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Exploiting Inmates

Phone companies and correctional facilities are reaping big profits by charging inmates huge fees to stay connected with their families. Reformers say it needs to stop.

By Sukey Lewis

Abstract:

Phone calls from jail are hugely expensive—often many times the cost of regular cellphone calls. Some might argue that overpriced phone rates are just another consequence of getting oneself arrested, but certain researchers and law enforcement experts say the high cost of communication for inmates hurts us all. Studies show that family bonds are crucial to helping fight recidivism. So why make these connections even harder to maintain by charging up to a \$1 a minute for phone calls?

First off, the customers—inmates and their mothers and wives and children—are not the ones selecting the provider. It is the correctional facility that does that. Within that jail or prison, the customers have no choice—they must use that provider. This creates a monopoly, with providers incentivized to attend to the needs of jails and prisons rather than inmates and their family members.

The second part of the problem is that state correctional facilities and local sheriff departments get a cut of the revenue from every phone call. These funds are used for everything from inmate programs to general fund money to salaries and benefits for personnel. So, the facilities award contracts to the large inmate telecommunications companies based on how much revenue they promise to deliver. The euphemism for these kickbacks is “site commissions.” The result has been providers competing to offer *higher* rates to inmates, rather than lower ones.

Some, including the sheriff of San Francisco, say this is effectively double-taxing poor people.

Last year, the FCC put a cap, limiting the cost of state-to-state (interstate) calls. Then a month ago, the commission said it was going to take action on in-state calls (which account for 80 percent of all calls).

They are proposing to do away with “commissions” altogether, leaving a large hole in the budgets of states and counties across the country. Some say the budget cuts will result in cuts to programs and services for inmates—hurting them more than helping them.

“You can’t rob Peter to pay Paul,” says Adam Christianson, sheriff of Stanislaus

County and president of the California State Sheriff's Association. "Either way, at the end of the day, this does nothing more than hurt the very people we're trying to help. That's the bottom line.... Let us take care of the folks that need our services, and the FCC really needs to go find something else to do."

The final piece of the puzzle are the huge fees that phone providers tack on to make up for the money they are losing in site commissions to facilities. These fees produce an incentive for crappy service (for every dropped call the inmate has to pay a large connection fee), and the phone companies have been very slow to respond to customer complaints—after all they have a monopoly, so they don't really need to.

"There are a lot of parasites fighting over this carcass," says Paul Wright of the Human Rights Defense Council. My story is an examination of the problems that have been created by this basic market failure, and the solutions the FCC is proposing.

Source List: Rita Figueroa, San Francisco Sheriff Ross Mirkarimi, Contra Costa County Assistant Sheriff Matt Schuler, Federal Communications Commissioner Mignon Clyburn, Christina Mansfield Co-executive Director of Community Initiatives for Visiting Immigrants in Confinement, Paul Wright of the Human Rights Defense Center, Aleks Kajstura of the Prison Policy Initiative, Filiberto Fuentes, inmate at the West County Detention Facility in Richmond, Adam Christianson, sheriff of Stanislaus County and president of the California State Sheriffs' Association, and Contra Costa County Supervisor John Gioia.

Article

Rita Figueroa's phone call always began the same way: "This call is being monitored and recorded for security purposes." Once the automated recording ended, Rita would hear her husband on the line. "Hola," Roberto would say. Then Rita's questions would start: How were the kids doing in school? Was David still getting bullied? Was Astrid eating enough?

In the Richmond shelter where Roberto and the kids lived at the time, they took turns passing the cellphone to each other, hoping to talk to Rita for a few more minutes. As Rita quizzed and listened to her seven-year-old son and her twelve-year-old daughter, another female inmate usually hovered a few steps away from the small bank of jailhouse phone booths, waiting for her fifteen minutes to call her husband, her mother, or her child.

Rita was inside the West County Detention Facility in Richmond, jailed there for four months on an immigration charge early last year. While behind bars, Rita tried to call her family twice a week — when they could afford it. "My husband didn't have work, so the little money he was able to collect he gave to me so I could have money to eat — and for these calls," Rita said through a Spanish-language interpreter after she was released from custody.

For Rita — like many of the more than two million men, women, and children held in state prison and county detention systems throughout the country — a phone call from behind bars can cost up to one hundred times the cost of a payphone call. And because a system of perverse incentives allows both telecommunications companies and detention centers to benefit directly from costly phone charges, inmates' calls have grown steadily more expensive in recent years, even as technology advancement and marketplace competition have made communication easier and cheaper for the rest of society.

On top of the high rates, phone companies tack on multiple fees and surcharges to inmate phone calls. There are fees to connect and deposit money and for validation. There are even fees to obtain a receipt. Rita said she never saw an itemized bill — just the regular evidence of money evaporating from her inmate financial account. “My husband would deposit \$50, and they would only let us talk about five or six minutes,” she said. “Then the balance would go all the way down to \$15.”

Nearly half of Rita's money went back to the very facility where she was jailed. Throughout the country, such kickbacks from inmate phone call revenue are used to pad state general funds, pay jailers' salaries, and finance inmate programs and services. This system of “commissions” paid from phone companies to correctional departments, which has evolved over the past thirty years, has driven up the cost of inmates' family connections, and sparked increasing calls for reform.

The high cost of communication for inmates has widespread impacts. It's often not just the people who are arrested or convicted who pay the phone bills — it's the grandmothers and mothers, the husbands and sons. And when they can't pay? Inmates simply lose touch with their families. And studies show that family bonds are one of the strongest prophylactics against recidivism.

“It's really very heartbreaking to witness the impact that these systems have on people; these people are already in very precarious situations,” said Christina Mansfield the co-director and cofounder of San Francisco-based nonprofit Community Initiatives for Visiting Immigrants in Confinement or CIVIC, which has been working to lower phone call rates for inmates like Rita. “The fact that they are gouged at every step of the way — it's terrible.”

This year, thanks largely to a push by Washington, DC-based Federal Communications Commissioner Mignon Clyburn, the inmate phone system is likely going to experience some profound changes. The FCC's proposed new rules, for which the comment period ended last week and which may be voted on soon, are intended to undo some of the perverse incentives and unfair charges levied against incarcerated people and their families.

However, many county jail and corrections officials oppose any plan to cap, rollback, or eliminate expensive phone calls. They contend that the steep phone charges pay

for essential services, including reentry and training programs designed to keep people from reoffending and returning to custody. Nonetheless, FCC officials and inmate advocates say the current system does more harm than good and that it's time for reform. "We are determined to address this in a way that is both sustainable and fair," Clyburn said in interview, "to make sure that these families, these friends, and their legal advisors have a way to keep in touch, a way to provide adequate advice, and — most importantly for me — for those 2.7 million children who have at least one parent in prison, to ensure that they have a regular communications vehicle in order for them to thrive as best they can in an already difficult situation."

The market monopoly at the heart of the sky-high phone rates in jails and prisons results from a basic disconnect between users and providers. When ordinary consumers sign contracts with AT&T, Verizon, or T-Mobile they make a choice about which company offers the best service and rates for their area. If they receive poor service or believe they've been subjected to unfair charges, they can switch carriers.

But inmates and their family members have no choice. They must use the company selected by the correctional facility. And back in the 1980s, the CEO of an inmate phone services company found a creative way to access these monopoly markets inside jails and prisons, said Paul Wright, who has extensively researched the inmate phone market and is the director of the Florida-based Human Rights Defense Center.

According to Wright, Barry Fitzgerald, who ran North American InTelecom, started offering correctional facilities a cut of each phone call in exchange for exclusive contracts. Many facilities then used the money they received from these calls to boost their correctional budgets. Wright referred to the practice as a kind of "legalized bribery," and said it soon caught on throughout the inmate-phone industry.

As these once-novel contracts became standard, traditional telecommunications companies backed away from the inmate phone market, and were replaced by new "inmate-only" phone companies, many of which are owned by private hedge funds. These companies now dominate the \$1.2 billion a year industry. By 2015, county detention systems nationwide and 42 state governments had negotiated some kind of kickback contract with inmate telecommunications providers.

The primary criterion in awarding most phone contracts now is not service, security or cost — it's the kickback, known in the industry as a "commission." Correctional facilities use these commissions for inmate education programs, staff salaries and benefits, and more.

Although California prohibited commissions for state-run facilities in 2007, the ban doesn't apply to local jail systems. About half of what Rita Figueroa paid to call her

family went directly back to the Contra Costa County Sheriff's Office, which operates the Richmond jail, to pay for benches, television repair, ESL education, and chaplain programs. While the percentage taken by facilities varies from state to state and county to county, one thing seems clear — the commissions these facilities receive keep getting fatter.

A little more than a year ago, the Contra Costa County Sheriff's Office was poised to ink a new contract with the Alabama-based inmate phone company Global Tel* Link. According to emails received through a public records request, the new contract would have included a \$75,000 to \$125,000 signing bonus from Global Tel* Link to the sheriff's office and would also have raised from 56 to 65 percent the chunk of phone call revenue paid to the sheriff. While pressure from community groups ultimately quashed the deal, representatives from Prison Policy Initiative, a Massachusetts-based nonprofit, said increases like this are happening around the country.

"The problem is so cyclically entrenched," said Prison Policy Initiative researcher Aleks Kajstura. "The scale of the system is pretty shocking."

In 2013, according to documents filed with the FCC, jails and prisons nationwide received \$460 million in phone commissions. In Contra Costa County, the sheriff's office raked in about \$700,000 from phone revenue for that year, according to public records.

Jail officials don't deny that they're receiving these funds — on the contrary, they say they've come to rely on the revenue to provide inmates with essential services. "We're trying to benefit them," said Contra Costa County Assistant Sheriff Matt Schuler. "We're trying to get them back in our communities as productive citizens."

Fourteen years ago, Martha Wright filed a class action lawsuit against the Corrections Corporation of America, alleging that the company colluded with inmate phone providers to charge her exorbitant rates whenever she called her incarcerated grandson. The case was referred to the Federal Communications Commission by a district court judge. But Wright's petition went nowhere at the FCC for nearly a decade.

Then, finally in 2013, in response to Wright's petition, the FCC took a first tentative stab at limiting the ballooning rates for inmate phone calls. It placed a blanket "rate cap" on all state-to-state calls. This means an inmate like Rita Figueroa in California could call Hawaii, New Mexico, or any other state for about \$3.50 for a call — and no fees or commissions can be added on top of that. Since the cap was established, calls between states jumped by as much as 70 percent. The regulation seemed to be working: more inmates could connect with loved ones far away.

However, the cost of calls within states remained higher than ever, and sheriff and corrections departments started finding ways to game the system. In Contra Costa County, the sheriff's office cut a deal with Global Tel* Link to keep from losing revenue. Instead of a commission from interstate calls, the sheriff now gets a so-called "technology allowance," which is a lump sum payment from the phone company that basically makes up the difference in what, absent FCC regulation, the sheriff would have been pocketing from state-to-state calls.

Filings submitted to the FCC show that the Contra Costa County Sheriff's Office is not alone in its efforts to maintain the status quo. Across the state and the nation, cash-strapped counties and corrections departments are wheeling and dealing — trying not to lose their slice of the lucrative inmate phone services market.

And the FCC's order had another unintended consequence. In all but a few cases, states, counties, correctional departments, and inmate phone companies scrambled to make up for the loss of revenue on interstate calls in other ways — upping both the kickbacks and the fees charged to inmates and their families. By the fall of 2013, the highest inmate facility phone commission reported to the FCC was 88 percent — that is, the facility received 88 percent of the basic phone rate charged to inmates and their families. A year later, the high water mark had jumped to 96 percent. So while state-to-state calls were cheaper under the new FCC rule, intra-state calls (like what Rita Figueroa was making) — local calls or calls within the state, which are by far the majority (85 percent) of the calls inmates make — were getting more expensive, according to filings with the FCC.

"There are a lot of parasites fighting over this carcass," said Wright of the Human Rights Defense Center. "These are the poorest people in our society."

Activists say skyrocketing phone charges are the product of inmate phone companies competing with each other to offer higher commissions to inmate facilities — rather than lower rates to the people who use the phones: inmates and their families. It's called "reverse competition," and the FCC regulators say this force drives the market's inequity. "It is very clear seeing some of these trends, that it is time for us to act," Clyburn told me.

So, on October 17, 2014, Clyburn addressed her fellow commissioners at an FCC meeting in Washington, DC. "If there ever was a time to stand up for fundamental fairness, this is it," she began. Clyburn, who is the former chair of the FCC, wore an elegant deep purple suit, her black hair tied back in a bun, as she read from a prepared statement looking up often to stress a point or engage the audience. "While today's vote cannot make up for the inactions of the past," she said, "it is my hope that an expeditious move to a final order will finally bring relief to the 2.7 million children who just want to hear that parent's voice, and show that the process can work for them, too." Clyburn's voice faltered and broke, and for a moment, she was overcome with emotion.

Clyburn's speech was remarkable in light of the setting. The FCC chambers in the nation's capital are usually host to a cacophony of telecommunications jargon: megahertz, gigahertz, conduits, spectrum, antenna structures, and the like. The government agency in charge of overseeing the vast array of US communications markets and technologies handles important issues, but they are also ones of such technical and regulatory density that few outsiders are ever moved by them. "There are so few issues that have real personal emotion and individual impact associated with them," said Chair Tom Wheeler, after Clyburn finished speaking. "You used the term 'persistent heroine' to describe Ms. [Martha] Wright, I think we're talking about two 'persistent heroines.'" Wheeler raised two fingers toward the assembled audience. "So, thank you, Commissioner Clyburn."

In response to Clyburn's efforts, the FCC passed its "Second Further Notice of Proposed Rulemaking" — the last procedural step before adopting a regulation. Though Martha Wright passed away on January 20, 2015, and will never get to see this regulation enacted, it could offer hope to people like her and Rita Figueroa all across the country.

The rulemaking proposes to phase out commissions over the next two years, implement a new regulated rate structure, and significantly cut the high fees charged by inmate phone companies. During the past three months, the agency has received hundreds of public comments on the proposal from district attorneys, judges, inmates and their family members, phone companies, local law enforcement, state correctional facilities, and advocacy groups. Now that the comment period is closed, the commission will analyze and consider everyone's input before voting on a final rule.

"We're looking at the overall structure of this regime," Clyburn told me, "and what we're putting forth is what can be legally charged to these families and to these inmates is what is based on a cost-based structure. We know these site commissions and these fees — they are distorting the market. What we're attempting to do here is have a market-based structure that will discourage all such conduct that would discourage contact."

Global Tel* Link (GTL) and Securus, which is based in Texas, are the two largest inmate phone services companies in the nation. Together, they control about 80 percent of the market. And according to the Better Business Bureau website, they have had hundreds of complaints filed against them in the past three years. In addition, in just the past two years, the FCC has received about three hundred complaints about these companies, alleging shoddy service, lack of transparency, and graft, records show.

If site commissions are a significant part of the problem, a second and related issue is that when a company holds a monopoly there is little incentive for it to respond to

user complaints or provide better service. In fact, there may be an incentive to do the opposite.

Of course, this \$1.2 billion a year industry does have an important responsibility — preventing criminals from using phones in jails and prisons to plan and execute new crimes. In filings submitted to the FCC, these companies justify their steep rates and fees by pointing to their crime-prevention responsibilities. They argue that they need to charge high fees to pay for monitoring and security features.

In Contra Costa County, Assistant Sheriff Schuler said enhanced security features on inmate calls are vital to running the jail. “We have a responsibility to keep safe and secure facilities,” he said. “To go back and see recorded phone calls ... to see if any criminal activity is going on within our facilities — any plans to escape, those sort of things — costs [money].”

Last summer, the FCC requested cost data from all the major inmate communications companies. Before passing further rate caps, the agency wanted to get a handle on exactly how much these calls cost to provide.

While there were discrepancies in the data (some companies claimed costs of .04 cents a minute, while others claimed five times that amount), it did show some consistent trends and pointed to possibilities for reform, including scrapping the current system of kickbacks for facilities.

The data also showed where the biggest customer rip-off stems from (next to the commissions) — the ancillary fees. Fees are not a part of the basic rate, so the phone companies do not “share” any of this revenue with the facilities. And as the commissions paid to jails and facilities have grown, so have these fees, according to research by the Prison Policy Initiative.

There are fees for just about everything. “Convenience” fees range from about \$2 to \$10 for each deposit that is made into an inmate or family member’s phone service account. Some of the other fees include but are not limited to — single-bill fees, biometric service charges, regulatory and carrier cost recovery fees, validation surcharges, network infrastructure fees, wireless administration fees, and even fees to receive a refund. Most of these fees are automatically deducted from a family member’s phone service account or an inmate’s jail account with no itemized receipt.

“These fees are charged at every step of the process,” Kajstura of Prison Policy Initiative told the FCC in July at a Washington, DC workshop on inmate phone services reform. “They’re charged for taking the customer’s money, for then holding the customer’s money, and then if the customer wants their money back because their loved one is out of the facility, they charge money there, too.”

In addition, the initial fee to connect a call typically costs about \$3. However, inmate phone calls often get dropped, which forces inmates and their families to reconnect — and pay more fees. Inmate phone services companies say they drop calls when they suspect that a person on the line is trying to do a “three-way call” — illegally forwarding an inmate’s call to an unapproved third party. However, the high fees for the first minute also create an incentive for the company to drop a call even when the call is perfectly legitimate.

“Yes, these phone companies are notorious for having very bad service,” said Mansfield of CIVIC. “And the calls are very often dropped, and at that point, when the call is dropped, the family is then required to pay the first-minute fee again.”

Filiberto Fuentes, another inmate in West County Detention Facility in Richmond, said making phone calls was especially important when his son tried to commit suicide shortly after Fuentes was incarcerated on a drug charge. But his efforts to connect with his family were frustrated by dropped calls, static, and poor service, he said. “There’s no three-way going on or things like that for them to drop the phone calls,” he said. “A lot of people complain.”

Prison Policy Initiative estimates that throughout the country inmates and their families shell out \$386 million in fees each year — that’s on top of the very high per-minute rate. The FCC is looking at how best to curb these fees — from an outright ban on certain types to some sort of cap or limit on how much companies can charge.

From Assistant Sheriff Schuler’s perspective, the issue is not as simple as reform advocates make it sound. “One hundred percent of the revenue goes to inmate programs,” Schuler said of the commissions that the sheriff’s office receives. The programs, he added, keep inmates “occupied while in custody, helps them not reoffend, gets them prepared to reenter into society with more of a seamless transition than to have them out there without any help.”

What Schuler is referring to is a law in California and some other states that requires all phone call revenue to be used for “inmate welfare.” Corrections officials say that without commission funding, many inmate services and programs will have to be cut or eliminated.

“You can’t rob Peter to pay Paul,” said Adam Christianson, sheriff of Stanislaus County and president of the California State Sheriffs’ Association. “Either way, at the end of the day, this does nothing more than hurt the very people we’re trying to help. That’s the bottom line. ... Let us take care of the folks that need our services, and the FCC really needs to go find something else to do.”

California, which has shifted many inmates convicted of felonies from overcrowded state prisons to county jails, has been trying to slash both the total number of inmates in the state and the percentage of them who wind up back in custody within a few days, months, or years of being released.

The state and its 58 counties, including Contra Costa, have been focused on increasing inmate access to reentry services — job training programs, drug treatment, education, and the like. Of course, these expanding services cost money, and while state funding pays a chunk of it, Shuler said the sheriff's office needs the phone commission revenue to keep its programs going. "I feel for them — those folks that don't have money to pay for it," he said. "But we have to look at the overall inmate population and what's best for them."

But critics of the current inmate phone system say law enforcement arguments for commissions are based on a false premise. "If Verizon suddenly wanted to charge certain mobile phone users a really high rate, but they're like, 'But don't worry, we're going to take all the money and we're going to give it to a really good cause,' it's still illegal," said Rhonda Lien, an attorney for the Policy Pricing Division of the FCC's Wireline Competition Bureau, at last July's workshop.

Moreover, in states that have banned commissions, including the state prison system of California seven years ago, the wholesale cutback of inmate services and programs did not happen. "New York State was receiving over \$20 million a year from phone commissions before they eliminated commissions," Wright of the Human Rights Defense Center said at that same FCC workshop. "Last I heard, the New York Department of Correctional Services is still functioning and services are still being provided to prisoners, so I would respectfully submit to the FCC that this whole argument is, for lack of a better term, a red herring."

Part of the logic behind the FCC's recent move is that the \$460 million doled out to counties and state governments in commissions each year is actually only a tiny fraction — between .03 and .04 percent — of the total budget nationwide for correctional facilities. "What appears to be of limited relative importance to the combined budgets of correctional facilities has potentially life-altering impacts on prisoners and their families," reads the agency's rulemaking notice.

However, if the FCC phases out commissions it remains to be seen how it will financially impact Contra Costa and Alameda counties. Contra County Supervisor John Gioia, who represents Richmond and other West County communities, said the rebounding economy should help ease the transition off commissions. The foreclosure crisis of the past half-decade seems to be waning and tax collections are up.

"Of course, there's plenty of demand on any new revenue," Gioia said. "There's demand for more healthcare. There's demand for more law enforcement on the streets. There's demand for more social services. There's demand for many things."

Those are the issues. It's clear that the right thing to do is to lower the cost of the calls. We have to deal with the hard financial issue of coming up with replacement funding."

Across the Bay in San Francisco, county Sheriff Ross Mirkarimi has drawn national attention for actively working to reduce phone rates for inmates. He renegotiated his department's inmate phone services contract — the only one in the state that has reduced commissions rather than increased them. He also argues that the funding for inmate programs and services needs reform. "One could argue that that's double-taxation," he said of the steep phone charges levied on inmates and their families, "and the bleeding or potential bleeding of poor people — or gouging them for what some would think was a county or government responsibility."

While Mirkarimi and Shuler both remain concerned about where the replacement funding will come from, it seems unlikely that state and local governments will simply allow inmate education programs to evaporate overnight. And the FCC's proposed two-year phase out of the practice is designed to allow counties and states the time to find the necessary monies to keep supporting inmate reentry and education programs.

Rita Figueroa is four months pregnant now and free — or free-ish. Since her pregnancy, she's been able to take off her ankle monitor, but still gets regular visits from a case officer. Her immigration status won't be decided until 2016, but she hopes the US government will grant her appeal for asylum. She is studying and training to become a community organizer and her husband found work as a carpenter, allowing the family to leave the shelter for a small apartment in Richmond.

On a recent Friday, two kids bikes were propped up in the kitchen. Rainy photos from a Chucky Cheese outing decorated the side of the fridge. Roberto Orellana played on the stereo.

Astrid, a striking girl with almond eyes and dark hair plaited into a braid, wore a pink hoodie with the word "California" written on it. David dragged his homework into the living room and perched next his mom on the armrest of the couch.

Since his mom came home, things have continued to be difficult for the seven-year-old. He keeps getting suspended from school, was held back a grade, and still doesn't understand why his mother was locked away.

While FCC action can't give Rita and David back those months they were apart, comprehensive reform of the cost of inmate communication could help millions of kids like David stay connected a little better.

“Then you, the society itself, would not have to build as many prisons,” Commissioner Clyburn told me. “You would not have the disciplinary problems you often see if you ask teachers and those who counsel these children — the children of these inmates who cannot share their days with their loved one because it’s too expensive to communicate.”

Statistics show that the children of those incarcerated are estimated to be between five and seven times more likely to end up in jail themselves. Clyburn acknowledges that a cheaper phone call will not, by itself, stop people from reoffending, but to her and other reform advocates, maintaining family relationships is part of breaking the cycle of recidivism.

Rita stroked her son’s hair as she tried to help him with his homework; they both sounded out the words together to an Elephant and Piggie book titled *Today I Will Fly!*

“We’re going to get birds,” Astrid blurted out. “They’re blue and green and white.”

David got up off the couch and snuggled into his father’s lap.

Rita interrupted, shaking her head, “The kids could have a bird, but I’m against that because it would be caged, and I know what it feels like to be caged.”

Alexandra Garreton, Yuritzzy Gomez, and Noelia Gonzalez helped translate interviews with Rita Figueroa.