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Federal Communications Commission
Washington, D.C.

In the Matter of:)
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Services)

Reply Comments of Accessibility Advocacy and Research Organizations

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Summary

Incarcerated people with disabilities are routinely denied equitable access to communication in carceral facilities. Evidence in the record confirms that the Commission has the authority to vindicate the civil and human rights of incarcerated people with disabilities by amending and enforcing its rules to ensure that inmate calling service (ICS) providers facilitate access to modern forms of telecommunications relay service (TRS) and direct video and text communications services.

To ensure equitable access to communications, the record unanimously affirms that the Commission has authority under sections 225 and 276 of the Communications Act, supplemented by ancillary authority flowing from sections 255 and 716 of the Act. The record also unanimously confirms that basic necessities are being denied to incarcerated people with disabilities with no justification. The record further confirms that direct forms of communication, such as direct video communication and real-time text, must be provided. To ensure all incarcerated people with disabilities have access to these services, the record confirms that registration requirements must be amended to address the circumstances of carceral facilities. The record also confirms that the reporting requirement within carceral facilities should also be amended to include all accessible communication to increase transparency within facilities.

Table of Contents

Summary	v
Discussion	1
I. The record unanimously confirms that the Commission has legal authority to implement the proposed rules.....	2
II. The record underscores the critical benefits afforded by providing communication through TRS.....	4
A. The record confirms access to modern forms of TRS brings critical benefits to incarcerated people with disabilities.....	5
B. The record confirms that TRS providers are currently able to provide these benefits to incarcerated people with disabilities through modern forms of TRS.....	7
C. Requiring IP CTS in carceral facilities will provide equitable access for people who are hard of hearing.....	8
III. The record shows that the costs from the Commission implementing these proposed rules are minimal compared to the benefits.....	10
IV. The record confirms that direct video communication and real time text should be provided within carceral facilities and governed by the same rules which apply to TRS calls.....	12
V. The record confirms that the Commission should not charge for any form of TRS calls, direct video communication, or RTT.....	13
VI. The record confirms registration requirements for TRS and IP CTS must be amended to allow access to efficient communication for all incarcerated people with disabilities.....	14
VII. The Commission should expand the reporting requirements by ICS and TRS providers to ensure transparency of equitable communications provided in carceral facilities.....	16
VIII. The record confirms that ICS providers will not provide access to equitable communication to incarcerated people with disabilities if not required by Commission rules.....	17

Discussion

The above-signed incarcerated deaf/disabled people and their advocates, consumer groups, and accessibility researchers reply to comments on the Commission's Fifth Notice of Proposed Rulemaking ("Fifth FNPRM") in the above-referenced docket.¹ The Fifth FNPRM and comments in the docket seek to rectify the inequitable access to communication currently being provided to incarcerated people with disabilities.²

As discussed in our comment, the Commission has the authority to amend and promulgate rules in order to ensure that incarcerated people with disabilities are no longer denied access to equitable forms of communication.³ Accordingly, the Commission must ensure equitable access to communications by prohibiting charges for all accessible calls, changing the registration requirements for using these services, and expanding the reporting requirement to include accessible calls. Doing so will help ensure that the civil and human rights of incarcerated people to access communications on equitable terms are met.

The record unanimously confirms the following:

- The Commission has the required legal authority to amend and implement the proposed rules;

¹ *Rates for Interstate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, Docket No. 12-375, 36 FCC Rcd. 9519 ("Third R&O" and "Fifth FNPRM"), https://docs.fcc.gov/public/attachments/FCC-21-60A1_Rcd.pdf.

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 again 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. (might cut down this time)

³ Comment of Accessibility Coalition at 3–4 (Sept. 27, 2021), <https://www.fcc.gov/ecfs/filing/10927245844157>.

- Incarcerated people with disabilities receive access to critical benefits when their rights to access communications on equitable terms are met, while the denial of these rights results in increased levels of isolation, higher rates of recidivism, and lack of access to proper medical and legal advice;
- Direct forms of communication, including direct video communication and real-time text (RTT), must be provided in carceral facilities;
- Because the Commission should not discriminate based on the form of equitable communication incarcerated people prefer to use, charges for all TRS calls, direct video communication, and RTT should be prohibited; and
- The Commission must amend TRS registration requirements to ensure incarcerated people with disabilities have immediate access to these services upon entering a carceral facility.

Furthermore, the record demonstrates that expanding the reporting requirement to increase transparency of services provided by ICS and TRS providers will ensure incarcerated people with disabilities are provided access to equitable forms of communication. The record likewise shows that ICS providers will not provide equitable forms of communication if not required to do so.

I. The record unanimously confirms that the Commission has legal authority to implement the proposed rules.

The Commission sought comments “on the extent of [its] statutory authority to require inmate calling services providers to provide access to TRS.”⁴ As we explained in our comments, the Commission has authority to promulgate rules governing ICS providers and incarcerated people with disabilities access to telecommunication relay

⁴ Fifth FNPRM, 36 FCC Rcd. at 9645, ¶ 271.

services (TRS) under Sections 225 and 276 of the Communications Act,⁵ supplemented by ancillary jurisdiction under Sections 255 and 716.⁶

The record unanimously confirms the Commission’s legal authority under Section 225 of the Act extends to incarcerated people with disabilities as discussed in our comments.⁷ The record also confirms that Section 276 of the Act, combined with the authority granted in Section 225, grants the Commission authority to ensure the provision of telecommunication relay services (TRS) within carceral facilities.⁸ The Commission’s ancillary authority under Sections 255 and 716 of Act likewise remains unopposed in the record.⁹

ZP Better Together (ZP), Hamilton, and Global Tel*Link (GTL) all affirm the Commission’s conclusion that Section 225 extends to ensuring incarcerated people with disabilities have access to equitable communication.¹⁰ Hamilton “supports Commission action to ensure that more modern forms of TRS are available to incarcerated people”¹¹

⁵ Accessibility Coalition Comments at 3–4.

⁶ *Id.* at 4–5.

⁷ *Id.* at 3–4; *See* 47 U.S.C. § 225(b)(1).

⁸ 47 U.S.C. §§ 225(b)(1) & 276(b)(1)(A).

⁹ 47 U.S.C §§ 255(c) & 617(b).

¹⁰ *See* Comments of Hamilton Relay at 3 (Sept. 27, 2021) (agreeing that access to modern relay services fulfills Section 225’s functional equivalence mandate) <https://www.fcc.gov/ecfs/filing/10927066721479>; Comments of ZP Better Together at 16 (Sept. 27, 2021), <https://www.fcc.gov/ecfs/filing/10927008673658> (stating that incarcerated people are not exempt from the Commission’s mandate to ensure interstate and intrastate telecommunication relay services under Section 225); Comments of Global Tel*Link Corp. at 4 (Sept. 27, 2021), <https://www.fcc.gov/ecfs/filing/10928500017094> (stating that incarcerated people with disabilities are not exempt from the general mandate of Section 225).

¹¹ Hamilton Comments at 2.

and agrees that “[m]odern relay services and equipment are effective means of fulfilling Section 225’s functional equivalence mandate.”¹² ZP concurs:

Most importantly, section 225(b)(1) of the Act requires the Commission “to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States,” [a]nd as the Commission noted in the FNPRM, “incarcerated people are not excluded from this mandate.”¹³

No commenters challenge the Commission’s authority under Sections 225 and 276.

Likewise, there is no argument in the record contradicting the Commission’s authority under Section 276(b)(1)(a) to ensure “telecommunication relay services calls for hearing disabled individuals” are provided.¹⁴ There is also no argument contradicting the Commission’s ancillary authority to require access to modern forms of TRS under sections 255 and 716 of the Act.

II. The record underscores the critical benefits afforded by providing communication through TRS.

The Commission sought comments on the benefits of providing modern forms of TRS within carceral facilities and the extent to which forms of TRS other than TTY-based

¹² *Id.* at 3 (citing Comments of Accessibility Coalition, Docket No. 12-375 at 12 (Nov. 23, 2020), <https://www.fcc.gov/ecfs/filing/1123290918519>).

¹³ ZP Comments at 16.

¹⁴ The discussions of Section 276 in the record generally related to fair compensation of ICS providers for calls made by incarcerated people without disabilities. *See, e.g.*, Comments of Securus at 7 (Sept. 27, 2021), <https://www.fcc.gov/ecfs/filing/10928157404568> (recommending revisions designed to improve the Commission’s ability to set industry-wide just and reasonable rate caps that ensure that providers are fairly compensated as required by Sections 201 and 276); Comments of Pay Tel Communications at 9 (Sept. 27, 2021), <https://www.fcc.gov/ecfs/filing/10927235303275> (arguing that the Commission has an obligation under Section 276 to ensure ICS providers are fairly compensated).

TRS are available within carceral facilities.¹⁵ The record confirms our explanation that providing access to equitable forms of communications ensures that incarcerated people with disabilities receive critical benefits to which their civil rights entitle them.¹⁶

The benefits of ensuring equitable access to communication, including modern forms of TRS, are confirmed in the record. The record further confirms that inmate calling service (ICS) providers and carceral facilities can readily provide modern forms of TRS, including VRS. The record also confirms that access to IP CTS specifically is critically important for incarcerated people who are hard of hearing.

A. The record confirms access to modern forms of TRS brings critical benefits to incarcerated people with disabilities.

As we explained in our comment, decades of advocacy and recent testimonials from formerly incarcerated people with disabilities have shown that access to TRS and efficient forms of communication brings a wide range of critical benefits.¹⁷ These benefits include reduced reincarceration after release, better planning for life after release, decreased feelings of isolation, and better language retention.¹⁸

The record confirms access to equitable communications decreases the isolation felt by incarcerated people with disabilities allowing them to better prepare for life following release.¹⁹ For example, direct video communication allows for incarcerated people with disabilities to communicate in ASL with people who are not incarcerated.²⁰ As we noted

¹⁵ Fifth FNPRM, 36 FCC Rcd. at 9646–9647, ¶¶ 275–276.

¹⁶ Accessibility Coalition Comments at 9–13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7–12.

²⁰ ZP Comments at 10.

in our comment, the ability to communicate with family and friends outside of the carceral facility helps to reduce reincarceration.²¹

Providing modern forms of TRS, also prevents incarcerated people with disabilities—particularly ASL signers—from experiencing language deprivation, which may lead to significant mental health consequences which are only compounded by the concurrent detrimental impacts of isolation on their relationships with loved ones.²² For many, access to telecommunications of modern TRS is a life-saving resource. As we noted in our comment, incarcerated people with disabilities do not have homogeneous communication preferences and some may require different communications technologies.²³ To ensure all gain access to the critical benefits of communication, all forms of modern TRS services must be provided at all carceral facilities.²⁴

As ZP explains, providing modern forms of TRS to incarcerated people with disabilities results in equitable communication which “allow[s] incarcerated people to remain connected with their family and friends, reducing isolation, improving mental health, and increasing the chances of successful re-entries into society.”²⁵ Carceral facilities should not be equivalent to “communicative solitary confinement” for people with disabilities.²⁶ Communicative solitary confinement occurs often when carceral facilities do not provide modern forms of TRS, causing incarcerated people with disabilities to be unable to communicate with people outside the facility or understand information conveyed within the facility.²⁷

²¹ Accessibility Coalition Comments at 9–10.

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ ZP Comments at 21.

²⁶ *Id.* at 3.

²⁷ *Id.*

As ZP explains, facilities have denied incarcerated people with disabilities to miss out on important “medical care, legal rights, and their basic human needs” by failing to provide access to modern forms of TRS.²⁸ Providing equitable communications within carceral facilities would be a step towards ensuring incarcerated people with disabilities can receive medical treatment, communicate with legal counsel, and plan for life after release.

B. The record confirms that TRS providers are currently able to provide these benefits to incarcerated people with disabilities through modern forms of TRS.

The Commission sought comments on the extent to which modern forms of TRS are already being provided within carceral facilities.²⁹ While TRS is not widely deployed, the record confirms that multiple TRS providers have already demonstrated the ability to provide modern forms of TRS within carceral facilities. To do this, ICS providers must work cooperatively with TRS providers.³⁰

Hamilton, a provider of TRS, is currently providing VRS and IP CTS to some carceral facilities without charge to any party while adhering to the Commission’s current rules.³¹ Similarly, ZP is currently providing VRS to multiple carceral facilities.³²

²⁸ *Id.*; see also Department of Justice, *DOJ and Clark County Jail resolve alleged violations of Americans with Disabilities Act*, Press Release, (July 15, 2021), <https://www.justice.gov/usao-wdwa/pr/doj-and-clark-county-jailresolve-alleged-violations-americans-disabilities-act> (arguing that people with disabilities must be given access to equitable communication to avoid them being denied human rights and access to information outside the carceral facility).

²⁹ Fifth FNPRM at 9647, ¶ 276.

³⁰ See Hamilton Comments at 3 (discussing how Hamilton regularly works with the operators of correctional facilities and with ICS providers to provide TRS equipment and service in correctional facilities); See ZP Comments at i (“Working with correctional facilities and ICS providers, ZP currently provides VRS to many incarcerated people who are deaf or hard of hearing.”).

³¹ Hamilton Comments at 3.

³² ZP Comments at 8.

Through its current implementation of VRS in carceral facilities, ZP has seen an increase in accessible communication which other carceral facilities could achieve if the Commission requires VRS to be available in all carceral facilities.³³ The current practices of Hamilton and ZP confirm that equitable forms of communication can be provided to incarcerated people with disabilities to ensure the benefits discussed above.³⁴

One commenter nevertheless contends that there are barriers to providing accessible communication to incarcerated people with disabilities including lack of readily available security software, the registration requirement, and lack of infrastructure required to install the equipment needed for modern forms of TRS and IP CTS.³⁵ Hamilton and ZP demonstrate that implementing modern forms of TRS, such as VRS, is already feasible.³⁶ Furthermore, these barriers do not diminish the critical needs of incarcerated people with disabilities to access communication on equitable terms.

C. Requiring IP CTS in carceral facilities will provide equitable access for people who are hard of hearing.

It is specifically important for the Commission to ensure equitable access needs for requiring access to IP CTS for incarcerated people who are hard of hearing.³⁷ Many people who are hard of hearing rely on IP CTS technology for equitable access to communications. IP CTS enables people who are hard of hearing to view live captions of their conversations while simultaneously being able to speak directly to the called party and use some residual hearing to listen to the conversation. This allows incarcerated people who are hard of hearing to communicate with their attorneys, access outside resources including advocacy, and to maintain connections with their friends and family.

³³ *Id* at 8–9.

³⁴ *But see* Comment of ClearCaptions at 3–5 (Sept. 27, 2021) <https://www.fcc.gov/ecfs/filing/109270842508709>.

³⁵ ClearCaptions Comments at 3–5.

³⁶ Hamilton Comments at 3; ZP Comments, at i.

³⁷ *See* Accessibility Coalition Comments at 9–11.

Incarcerated people who are hard of hearing who have reached out to HLAA consistently report that they face unique additional barriers to gaining access to IP CTS in carceral facilities. Incarcerated people who are hard of hearing often face increased skepticism from carceral officials as to whether they truly require IP CTS. They are often accused of falsely claiming hearing loss. Because people who are hard of hearing can hear in some situations (such as quieter settings) but not others (such as cafeterias and other louder settings), carceral officials often become suspicious of their hearing loss.

Consequently, people with hearing loss who do not have equitable access to communication are often isolated, depressed and alone. The failure of ICS providers to provide adequate IP CTS, combined with carceral facilities' routine denial of IP CTS on the basis of prejudicial speculation, sets a dangerous precedent of dismissal of the needs of incarcerated people who are hard of hearing and effectively strips them of the right to communicate with the outside world. The Commission must therefore require ICS providers to facilitate access IP CTS in carceral facilities to ensure equitable access to communications for people who are hard of hearing.

To ensure equitable access to IP CTS, and to mitigate and prevent mistreatment and skepticism of the need for incarcerated people who are hard of hearing to access IP CTS, the Commission must also work with the Department of Justice (DOJ) to pursue an equitable implementation strategy.³⁸ For example, the Commission should collaborate with the DOJ to require affirmative outreach strategies to identify the unique needs of incarcerated people who are hard of hearing not only at the intake stage of incarceration, but also during incarceration. Many incarcerated people experience disabilities as a result of being incarcerated. For example, many people with disabilities who have reached out to HEARD have reported losing their hearing and/or vision during

³⁸ Third R&O, 36 FCC Rcd. at 9612, ¶ 208.

their time in prison. This would not have been caught at intake because it did not exist at intake. Nonetheless, they are still similarly subjected to mistreatment and skepticism.

The record also highlights that the Commission must be attentive to the quality of IP CTS services as they are introduced into carceral facilities. In 2020, the Commission proposed to amend its rules “to specify and quantify the application of minimum TRS standards to CTS/IP CTS in two areas: caption delay and caption accuracy.”³⁹ Many of the Accessibility Advocacy and Research Organizations have urged the Commission to facilitate robust, efficient, objective, and quantifiable measurement of the quality of these services.⁴⁰ We remain concerned that inexpensive ASR solutions will rapidly overtake human captioners without the Commission having a handle on the quality, privacy, and other tradeoffs involved.⁴¹ The Commission must be mindful that the increased introduction of IP CTS into carceral facilities will both implicate and exacerbate these trends. We again urge the Commission to act quickly to adopt IP CTS metrics.

III. The record shows that the costs from the Commission implementing these proposed rules are minimal compared to the benefits.

The Commission sought comment on the costs of implementing the proposed rules.⁴² The record demonstrates that costs are unlikely to be unduly burdensome to ICS providers.

³⁹ *Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CG Docket Nos. 13.24, 03-123, 10-51, 35 FCC Rcd. 10,866, 10,898, ¶ 66 (October 2, 2020) (“2020 FNPRM”), https://docs.fcc.gov/public/attachments/FCC-20-132A1_Rcd.pdf.

⁴⁰ *E.g.*, Comments of Accessibility Coalition, CG Docket No. 03-123, at iv (Mar. 3, 2021), <https://www.fcc.gov/ecfs/filing/1030387451500>.

⁴¹ *See* Comments of Accessibility Coalition, CG Docket No. 01-123, at 2 (Aug. 16, 2021), <https://www.fcc.gov/ecfs/filing/10816863715918>.

⁴² Fifth FNPRM, 36 FCC Rcd. at 9647–9648, ¶¶ 277–279.

As noted above, TRS providers explain that they currently offer access to modern forms of TRS and direct communications in some carceral facilities.⁴³ Hamilton currently offers RTT and IP CTS technology without charging incarcerated people with disabilities.⁴⁴ ZP also notes their ability to provide VRS services at no charge to incarcerated people with disabilities.⁴⁵ Even one ICS provider claims that it offers VRS in some carceral facilities.⁴⁶

The current use of modern TRS services shows implementing these proposed rules will not be overly burdensome on ICS providers. Indeed, as ZP states:

[I]t is feasible for ICS providers to facilitate access to VRS and for correctional facilities to permit incarcerated people who are deaf or hard of hearing to utilize VRS. . . . [W]e know that it can be done in a safe and reliable manner that provides substantial benefits to incarcerated people who are deaf or hard of hearing.⁴⁷

Moreover, the record is devoid of any data, testimonials, reports, or verifiable sources to demonstrate these costs are burdensome.⁴⁸

⁴³ Hamilton Comments at 1; ZP Comments at i (explaining that ZP is currently able to offer VRS within many carceral facilities through working with the facilities and ICS providers); *see* Securus Comments at 3–4 (stating that Securus enables use of TTY-based TRS and offers VRS to carceral facilities).

⁴⁴ Hamilton Comments at 3.

⁴⁵ ZP Comments at 2–5.

⁴⁶ Securus Comments at 3–4.

⁴⁷ ZP Comments at 8.

⁴⁸ GTL's suggestion that these technologies are not currently available is unsupported in GTL's comment, *see* Global Tel'Link Comments at 4–7, or the record, as Hamilton, ZP, and Securus are currently offering some facilities access to these services, *see* Hamilton Comments at 3; ZP Comments at i; Securus Comments at 3–4. Likewise, ClearCaptions' speculative concerns about costs omit verifiable data or studies suggesting that provision is likely to be unduly burdensome. *See* ClearCaptions Comments at 2–4. Tidal Wave's concerns about enterprise phone systems for IP CTS similarly lack verifiable data or studies about costs and are contradicted by Securus's use of Purple Communications enterprise phone systems. *See* Tidal Wave Comments at 4–5.

IV. The record confirms that direct video communication and real time text should be provided within carceral facilities and governed by the same rules which apply to TRS calls.

The Commission sought comments on the use of direct video communication and direct text-based communication in carceral contexts.⁴⁹ As our comments explain, incarcerated people with disabilities are likely to have varying preferences on which form of equitable communication is best suited to meet their communication needs, and ensuring access to direct forms of communication is critical.⁵⁰

The record confirms that incarcerated people with disabilities have varying communication needs. In some circumstances, incarcerated people with disabilities prefer to communicate through modern forms of TRS; in others, they prefer to communicate through direct forms of communication.⁵¹ Accordingly, the Commission should expand its rules to require ICS providers to facilitate access to direct video communication and real-time text (RTT).

Because the primary language of many deaf people is ASL or other sign languages, only face-to-face communication via direct video communications will result in communication comparable to two people communicating over a standard phone through English or another spoken language.⁵² As NDRN explains, judges in every jurisdiction which has addressed the issue of allowing direct video communication within carceral facilities have ruled that incarcerated people who are deaf cannot be denied access to videophones.⁵³ Because incarcerated people with disabilities cannot be denied

⁴⁹ Fifth FNPRM, 36 FCC Rcd. at 9654, ¶¶ 294–296.

⁵⁰ Accessibility Coalition Comments at 16–18.

⁵¹ Many people with disabilities use both TRS and direct forms of communication.

⁵² Comments of NDRN, HEARD, TDI, & NAD at 8 (Sept. 27, 2021) (“NDRN Comment”) <https://www.fcc.gov/ecfs/filing/10927279044528>.

⁵³ *Id.* at 14–15.

access to videophones, rules governing ICS providers must create complementary obligations to ensure access to direct video communication services.

Although some people with disabilities prefer access to direct video communication, other may communicate best through text-based direct communication such as RTT.⁵⁴ There is nothing in the record in opposition to implementing direct video communication or RTT to ensure people with disabilities have access to equitable communication.

V. The record confirms that the Commission should not charge for any form of TRS calls, direct video communication, or RTT.

The Commission sought comments on adjusting the current charging practices for forms of TRS as well as forms of direct communication, such as direct video communication and real-time text.⁵⁵ As discussed in our comments, section 276(b)(1)(A) prohibits ICS providers from charging for relay calls made by people with disabilities.⁵⁶ Accordingly, the Commission must not charge for accessible communication made by incarcerated people with disabilities which is confirmed by the record. Furthermore, the Commission should not discriminate based on which form of equitable communication an incarcerated person with disabilities prefers—whether TRS calls, direct video communication, or RTT.⁵⁷

The record contains evidence that incarcerated people with disabilities are likely to face heightened burdens⁵⁸ when communicating with people outside of carceral

⁵⁴ Accessibility Coalition Comments at 16.

⁵⁵ Fifth FNPRM, 36 FCC Rcd. at 9653 & 9655, ¶¶ 293 & 297.

⁵⁶ Accessibility Coalition Comments at 14–15; *see* 47 U.S.C. § 276(b)(1)(A).

⁵⁷ *See* discussion *supra*, Part II.A.

⁵⁸ Heightened burdens include the barriers incarcerated people with disabilities face in accessing communications services compared to people without disabilities. These burdens can present themselves as lack of communication with outside family and friends, keeping up to date on carceral facility information, and an inability to communicate with counsel or medical assistance.

facilities. These increased burdens for incarcerated people with disabilities causes them to be likely to spend more time per call to communicate the same amount of information.⁵⁹ In some circumstances, incarcerated people with disabilities are unable to retain much of the information conveyed to them through outdated forms of accessible communication. For example, Thomas Heyer, a formerly incarcerated Deaf person, described how communication with people outside of carceral facilities was burdensome and resulted in him missing out on much of the information being conveyed to him.⁶⁰

There is no argument in the record that Section 276's prohibition on charging for "telecommunication relay service calls for hearing disabled individuals" does not apply in carceral facilities.⁶¹ Accordingly, ICS providers and TRS providers must not charge any party to a TRS call.⁶² Because providing direct video communication and RTT helps ensure incarcerated people with disabilities are given access to equitable communication, incarcerated people with disabilities should not be charged for these services. There is also no argument in the record opposing prohibiting charges for access to direct video communication and RTT.

VI. The record confirms registration requirements for TRS and IP CTS must be amended to allow access to efficient communication for all incarcerated people with disabilities.

The Commission sought comments on whether the rules that govern the registration process for TRS should be amended to ensure access to these services within carceral facilities.⁶³ The record confirms that the current TRS registration requirement must be amended to include all access to modern forms of TRS within carceral

⁵⁹ NDRN Comments at 7.

⁶⁰ *Id.* at 6, 15–16.

⁶¹ *See* 47 U.S.C. § 276(b)(1)(A).

⁶² *See* Third R&O, 36 FCC Rcd. at 9611, ¶ 206.

⁶³ Fifth FNPRM, 36 FCC Rcd. at 9650, ¶ 284.

facilities.⁶⁴ The current registration requirements were designed for people who are not confined within carceral facilities, have access to a personal calling device, and reside at a single address. To address the barriers that the registration requirement imposes, the Commission should amend the requirement to allow for both individual registration and device-based registration within carceral facilities.

Current IP CTS registration requirements pose particular problems for incarcerated people with disabilities and need amendment. When one person is registered to one address, difficulties may arise where there are many individuals needing devices and not enough devices to accommodate every person. Thus, it is critical for the Commission's rules to facilitate facility-wide enterprise-style registration for carceral facilities instead of requiring individual device registration. Facility-wide registration will also increase transparency within carceral facilities because the Commission will know which facilities have registered for IP CTS.

While IP CTS should use sitewide registration basis, ICS providers should facilitate both group and individual registration for VRS, with at least one videophone registered to a facility and individual registration available to set up accounts for people who need them. Allowing incarcerated people with disabilities to register individually would allow their registration to be transferred between carceral facilities. This is especially important considering the transient nature of incarcerated people in carceral facilities. When users are already in the relay registration system, they can move between facilities and still maintain access to relay services through their individual accounts. This dynamic will benefit formerly incarcerated people with disabilities and their families, friends, and legal advisors because they will have access to TRS immediately after release through their individual registration.

⁶⁴ Hamilton Comments at 4.

It is critical for the Commission to take pragmatic measures to eliminate barriers making facility-wide TRS registration and individual VRS registration unduly burdensome. The Commission should require ICS providers to work with carceral facilities to resolve issues concerning device usage and which users are using which devices, as well as other bookkeeping issues.

VII. The Commission should expand the reporting requirements by ICS and TRS providers to ensure transparency of equitable communications provided in carceral facilities.

The Commission sought comments on the benefits and burdens of expanding the reporting requirements of carceral facilities to include all forms of accessible communications.⁶⁵ As our comment explains, the Commission should expand the reporting requirement to cover all accessibility-related calls in order to ensure equitable communication services are being provided within carceral facilities.⁶⁶ The reporting requirement should be expanded to include which forms of accessible communication are available at each facility, the amount of call time spent on each form of accessible communication, and the number of individuals in each carceral facility registered to use these each form of the associable communication services.

ZP contends that increasing reporting requirements will discourage ICS and TRS providers from providing accessible communication services within carceral facilities.⁶⁷ However, ICS providers are already required to submit annual reports to the Commission, so increasing the reporting requirement to include data specific to the use of accessible communication services would not create extensive burdens for these providers.⁶⁸ Furthermore, ICS and TRS providers should already be required to provide

⁶⁵ Fifth FNPRM, 36 FCC Rcd. at 9650, ¶ 284.

⁶⁶ Accessibility Coalition Comments at 18–19.

⁶⁷ ZP Comments at 15.

⁶⁸ *Rates for Interstate Inmate Calling Services*, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, Docket No. 12-375, 35 FCC Rcd. 8485, 8532–

access to equitable forms of communications within carceral facilities, so the reporting requirement should not serve as a justifiable reason for ICS providers to provide these services.

Moreover, the benefits from amending the reporting requirement are likely to outweigh the costs. As our comment explains, there is little data on how many facilities provide access to modern forms of TRS or other equitable communication services.⁶⁹ However, the record reflects that “only 19% of deaf inmates have access to TTY systems in good working condition.”⁷⁰ Increasing the reporting requirement would eliminate this lack of data transparency and allow the Commission better oversight to ensure that ICS providers are providing access to equitable forms of communication within carceral facilities.

VIII. The record confirms that ICS providers will not provide access to equitable communication to incarcerated people with disabilities if not required by Commission rules.

It is clear from the record that ICS providers will not provide modern TRS services for incarcerated people with disabilities without Commission action. ICS providers are not required to wait for the Commission’s approval to provide access to modern TRS services to incarcerated people with disabilities, and have long possessed the capability of implementing and providing access to modern TRS services to carceral facilities. For more than a decade, they have had the opportunity to address and overcome technical challenges and implement registration processes, but have not taken the actions necessary to ensure ubiquitous, equitable access.

8534, ¶ 132 (Aug. 7, 2020), <https://www.fcc.gov/document/fcc-seeks-reduce-rates-and-charges-inmate-calling-services-0>.

⁶⁹ Accessibility Coalition Comments at 6–7.

⁷⁰ See Christie Thompson, Why Deaf Prisoners Can’t Call Home, The Marshall Project (Sept. 19, 2017), <https://www.themarshallproject.org/2017/09/19/why-many-deaf-prisoners-can-t-call-home> (cited by ZP Comments at 6 & n.18).

The time has long passed to allow ICS providers to voluntarily facilitate the provision of equitable access to communications to incarcerated people with disabilities. As NDRN explains, incarcerated people with disabilities are currently being denied access to communication, and have been for some time.⁷¹ This has forced incarcerated people with disabilities to live in a prison within a prison. They are isolated from their loved ones on the outside⁷² and are denied access to communication with staff, doctors, or other people.

As ZP explains, “things do not have to be this way.”⁷³ ICS providers have long had it in their power to correct these wrongs and provide access to modern TRS services and direct video and text communications. Their failure to do so compels the Commission to exercise its power to stop the long-standing denial of equitable access to communications for incarcerated people with disabilities.

⁷¹ NDRN Comments at 7.

⁷² *Id.* at 15.

⁷³ ZP Comments at 4.