant and multiply marginalized subset of people whom section 225 was enacted to protect.

Section 276 affirms that the Commission’s broad jurisdiction over “inmate telephone service in correctional institutions”¹² extends to the accessibility of those services. In particular, Section 276(b)(1)(A) governs the provision of “telecommunications relay service [TRS] calls for hearing disabled individuals [sic].”¹³ Section 276’s specific regulation of TRS calls provided by ICS providers, coupled with Section 225’s broad mandate that all Americans have access to TRS, confirms that Congress intended to ensure that the Commission ensure the accessibility of ICS by requiring ICS providers to provide TRS access to incarcerated people with disabilities.

Sections 255 and 716 of the Communications Act further supplement the Commission’s plenary authority under Section 255 and Section 276 by providing robust

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.* (emphasis added).

¹² *See* 47 U.S.C. § 276(d).

¹³ *See* 47 U.S.C. § 276(b)(1)(A).

sources of ancillary jurisdiction.¹⁴ Section 255 requires that “[a] provider of telecommunication services shall ensure that the service is accessible to and usable by individuals with disabilities [sic].”¹⁵ Section 716 of the Act relatedly requires “a provider of advanced communications services [to] ensure that such services . . . are accessible to and usable by individuals with disabilities [sic].”¹⁶ Section 255 and Section 716 collectively aim to ensure that communications services of all types—including telecommunications services and advanced communications services—are accessible to people with disabilities.

The Commission’s obligations to ensure the accessibility of communications services to people with disabilities would be frustrated if incarcerated people with disabilities—a significant subset of the people which Section 255 and Section 716 were enacted to protect—were effectively unable to access communications services at all. By ensuring that ICS providers make TRS available to incarcerated people with disabilities, the Commission will ensure that it is meeting its obligations under Section 255 and Section 716. The Commission thus has ancillary authority to promulgate regulations necessary to comply with the Act’s provisions—including the changes discussed here—in addition to its plenary authority under Section 225 and Section 276.

¹⁴ See, e.g., *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014) (explaining that the Commission may exercise ancillary jurisdiction where “(1) the Commission’s general jurisdictional grant under Title I covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities”) (quoting *American Library Ass’n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005)). Here, the Commission’s general jurisdiction over “all interstate and foreign communication by wire or radio” in Title I extends to the provision of TRS. See 47 U.S.C. § 152(a). As the remainder of this section explains, requiring ICS providers to provide access to TRS services is “reasonably ancillary” to the Commission’s performance of its duties under sections 255 and 716.

¹⁵ 47 U.S.C. § 255(c).

¹⁶ 47 U.S.C. § 617(b)(1).

II. Making modern forms of TRS available in carceral facilities would provide substantial benefits to incarcerated people with disabilities and society more generally. (¶¶ 274–276)

The Commission seeks comment on the benefits and costs of expanding access to all forms of TRS.¹⁷ In particular, the Commission asks for information on how services are currently being provided¹⁸ and the benefits of providing services where they are not available.¹⁹

Expanding access to TRS will save lives. Few carceral facilities currently deploy accessible communication services. Recent testimonials from formerly incarcerated people with disabilities highlight how incarcerated people with disabilities face systemic injustices in carceral facilities stemming from a lack of equitable access to communication systems. These circumstances could be significantly ameliorated by the provision of modern forms of TRS. Providing modern forms of TRS also would provide incarcerated people with disabilities access to information on equitable terms and help ensure their successful reintegration into society.

A. Few carceral facilities currently deploy accessible communication services.

Few carceral facilities currently offer reliable VRS, IP Relay, IP CTS, and CTS to incarcerated people with disabilities. Indeed, as the Fifth FNPRM notes, incarcerated people with disabilities widely lack equitable access to communication services.²⁰ Thus, it is no surprise that information on how services are currently being provided at carceral facilities is scarce.

¹⁷ Fifth FNPRM at ¶¶ 274–276.

¹⁸ *Id.* at ¶ 274

¹⁹ *Id.* at ¶ 275.

²⁰ *Id.* at ¶ 266 (internal citations omitted).

The limited available information indicates access to communication services for incarcerated people with disabilities is often non-existent or nearly so.²¹ This lack of access results from the refusal or failure of ICS providers to provide accessible communications services in carceral facilities—often limiting incarcerated people with disabilities to payphones and TTYs.

B. Testimonials from formerly incarcerated people with disabilities recount systemic injustices in carceral facilities stemming from lack of equitable access to communications and information.

Notwithstanding decades of advocacy, recent accounts from formerly incarcerated people with disabilities and their loved ones underscore the ongoing deprivation of equitable access to communications services in carceral facilities. These accounts also demonstrate that the lack of accessible communication services in carceral facilities have pervasive effects on the physical, mental, and emotional states of incarcerated people with disabilities, who are effectively confined to prison within a prison.

Travis W., a formerly incarcerated deafdisabled person said, “I was always the last to get food, announcements, information . . . [and m]ost of the time, I would get no information at all.”²² Without accessible communications systems, incarcerated people with disabilities are denied equitable communication of information pertaining to developments both within and outside of carceral facilities.

This denial of information takes a significant toll on the mental, emotional, and physical well-being of incarcerated people with disabilities. For example, HEARD has confirmed that many deaf/disabled people had not been informed about the existence of

²¹ N.R. Schneider & D.B. Sales, *Deaf or Hard of Hearing Inmates in Prison*, 19:1 *Disability & Society*, 77, 79-87 (2004) <https://doi.org/10.1080/0968759032000155631> (finding a dire need to fill a void in scientific research on the “availability and quality” of accommodations for incarcerated people with disabilities).

²² HEARD (@behearddc), Twitter (Aug. 30, 2021, 5:04 p.m), <https://twitter.com/behearddc/status/1432479478412886020> (quoting Travis W.)

COVID-19 more than a year into the pandemic, placing their safety at risk by wholly denying them the ability to undertake protective measures to avoid the virus.

Similarly, incarcerated people with disabilities are deprived of equitable access to basic information concerning matters crucial to their mental and physical well-being. For example, HEARD has confirmed that the lack of equitable access to accessible communication services has specifically and recently deprived incarcerated people with disabilities access to information about parole processes, instructions on how to file grievances, and information concerning medical diagnoses and prescriptions, among other critical information. These deprivations often mean that incarcerated people with disabilities spend longer incarcerated than their non-disabled peers.

Joseph N., another formerly incarcerated deafdisabled person, noted that “the extreme isolation and communication deprivation” that he experienced “made [his] emotions, language, and communication sharply decline.”²³ Without modern forms of TRS, incarcerated people with disabilities cannot adequately stay informed about the status of their cases, maintain communications with attorneys and family members, or keep up with other developments both within and outside of prison. Incarcerated people with disabilities often lack other ways to maintain their communication skills, especially when they use a signed language, such as American Sign Language (ASL). Joseph N. articulated the impact of the lack of adequate information communication:

My experience was really tough mainly because of lack of communication and communication breakdowns. I wish I had been provided interpreters instead of them depending on my hearing family to try to share information with me. Parole likes to try to use family members with deaf people who are on parole and they absolutely should not be doing that! That was really tough on me [looks down sadly] I did not understand

²³ *Id.*

those forms! They were long and wordy. I am Deaf. I use ASL not English!²⁴

Modern forms of TRS are crucial to allow for the equitable dissemination of information, especially when incarcerated people with disabilities who only know sign languages and who use sign language interpreters are expected to sign and understand forms and other documents that are not generated in or adapted to the sign languages they are familiar with. The lack of language access enabled by interpreting services further inhibits incarcerated people with disabilities from successfully seeking parole or adequately preparing for post-incarceration life, which in turn may potentially increase their likelihood of being reincarcerated.²⁵

C. Implementing modern forms of TRS will provide incarcerated people with disabilities more equitable communication of information and help facilitate their successful reintegration into society.

The Commission “seek[s] additional comment on the benefits of making VRS, IP CTS, IP Relay, and CTS available in correctional facilities where they are *not* currently available.”²⁶ Adequate communication provides incarcerated people with disabilities numerous benefits, including the protection of their right to counsel, the facilitation of communication with families and communities, and equitable opportunity to plan for

²⁴ HEARD (@behearddc), Twitter (Sep. 2, 2021, 7:25am), <https://twitter.com/behearddc/status/1433420853019041793>, <https://twitter.com/behearddc/status/1433420886908997637>, <https://twitter.com/behearddc/status/1433420903531139074>.

²⁵ Schneider & Sales, *supra* note 21 at 84-85 (identifying seven major areas where accommodations are not provided, including lack of ASL interpreters); *see also* Ryan Shanahan & Sandra Villalobos Agudelo, The Family and Recidivism, VERA Institute of Justice at 24 (2012) <https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf> (finding that incarcerated people who maintain contact with friends and family have a higher chance of succeeding after incarceration).

²⁶ Fifth FNPRM at ¶ 275 (emphasis in original).

their future in order to successfully reintegrate into society.²⁷ Access to communications is a basic human and civil right of incarcerated people with disabilities that is critical to their ability to navigate and survive the carceral system and to communicate with their families, attorneys, and organizations that provide resources and support. Moreover, the same reasons that lead the Commission to provide each of these programs—including TTY, VRS, and others—to people *not* living in carceral facilities also apply to people within carceral facilities.

The ability for incarcerated people to communicate with their families is crucial to facilitate their successful reintegration into society. One study found that 82% of incarcerated respondents in jails and 92% in prisons intended to rely on family when re-entering the community.²⁸ Other studies have noted that incarcerated people who had no contact with their families while incarcerated are significantly more likely to be reincarcerated as those who had maintained closer ties with their families.²⁹ Many incarcerated people with disabilities, who already are vulnerable to exploitation, abuse and the other negative effects of incarceration, are wholly prevented from communicating with family and friends.

Communication with family while incarcerated increases the chances that people will successfully return to their lives after release.³⁰ This is because communicating with

²⁷ See Kabrianna Tamura & Elaine Gunnison, *Hearing on the Deaf Penalty: The Intersection of Deafness and Criminal Justice*, 7:3 *Qualitative Criminology* (2019) <https://www.qualitativecriminology.com/pub/v7i3p5/release/1?readingCollection=eaf22e80> (“Introduction” and “ADA and the Deaf Community Within the Criminal Justice System”).

²⁸ Shanahan & Agudelo, *supra* note 25 at 21.

²⁹ See Alex Friedmann, *Lowering Recidivism through Family Communication*, *Prison Legal News* (Apr. 15, 2014), <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/>.

³⁰ See Lorig Charkoudian, Bonita L. Cosgrove, Denis P. Ferrel & Shawn M. Flower, *The Role of Family and Pro-Social Relationships in Reducing Recidivism*, *Am. Correctional*

family and friends allows for incarcerated people to maintain a support system that will continue after their incarceration ends, which in turn will help them find work, resources, and help them avoid encountering systematic barriers that often cause formerly incarcerated people to resort to old habits for coping or survival.

Moreover, the Department of Education has scored up to thirty-nine percent of incarcerated people as “below basic” for some forms of literacy.³¹ This means that a lack of access to TRS services that allow incarcerated people to communicate in sign languages can force them into a vicious cycle by cutting them off from their familial support systems and degrading long-term relationships. Ensuring that incarcerated people with disabilities can communicate with family and friends will increase their ability to maintain a support system for life after incarceration, which in turn will reduce the odds of recidivism and improve employment outcomes and other critical socioeconomic measures.

Providing accessible relay communication services also ensures that incarcerated people who use sign languages can continue to actively practice communicating and maintaining their language skills. Upon release, previously incarcerated people with disabilities have reported decreased proficiency in their signed language or loss of fluency, and needed to relearn how to sign.³² Wholete L., a deafdisabled advocate for incarcerated people with disabilities, described a situation in which she needed to reteach ASL to Travis W., a recently released deafdisabled person who “lost . . . some of

Association Inc. (2012), www.thefreelibrary.com/The+role+of+family+and+pro-social+relationships+in+reducing...-a0305747641.

³¹ U.S. Dept. of Education, *Literacy Behind Bars Results from the 2003 National Assessment of Adult Literacy Survey* at 13 (2003) <https://nces.ed.gov/pubs2007/2007473.pdf>.

³² See HEARD (@behearddc), Twitter, (Sept. 1, 2021 7:34am), <https://twitter.com/behearddc/status/1433060618093928454>.

his ability to communicate during incarceration. It was a long, slow, and difficult process to try to make sure he could communicate again.”³³

Empirical evidence suggests that language deprivation may lead to mental health consequences, including “language dysfluency, fund of knowledge deficits, and disruptions in thinking, mood, and/or behavior.”³⁴ These may present additional hurdles to incarcerated people with disabilities successfully reintegrating into society. One study noted:

Language exposure has an inextricable impact on one’s development across the lifespan. Early suggestions of a language deprivation syndrome indicate that it may be a natural consequence of chronic lack of full access to language. This has implications for language development as a social factor influencing the epidemiology of mental health.³⁵

Language deprivation can also become so severe that it becomes a disability in and of itself. Language Deprivation Syndrome may cause “cognitive delays and mental health difficulties across the lifespan.”³⁶ In fact, “[m]ental health clinicians often see language deprivation and language dysfluency being a common ‘symptom’ in deaf individuals who seek treatment, and are subsequently admitted to inpatient hospitals.”³⁷

Incarcerated people with disabilities face potentially serious adverse effects to their physical and mental well-being when deprived of channels to maintain their language

³³ *Id.*

³⁴ Wyatt C. Hall, Leonard L. Levin & Melissa L. Anderson, *Language Deprivation Syndrome: A Possible Neurodevelopmental Disorder with Sociocultural Origins*, 52:6 *Social Psychiatry and Psychiatric Epidemiology* 761–776 (2017), <https://link.springer.com/article/10.1007/s00127-017-1351-7>.

³⁵ *Id.* at 768.

³⁶ Wyatt C. Hall, *What You Don't Know Can Hurt You: The Risk of Language Deprivation by Impairing Sign Language Development in Deaf Children*, 21 *Maternal and Child Health Journal* 5 961, 963 (2017), <https://link.springer.com/article/10.1007%2Fs10995-017-2287-y>.

³⁷ *Id.*

proficiency. In turn, this may add to the burden of their already oppressive experience in carceral facilities by being deprived of equitable forms of communications. Conversely, ensuring that incarcerated people with disabilities have equitable access to equitable forms of communication will improve their ability to maintain their language skills and, by extension, successfully reenter society after release.

III. The Commission should alter current TRS registration and related rules to the extent necessary to guarantee incarcerated people with disabilities equitable access to communication (¶¶ 284–287).

The Commission seeks comment on whether to amend the current TRS rules “in conjunction with expanded TRS access for incarcerated people.”³⁸ In particular, the Commission asks whether to modify the rules that address registration for devices used to access IP Relay and IP CTS; information and documentation collection by TRS providers; waste, fraud, and abuse safeguards; TRS confidentiality; and “the special circumstances that characterize inmate calling services.”³⁹ The Commission also seeks comment on how TRS providers should be selected and whether TRS providers should have to “identify inmate calling services calls in their claims for TRS fund compensation.”⁴⁰

As previously noted, the Commission has broad authority to ensure that incarcerated people with disabilities have access to “telecommunications relay services . . . , to the extent possible and in the most efficient manner.”⁴¹ Because of this, the Commission should take steps to amend its current rules to the maximal extent necessary to ensure that these rules do not create barriers which inhibit incarcerated people with disabilities from accessing communication services other than with insufficient TTY-based TRS access.

³⁸ Fifth FNPRM at ¶ 284.

³⁹ *Id.* at ¶ 286–87

⁴⁰ *Id.* at ¶ 285.

⁴¹ 47 U.S.C. § 225(b)(1); see discussion *supra*, Section I.

For example, the Commission should take steps to ensure that current requirements imposed on incarcerated people with disabilities to access IP Relay and IP CTS do not pose a barrier. The registration process for TRS services was not developed with users who are incarcerated in mind.⁴² As a result, a wide range of barriers for registration for IP CTS frequently arise, including in non-individual contexts, as the Commission’s Disability Advisory Committee (DAC) has explained in detail.⁴³ These requirements may make use inaccessible for incarcerated people with disabilities because each device can only be registered to a single person, even though a device may need to be shared in a carceral or other congregate setting.

Accordingly, the Commission should modify its registration rules as necessary to ensure incarcerated people are individually able to easily register for TRS services and that facilities can register on a site-wide basis for newly incarcerated users. To ensure that rule changes maximize the accessibility of communication within carceral facilities, the Commission should coordinate with TRS providers to ensure that barriers to individual and facility-based registration are removed.

IV. The Commission should prohibit ICS providers from charging for all forms of TRS calls (¶¶ 288–293).

The Commission asks about prohibiting provider charges for TTY-based and other forms of TRS calls.⁴⁴ We commend and support the Commission’s proposal to amend the rule set forth in Section 64.6040(b) “to expressly prohibit inmate calling services

⁴² See generally *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Docket Nos. 13-24 and 03-123, *Provision and Marketing of IP Captioned Telephone Service Order*, 28 FCC Rcd. 13,420, 13,420–25, ¶¶ 1–10 (Aug. 26, 2013), <https://www.fcc.gov/document/provision-and-marketing-ip-captioned-telephone-service-order>.

⁴³ DAC Recommendation on IP CTS Registration (Feb. 26, 2020), <https://www.fcc.gov/file/18102/download>.

⁴⁴ Fifth FNPRM at ¶¶ 288–293.

providers from levying or collecting any charge on *any* party to a TRS call”⁴⁵ and “to prohibit inmate calling service providers from charging for other forms of TRS to which an inmate calling services provider provides access.”⁴⁶

The Commission further seeks comment on its legal authority to prohibit carceral facilities from charging for TRS calls.⁴⁷ Section 276 provides express legal authority for the Commission to prohibit providers from charging for TRS calls.⁴⁸ Section 276 specifically carves out TRS from the general permission for ICS providers to be compensated for calls, noting that “telecommunications relay service [TRS] calls for hearing disabled individuals [sic] shall not be subject to such compensation.”⁴⁹ The Commission explicitly and correctly adopted this reasoning in the 2015 ICS Order and should reiterate it again here.⁵⁰

⁴⁵ *Id.* at ¶ 289 (emphasis in original).

⁴⁶ *Id.* at ¶ 290.

⁴⁷ *Id.* at ¶ 289.

⁴⁸ 47 U.S.C. § 276(b)(1)(A).

⁴⁹ *Id.*

⁵⁰ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd. 12,763, 12,879, ¶ 236 (Nov. 5, 2015) (“2015 ICS Order”) (“Specifically, section 276 exempts both emergency calls and TRS calls from the fair compensation mandate. The exemption of emergency calls means that providers may not charge for emergency calls. We believe it is reasonable to interpret the pairing of TRS with emergency calls as an indication that Congress also intended TRS calls be provided for no charge. Therefore, we prohibit ICS providers from assessing charges for ICS calls between a TTY device and a traditional telephone.” (internal citations omitted)), *affirmed by Rates for Interstate Inmate Calling Services*, Order on Reconsideration, Docket No. 12-375, 31 FCC Rcd 9300, 9304, n.29 (Aug. 9, 2016) (“no provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls”), <https://www.fcc.gov/document/fcc-releases-inmate-calling-services-order-reconsideration>.

V. The Commission should require ICS providers to provide access to direct video and text communication at no charge. (¶¶ 294–299)

We commend and support the Commission’s proposal “to require that, wherever inmate calling services providers provide access to VRS, they also provide access to direct video service, through a VRS provider or by another effective method.”⁵¹ The Commission seeks general comment on this proposed rule and related inquiries, including rates for direct video service.⁵² The Commission also seeks comment on the deployment of direct text-based communications for incarcerated people with disabilities.⁵³

Direct video services—namely, direct videophone services⁵⁴—are critical for incarcerated people with disabilities because they provide a direct mode of communication that does not require reliance on a third party to provide captions or interpretation. As a practical matter, incarcerated people whose primary language is a sign language *require* direct video services to communicate with other people whose primary language is also a sign language. Thus, it is imperative that the Commission require providers to deploy direct video services wherever they provide VRS and other forms of TRS to ensure that incarcerated people who use sign languages can communicate with other people who use sign languages.

Direct text communication—of which real-time text (RTT) is the most likely viable form in carceral contexts—stands ready to replace TTYs as a modern communication modality for incarcerated people with disabilities who communicate via text. While the

⁵¹ Fifth FNPRM at ¶ 295.

⁵² *Id.*

⁵³ *Id.* at ¶ 296.

⁵⁴ By direct video services, we do not include video visitation services.

RTT rollout remains in progress,⁵⁵ Acting Chairwoman Rosenworcel announced at the Sept. 9, 2021 meeting of the Disability Advisory Committee (DAC) that the DAC would be convening a working group to broach the deployment of RTT on wireline networks.⁵⁶ As this deployment unfolds, it will be critical for ICS providers to make RTT available in carceral facilities to serve incarcerated people with disabilities who communicate via text, and the Commission should lay the groundwork in this proceeding to require RTT once wireline deployment begins.

The benefits of providing direct video and text communications are consistent with those described above for the provision of TRS more generally.⁵⁷ Providing direct communication services will provide incarcerated people with disabilities more access to information on equitable terms and help facilitate their successful reintegration into society.⁵⁸ Providing direct communication services will also ensure that incarcerated people with disabilities are able to avoid further isolation within carceral facilities by allowing them to practice their primary form of communication.⁵⁹

Lastly, the Commission seeks comment on rates for direct video and text communications in light of the Commission's current rules, which cap rates at 25% of the rates for "traditional inmate calling services."⁶⁰

⁵⁵ See generally *Transition from TTY to Real-Time Text Technology*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 13,568 (Dec. 16, 2016), <https://www.fcc.gov/document/adoption-real-time-text-rtt-rules>.

⁵⁶ Federal Communications Commissions, *Disability Advisory Committee Meeting—September 2021*, YouTube at 5:42 (Sept. 9, 2021), <https://www.youtube.com/watch?v=fOde7XujMjY>.

⁵⁷ See discussion *supra*, Part II.

⁵⁸ See discussion *supra*, Part II.C.

⁵⁹ See discussion *supra*, Parts II.B–II.C.

⁶⁰ Fifth FNPRM at ¶ 297.

Because the Communications Act bars compensation to ICS providers for TRS calls,⁶¹ the Commission should also bar charges for direct video and text communications. Allowing ICS providers to impose discriminatory charges would frustrate the spirit of Section 276's bar on charges for TRS calls and the Commission's broad accessibility mandates under Section 255 and 716.⁶² Allowing discriminatory charges would allow ICS providers to impose charges on incarcerated people with disabilities simply because the people they wish to communicate with use sign language, in the case of direct video communications, or because they communicate with text, in the case of direct text communications.⁶³

VI. The Commission should expand its annual reporting requirement to include all TRS and direct video and text communications. (¶¶ 300–301)

“[The Commission] seek[s] comment on whether to expand the inmate calling services providers' reporting requirements to include all other accessibility-related calls.”⁶⁴ Specifically, the Commission inquires about the benefits and burdens of this additional requirement, whether its safe harbor provision has prompted providers to provide less accessible forms of communication services, and whether to modify or eliminate this safe harbor provision.⁶⁵

The Commission should require ICS providers to include all TRS and direct video and text communications as well as any accessibility-related complaints in their annual

⁶¹ See discussion *supra*, part IV.

⁶² See discussion *supra*, part I.

⁶³ The Commission has also previously noted increased communication times and overhead in addressing rates for TTY-based communications. Fifth FNPRM at ¶ 297 (citing 47 C.F.R. § 64.6040; 2015 ICS Order, 30 FCC Rcd at 12880, ¶ 238). Similar dynamics to those associated with TTYs are likely to occur when direct video and text communications are provided in carceral contexts.

⁶⁴ Fifth FNPRM at ¶ 301.

⁶⁵ *Id.*

reports.⁶⁶ The Commission notes that it previously “found the burdens of reporting TTY-based calls to be far outweighed by the benefits of greater transparency and heightened accountability on the part of inmate calling services providers.”⁶⁷ Including all TRS and direct video and text communications would substantially expand the benefits of transparency and accountability.

⁶⁶ *Id.*

⁶⁷ *Id.* at ¶ 300 (citing 2015 ICS Order, 30 FCC Rcd at 12882-83, ¶ 245).