



## Insight

# FCC Moves to Reduce Costs of Phone Calls from Prison

TARA O'NEILL HAYES, JENNIFER HUDDLESTON | AUGUST 6, 2020

### Executive Summary

- The high cost of phone calls from jail or prison can be prohibitive for many incarcerated individuals and their families, leading to minimal communication, strained relationships, greater likelihood of recidivism, poor mental health, and behavioral problems among children of the incarcerated.
- As an estimated 80 percent of phone calls from prison or jail are intrastate calls, the Federal Communications Commission (FCC) has limited authority to regulate costs and most states have failed to use their authority to meaningfully reduce costs.
- A new rule adopted by the FCC will reduce existing rate caps for interstate prison calls and regulate the costs of ancillary fees for all calls, but without each state taking action to reduce the cost of calls, Congress would need to expand the FCC's authority over intrastate calls in order for the agency to be able to regulate the costs of such calls.

### Introduction

Maintaining communication and relationships with family while in prison is important for the incarcerated individual's success following release as well as for the wellbeing of the children of the incarcerated. The primary way incarcerated individuals keep in touch with those outside is through phone calls, particularly when individuals are incarcerated far from home but even more so now that the coronavirus pandemic has led to visitation restrictions. Oftentimes, however, the calling rates are prohibitively expensive—particularly since the majority of [individuals incarcerated are lower-income](#)—and incarcerated individuals may not be able to maintain regular contact as a result. The loss of connection can lead to poor mental health and, after the prisoner is released, trouble reintegrating into society, which

leads to an increased likelihood of recidivism.

A key challenge to reducing the cost of phone calls is the lack of competition: Most prisons and jails contract with a single phone service provider that can charge high rates as a result of its monopoly.[1] The Federal Communication Commission (FCC) has authority to regulate rates for *interstate* calls, but 80 percent of phone calls from prisons and jails are *intrastate*, where the authority resides with the states.[2] A recent court order allows the FCC to regulate the costs of ancillary fees associated with phone calls, which it is now doing, but without congressional action to expand the FCC's authority, it does not have the ability to regulate the base cost of the majority of phone calls.

### **The Benefits of Maintaining Relationships While Incarcerated**

Numerous studies have shown the myriad benefits that result from an individual maintaining relationships with loved ones while incarcerated.[3] While in prison, regular contact and communication with family members helps people maintain good mental health.[4] Because mental health problems are strongly correlated with a likelihood of being imprisoned, maintaining mental health is important for reducing recidivism.[5]

Following release, it is important for the formerly incarcerated to have a strong support network, particularly given that most of those just out of prison struggle to find employment and are often ineligible for government assistance, as explained [here](#). As such, 82 percent of inmates expected to rely on family and 74 percent on friends in order to meet their needs following release.[6] Family members can provide housing, financial support, leads on employment opportunities, mental health support, and discourage drug use, all of which are important for an individual's wellbeing. Among those incarcerated, roughly 40 percent are reported to be struggling with a mental health issue, and more than half are struggling with drug use or dependence.[7] A study in Baltimore found three-fourths of all individuals released from prison reported that strong family support was an important factor for staying out of prison; individuals who were employed and individuals not using drugs following release were more likely to have higher Family Support, Partner Support, and Family Relationship Quality scores, as rated by the study's authors.[8]

A lack of communication also negatively impacts the children of incarcerated individuals.[9] One study found that having a parent incarcerated increased the odds of a child having worse health outcomes (both mental and physical) for 8 out of 16 conditions measured.[10] Maintaining a bond between parents and children can help reduce the negative health outcomes and behavioral challenges that often develop in children lacking a strong parental bond.[11] [12] And a significant number of incarcerated parents have no or limited contact with their children. According to a 2008 report from the Bureau of Justice Statistics, 21

percent of incarcerated parents had no contact at all with their children while incarcerated. Further, 47 percent never spoke with their children over the phone, and 58 percent had not had an in-person visit with their children.[13]

## **Current Rules**

One survey found that 69 percent of respondents reported calling costs were the key obstacle to keeping in touch with an incarcerated family member, and more than one-third of those surveyed went into debt because of phone and visitation costs.[14] Incarcerated persons have limited options when it comes to how to communicate. If phone calls via the prison provider are too expensive, the alternatives are not to switch providers or use a different type of service, as a typical consumer could do, but instead to use entirely different modes of communication such as letter writing or even wait for in-person visits (which can also be costly and burdensome).

To address these concerns, in February 2014, the FCC implemented a rate cap of 21 cents per minute on interstate long distance calls and 25 cents per minute on interstate collect calls.[15] Rates for intrastate calls, however, can be much higher. As the FCC notes in its letter to the National Association of Regulatory Utility Commissioners, “[t]hirty-three states allow rates that are at least double the current federal cap, and 27 states allow excessive ‘first-minute’ charges up to 26 times that of the first minute of an interstate call.” Call rates are highest from local jails, where [three-fourths](#) of individuals being held have not been convicted of a crime: The average cost for a 15-minute phone call in 2018 from a local jail was \$5.74.[16] For comparison, a 15-minute long-distance call using a landline in the United States costs between \$0.38 and \$1.50 while the average cost of a 15-minute international call to Mexico is \$0.29 (plus possible fees).[17] For the majority of people who now use cell phones with unlimited calling rates, most are able to talk as long as they’d like at no additional cost.

In addition to per-minute charges, numerous ancillary fees are also charged for each phone call and can increase the cost of a call by as much as 40 percent.[18] Ancillary fees may be charged for opening an account (required to make calls and pay the bill), having an account, closing an account, receiving the bill, paying the bill, etc.[19] While the FCC has previously capped many of these fees, reports indicate that some providers have found ways around these limits.[20] [21]

In 2016, the [FCC issued an order](#) that would lower the rate caps for interstate calls as well as impose caps on intrastate calls and limit ancillary fees, but this order was stayed and then later vacated by the courts. In 2017, the Court of Appeals for the District of Columbia Circuit found the FCC had overstepped its authority by limiting intrastate call rates, but

upheld its regulations of inmate interstate and international call rates based on its current authority under the 1934 Communications Act.[22] The court also directed the FCC to consider if such ancillary fees could be separated into interstate and intrastate charges.

### **The FCC's Latest Action**

On Thursday, the FCC voted on a draft order and final notice of proposed rulemaking that responds to the prior directives and parameters of the D.C. Circuit ruling. The FCC's order finds that ancillary fees are generally not separable between intrastate and interstate calls and as such fall within the FCC's authority and rate caps. Because these charges are not limited to only intrastate action and are applied to interstate calls, this proposed order falls within the FCC's authority over interstate communication. In capping these rates, the FCC is not regulating intrastate call rates but is ensuring that regulation within its authority is properly applied.

In addition to addressing concerns regarding these ancillary fees, the FCC is also proposing rules to lower the costs for interstate calls and to apply a cap to the fees for international calls as well. Based on its current authority, it is unable to set similar fee caps on in-state calls. To address concerns regarding intrastate calling, local Public Utilities Commissioners could issue their own caps as Chairman Pai has urged them to and some states have already done.[23] Legislative proposals have also sought to expand the FCC's authority under the Communications Act to allow regulation of all inmate calls.[24] While in-state prison calling may appear to be only an intrastate issue (and thus outside of the purview of the federal government under the commerce clause), there is sufficient question around whether the purely intrastate market has substantial effect on the national market that such federal regulation could likely pass constitutional muster.[25]

### **Conclusion**

The FCC's recent action will help reduce the cost of phone calls for individuals incarcerated and their families. Reducing these costs is expected to help individuals maintain relationships while they are incarcerated, which is beneficial to their wellbeing and that of their loved ones, particularly their children. Further, strong family relationships are critical for a successful reentry into society following release. Evidence shows that people who are able to maintain good relationships with loved ones while incarcerated are less likely to be reincarcerated later. In this regard, it is in the public's interest to reduce the costs of communication for the incarcerated population.

[1] <https://docs.fcc.gov/public/attachments/DOC-365581A1.pdf>

[2] <https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf>

- [3] <https://aspe.hhs.gov/basic-report/prisoners-and-families-parenting-issues-during-incarceration>,  
<https://www.urban.org/sites/default/files/publication/24921/1001630-Families-and-Reentry-Unpacking-How-Social-Support-Matters.PDF>
- [4] <https://aspe.hhs.gov/basic-report/prisoners-and-families-parenting-issues-during-incarceration>
- [5] [https://www.who.int/mental\\_health/policy/mh\\_in\\_prison.pdf](https://www.who.int/mental_health/policy/mh_in_prison.pdf)
- [6] <https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf>
- [7] <https://www.rstreet.org/wp-content/uploads/2018/10/Final-Short-No.-63-1.pdf>
- [8] <https://www.urban.org/sites/default/files/publication/42841/410974-Returning-Home-Understanding-the-Challenges-of-Prisoner-Reentry.PDF>
- [9] [https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s\\_nmfis04report.pdf](https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_nmfis04report.pdf)
- [10] <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3608482/>
- [11] [https://www.urban.org/sites/default/files/publication/89601/parent-child\\_visiting\\_practices\\_in\\_prisons\\_and\\_jails.pdf](https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf)
- [12] <https://www.prb.org/mass-incarcerations-toll-on-families/>
- [13] <https://www.rstreet.org/wp-content/uploads/2018/10/Final-Short-No.-63-1.pdf>
- [14] <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>
- [15] <https://www.fcc.gov/document/fcc-releases-order-reducing-high-inmate-calling-rates>
- [16] [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)
- [17] <https://electronics.costhelper.com/long-distance-phone.html>,  
<https://fitsmallbusiness.com/how-much-does-international-calling-cost/>
- [18] [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)
- [19] [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)

[20] <https://www.fcc.gov/consumers/guides/inmate-telephone-service>

[21] [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)

[22] *Global Tel\*Link v. FCC*, No. 15-1461 (D.C. Cir., Jun. 13, 2017)

[23]

<https://news.bloomberglaw.com/tech-and-telecom-law/fcc-chief-urges-states-to-crack-down-on-high-prison-phone-rates>

[24]

<https://www.duckworth.senate.gov/news/press-releases/duckworth-portman-booker-schatz-markey-and-king-introduce-bipartisan-bill-to-address-predatory-phone-rates-in-criminal-justice-system>

[25] <https://harvardlpr.com/wp-content/uploads/sites/20/2020/03/Fuchs.pdf>