

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Incarcerated People's Communications
Services;

Implementation of the Martha Wright-
Reed Act Rates for Interstate Inmate
Calling Services

WC Docket No. 23-62

WC Docket No. 12-375

COMMENTS OF

**UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY
AND
THE NATIONAL CONSUMER LAW CENTER
(ON BEHALF OF ITS LOW-INCOME CLIENTS)**

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Summary

United Church of Christ Media Justice Ministry and the National Consumer Law Center (on behalf of its low-income clients) submit these comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking in the above-captioned docket. The FCC has implemented the Martha Wright-Reed Act, and advocates have successfully pushed some states to cover call costs, allowing incarcerated people and their families to connect for free. This is a big win for keeping families together, but emerging reports of poor call quality detract from these positive changes. The FCC must take action to ensure that communications services for incarcerated individuals and their families are of sufficient quality to support family bonds, mental well-being, and fair treatment.

The FCC should clearly state that the Communications Act requires carceral communications service providers to meet an adequate quality standard. Inadequate quality carceral communications services violate Sections 202, 201(b) and 276(b)(1)(A) of the Communications Act. The FCC has a statutory obligation to ensure service quality for incarcerated people and the authority to bring enforcement actions against carceral communications providers that fail to meet the standard.

The FCC should also enhance its ability to affirmatively monitor service quality and timely identify carriers' noncompliance with an adequate quality standard. This is of particular urgency in light of already emerging reports of poor service quality in multiple locations. The FCC should routinely collect data on important call quality metrics in its annual data collection and certification requirements for carriers. In

addition, the FCC should build on the previous improvements to its complaint system so that incarcerated individuals and their families can more easily assist the agency in identifying noncompliant services and seeking redress. In addition, the FCC should conduct outreach to educate families on service quality standards and reporting options. Providing accessible resources and guidance on filing complaints would support families advocating for fair and reliable communications.

The FCC should also take at least two immediate steps to endorse service quality best practices. First, it should document best practices for various quality measures to establish a clear benchmark for service providers. Second, it should endorse model contract language for carceral communications services, giving state and local policymakers the tools to set consistent standards, ensure reliable service, and hold providers accountable for service quality failures.

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Introduction

For the nearly two million people incarcerated in the United States and for millions of their family members,¹ communications with family are lifelines to connection, stability, and hope. For example, children of incarcerated parents are sometimes referred to as “hidden victims” of the criminal legal system due to the host of associated challenges they face, but regular communications with parents can help children overcome these challenges.² For incarcerated people, hearing a familiar voice can bring comfort in an isolating environment, reducing anxiety and depression while reinforcing a sense of identity.³ Moreover, the impact extends even further: people with strong family connections are significantly more likely to reenter society successfully when they are released from incarceration, making their lives better as well as their families and their communities.⁴

The Federal Communications Commission (FCC) has successfully implemented the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act) on schedule. At the same time, advocates around the country have begun to successfully persuade states to take on the full cost of calling – meaning

¹ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, Prison Policy (March 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.

² See, e.g., Thurgood Marshall College Fund Center for Advancing Opportunity, *Children of Incarcerated Parents: Pathways to Resilience & Success* (2021), <https://static1.squarespace.com/static/61bcb00634061a13526f653c/t/61cd187f2ea59e4d19ce66d6/1640831107402/Children+of+Incarcerated+Parents+Pathways+to+Resilience+%26+Success+Research+Report+2021.pdf>.

³ See Ulandis Forte, *Statement*, Federal Communications Commission Open Meeting (Jul. 18, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10718424207712>; Karen De Claire, *The Effects of Prison Visits From Family Members on Prisoners' Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991*, 18 *Trauma, Violence, & Abuse* 185, 189 (2017).

⁴ Christy Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 *W. Crim. Rev.* 2, 20, 21 (2006).

incarcerated people and their families pay nothing. This is a tremendous victory that has taken the work of advocates around the country pressing for just treatment and for keeping families together during difficult times. As victory comes in the form of lower rates or free communication, unfortunately, other challenges sometimes arise. In some cases, reports now indicate that call quality is going down, marring the success of these efforts.

For these reasons and more, United Church of Christ Media Justice Ministry (UCC Media Justice) and National Consumer Law Center (NCLC) (collectively, “Commenters”) submit these comments in response to the Federal Communications Commission’s Further Notice of Proposed Rulemaking regarding improving Incarcerated People’s Communications Services (IPCS).⁵ Commenters have a long-standing history of advocating for nondiscriminatory, just, and reasonable communications services for incarcerated individuals and their families.⁶ As part of this important work, Commenters urge the FCC to ensure that communications services for incarcerated individuals are reliable and of high quality.

⁵ *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act, Report & Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking*, WC Docket No. 23-62, FCC 24-75 (rel. July 22, 2024) (“FNPRM”).

⁶ See, e.g., Sara Fitzgerald, *UCC Celebrates Law Limiting Prison Phone Rates*, UCC News (Jan. 13, 2023) <https://www.ucc.org/ucc-celebrates-law-limiting-prison-phone-rates>; Ariel Nelson & Caroline Cohn, National Consumer Law Center, *Written Testimony Before the Commonwealth of Massachusetts Joint Committee on Public Safety and Homeland Security in support of S.1559, An Act Relative to Inmate Telephone Calls* (2021), https://www.nclc.org/wp-content/uploads/2022/09/MA_S1559_testimony.pdf; Reply Comment of the Leadership Conference on Civil and Human Rights et al., *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (filed Dec. 17, 2021) (in which both organizations were signatories to a reply comment “call[ing] on the FCC to ensure that communications services are accessible, affordable, and transparent.”).

UCC Media Justice recently released a report, *Ensuring Access to Quality Communications for Incarcerated People: Options for Advocates and State Legislators*, which was prepared with assistance from the Communications & Technology Law Clinic at Georgetown Law and is attached as an appendix to this comment.⁷ The report makes recommendations about improving and safeguarding call quality for state and local policymakers. Many of the recommendations in that report are also applicable at the federal level and relevant to several questions in the FNPRM about the quality of incarcerated people’s communications services.⁸ These comments draw upon that report to make recommendations to the Commission. Without clear and enforceable quality standards, incarcerated individuals and their families are likely to receive subpar, inequitable, and discriminatory service.

I. The Commission Must Ensure Service Quality for Incarcerated People and their Families.

The FCC should ensure incarcerated people and their families receive high quality communications services. This is important because diminished call and service quality have emerged as means to provide inadequate services to incarcerated people and their families even as costs are being lowered or, in some states, calls are being provided without charge to families and incarcerated people. The FCC has both the authority and an obligation under multiple sections of the Communications Act to

⁷ United Church of Christ Justice Media Ministry, *Ensuring Access to Quality Communications for Incarcerated People: Options for Advocates and State Legislators* (2024), <https://uccmediajustice.org/wp-content/uploads/2024/08/UCC-Media-Justice-Report-Ensuring-Access-to-Quality-Communications-for-Incarcerated-People.pdf> (“UCC Report”). This report is also reproduced in its entirety as an appendix to this comment.

⁸ FNPRM at ¶¶ 613–16.

regulate service quality of communications services for incarcerated people. It should rely on that authority to collect data and study the quality of service currently provided to incarcerated people, and in the meantime to put carriers on notice that it will bring enforcement action against those that deliver substandard quality service that fails to meet the needs of incarcerated people and their families.

A. Poor Service Quality Has Emerged as New Means to Provide Inadequate Service to Incarcerated People and Their Families.

Successful regulatory efforts to push for free calls in state prisons and local jails and the FCC's new just and reasonable rate caps will mean that families are finally able to stay in communication with each other without drowning in debt due to high phone costs. In some jurisdictions, however, families are facing problems with the quality of communications services that they rely on to connect to their incarcerated loved ones. For example, in California, after the state started including the cost of calling with other utilities in its budget, users of carceral communication systems began to frequently encounter a range of issues that compromise the integrity and efficacy of these services.⁹ Reports indicate persistent connectivity problems, frequent difficulties in accepting calls, and excessive interruptions by repeated messages stating, "this call is being recorded."¹⁰ Users of carceral communications services also report severe delays in sending and receiving pictures, frustrating delays or outright denials in the receipt of text messages, and instances of crossed lines where callers inadvertently hear

⁹ UCC Report at 5.

¹⁰ *Id.*

conversations not intended for them.¹¹ These service quality issues not only undermine the reliability of communications between incarcerated individuals and their loved ones, but also impair humane treatment of those affected by the carceral system. Likewise, new anecdotal reports from Massachusetts indicate similar problems might be occurring there.¹²

Call quality concerns were also highlighted in FCC listening sessions. FCC listening sessions in Charleston and Chicago indicated that incarcerated individuals face difficulties in maintaining communication, including being charged for multiple calls when calls drop or when the quality is poor.¹³ In the Chicago listening session, Senator Duckworth highlighted the excessive costs faced by incarcerated individuals, stating that not only were they charged by the minute, but they also incurred connection fees, with calls dropping multiple times – three, four, even ten times – each resulting in an additional \$2 or \$3 charge, leading to a single conversation costing as much as \$50 to \$70.¹⁴ While the Commission’s rules against per-call fees addresses the problem with call termination costs, the problem of repeated call drops remains. During the Charleston listening session, participants expressed frustration with unreliable communications services, noting that everyone deserves the ability to stay connected with loved ones and legal representatives. They mentioned that calls frequently drop

¹¹ *Id.*

¹² *Id.*; see also Jake Wiener, *The FCC Capped Rates on Prison Phone Calls, Here’s What Needs to Happen Next*, Electronic Privacy Information Center Blog (Aug. 8, 2024), <https://epic.org/the-fcc-capped-rates-on-prison-phone-calls-heres-what-needs-to-happen-next/>.

¹³ IPCS Charleston Listening Session Ex Parte, *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62, at 16–17, 23–25, 62–64 (filed Mar. 4, 2024); FCC, IPCS Chicago Listening Session (Dec. 22, 2023), https://www.youtube.com/watch?v=Ou2_k5-SKcE.

¹⁴ IPCS Chicago Listening Session Ex Parte, *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62, 25–26 (filed Feb. 26, 2024).

without refunds or continuations, and if there is no money to call back, communication is simply cut off.¹⁵ Additionally, it was highlighted that calls often drop, the sound quality is poor, and the service goes out frequently.¹⁶

B. The FCC Has a Statutory Obligation to Ensure the Quality of Communications Services for Incarcerated People.

The FCC seeks comment on the scope of the Commission's authority to address quality of service issues related to communications services for incarcerated people, including to establish and enforce service quality rules or standards.¹⁷ The FCC has a statutory obligation to ensure the quality of communications services for all consumers, including incarcerated people, and the attendant authority to bring enforcement actions against carceral communications providers that fail to provide quality service.

The FCC also seeks comment on whether the Commission should develop minimum federal quality of service standards.¹⁸ Commenters urge the FCC to begin collecting data to develop concrete quality of service standards, and in the meantime to clearly signal that the Communications Act already requires carriers to deliver adequate quality service. In light of reports of failures in quality for incarcerated people, the FCC should put carriers on notice that it will bring enforcement action under these provisions of the Act against those that deliver substandard quality service that does not meet the needs of incarcerated people and their families.

¹⁵ IPCS Charleston Listening Session Ex Parte, *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62, 18 (filed Mar. 4, 2024).

¹⁶ *Id.* at 62.

¹⁷ FNPRM at ¶ 613.

¹⁸ FNPRM at ¶ 614.

The FCC asks which statutory provisions it might rely on to set minimum quality standards for communications services for incarcerated people.¹⁹ Inadequate quality communications services for incarcerated people run afoul of Sections 202, 201(b), and 276(b)(1)(A) of the Communications Act.

Provider rates and practices must be just and reasonable,²⁰ as well as free of unjust and unreasonable discrimination.²¹ Inferior quality services violate Section 202 of the Communications Act, which provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, *or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.*

Providing some incarcerated people with inadequate service quality constitutes the offering of like services on vastly different terms to different classes of persons.

Communications service providers are not permitted to provide acceptable quality for some people while providing inadequate quality to others.²² In the case where incarcerated people do not have competitive options, a focus on quality of service is important.

¹⁹ FNPRM at ¶ 613.

²⁰ 47 U.S.C. § 201(b).

²¹ *Id.* § 202(a).

²² Section 202(a) prohibits common carriers from making “any unjust or unreasonable discrimination” while providing communications services. *Id.* “Courts have fashioned a three-step analysis to determine whether a carrier has violated this section. The first inquiry is whether the services are ‘like’; if they are, the next inquiry is whether there is a price difference between them; and if so, the third inquiry is whether the difference is reasonable.” *Panatronix USA v. AT&T Corp.*, 287 F.3d 840, 844 (9th Cir. 2002).

The provision of low-quality communications services for incarcerated people also violates Section 201(b) of the Communications Act. As the FCC notes, Section 201(b) provides the Commission with clear jurisdiction to regulate service quality for incarcerated people’s communications and providers, as it mandates that all charges, practices, and regulations must be just and reasonable.²³ This includes ensuring that service quality meets appropriate standards.

Finally, the FCC has historically used its authority under Section 201(b) to address issues related to traffic delivery and call completion,²⁴ and can do the same for issues related to IPCS. For example, the FCC intervened under Section 201(b) to address rural call completion issues, ensuring that long-distance carriers were not failing to complete calls to rural areas.²⁵ The same section of the Act also requires that carriers’ practices be just and reasonable, including practices related to privacy and data protection.²⁶ This same section can be applied to ensure that providers of IPCS are held to the same standard.

II. The Commission Should Enhance Its Ability to Affirmatively Monitor Service Quality and to Timely Identify Noncompliant Carceral Communications Services.

The FCC should enhance its ability to affirmatively monitor service quality and timely identify inadequate quality carceral communications services. This is especially

²³ FNPRM at ¶ 613.

²⁴ See, e.g., USF/ICC Transformation Order, 26 FCC Rcd at 17903, ¶ 734; *Establishing Just and Reasonable Rates for Local Exchange Carriers*; Call Blocking by Carriers, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11631, ¶¶ 5-6 (WCB 2007).

²⁵ *Rural Call Completion*, FCC 13-135 (rel. Nov. 8, 2013). https://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1108/FCC-13-135A1.pdf.

²⁶ FCC, Enforcement, Privacy/Data Security/Cybersecurity: Customer Proprietary Network Information, (Oct. 20, 2024, 5:00PM), <https://www.fcc.gov/enforcement/areas/privacy>.

urgent in light of the emerging reports of noncompliant, poor service quality in multiple locations. The FCC should collect data on important metrics of call quality in its annual data collection and certification requirements for carriers. UCC Media Justice also urges the FCC to create a dedicated complaint process specifically for incarcerated individuals and their families, making it easier for them to report issues with communications services. In addition, the FCC should conduct outreach and education to ensure that incarcerated individuals and their families understand any new standards and know how to use the complaint process. Clear guidance and direct communication would help this vulnerable group access reliable support when issues arise.

A. The FCC Should Collect Data and Additional Information About Service Quality Failures.

As the Commission works to determine which types of service quality issues should be addressed by federal quality of service standards and to develop those standards,²⁷ it should proactively enhance its oversight and understanding of quality failures by collecting more comprehensive data. In particular, the FCC should collect quality data in its annual data collection and certification requirements for providers of IPCS. Structured collection of service quality data as part of the FCC's regular monitoring activities is crucial.

Because the Commission reaffirmed and updated its prior delegation of authority to the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) to revise annual reports, the Bureaus should begin

²⁷ FNPRM at ¶¶ 614–15.

collecting data on service quality failures.²⁸ The Bureaus recently issued a Public Notice requesting further comments on proposed changes to the annual reporting and certification requirements for PCS providers.²⁹ Commenters will file recommendations in that docket urging the Bureaus to collect service quality data, but in the meantime draw attention to this issue here as well, given its significance. Given that Rule 64.6060(5) authorizes annual reports to include “other information as the Consumer and Governmental Affairs Bureau or the Wireline Competition Bureau may require,” the FCC should affirm that this covers the service quality data needed to assess whether IPCS providers meet baseline service standards.³⁰

The systematic collection of quality data would be consistent with the goal of requiring IPCS providers to make annual filings “to enable the Commission to monitor and track trends in the IPCS marketplace, increase provider transparency, and ensure compliance with the Commission’s rules.”³¹ The Commission could require providers to submit records of the number of complaints they receive, time to resolve complaints, percentage of complaints satisfactorily resolved according to the customer, records of complaints in public databases, such as at state-level regulatory bodies or ombudsmen, and other records that they maintain in the regular course of business. Further

²⁸ FNPRM at ¶¶ 571–72.

²⁹ *Incarcerated People’s Communication Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Public Notice: Wireline Competition Bureau and Consumer and Governmental Affairs Bureau Seek Additional Comment on Revisions to IPCS Providers’ Annual Reporting and Certification Requirements, WC Docket No. 23-62, DA 24-918 (rel. Sept. 11, 2024) (“Annual Reporting Public Notice”).

³⁰ *Id.*; FNPRM at p. 334.

³¹ Annual Reporting Public Notice at 1.

discussion of categories of technical data of use in evaluating service quality is provided in Appendix C of UCC Media Justice’s attached report.³²

B. The FCC Should Introduce a Dedicated Complaint Process for Incarcerated Individuals and Their Families.

The FCC has recently improved its online complaint interface, making it simpler and easier to use. The new design includes clear instructions, helping users to navigate and submit complaints without confusion. Additionally, the interface has better accessibility features, making it easier for those with disabilities to use. These changes help consumers report issues and stay informed throughout the process.

Nevertheless, the FCC should add a dedicated section on its complaint website specifically for incarcerated individuals and their families, streamlining their access to resources and guidance. This would comport with important FCC goals of maximizing communications access, and is also of particular importance as the FCC attempts to deepen its understanding of carceral communications service quality issues that should be addressed by federal standards.³³

To ensure the efficacy of additional improvements to the complaint system, the FCC should consult with incarcerated individuals and their families, as well as other federal agencies and offices that collect complaints, such as the Consumer Financial Protection Bureau and Federal Student Aid. The FCC should conduct focus groups with organizations and individuals who regularly engage with incarcerated people to better understand the barriers they face in accessing the complaint system and identify

³² UCC Report at 27–28.

³³ FNPRM at ¶ 615.

potential improvements. Most incarcerated individuals, for example, lack internet access to file complaints online and cannot directly call the FCC's toll-free number, 1-888-CALL-FCC because they do not have authorization to call the FCC's number. As a result, most incarcerated people must rely on mail to submit a complaint without help from an outside advocate. Simplifying the process and promoting multiple filing options would give incarcerated individuals and their families the flexibility they need, empowering them to advocate more effectively for fair communications services.

C. The FCC Should Promote Outreach and Education for Its Rules and the Complaint Process.

To ensure accessibility, the FCC should advertise its new rate caps, along with the FCC's mailing address for complaints, in a clear, simple format within publications available in correctional facilities. The best complaint process in the world will not work if customers do not know about it. The FCC should purchase advertisements in publications such as *Prison Legal News* to publicize the complaint process and the new protections and encourage correctional facilities to include the information on bulletin boards and in intake packets. By including easy-to-understand instructions in plain-English on both the standards and how to file a complaint if issues arise, the FCC can empower incarcerated people and their families to advocate for just and reasonable and consistent access to communications services.

The FCC should also create a video tutorial that guides users step-by-step through the process of filing a complaint about communications services, specifically tailored for incarcerated individuals and their families. This tutorial would make the process more accessible, breaking down each stage in a visual and straightforward way

to ensure anyone can follow along. To reach a broader audience, the tutorial should be available in both English, Spanish, and other languages, and also contain closed captioning to accommodate individuals with disabilities. By offering this resource, the FCC can make the complaint process more inclusive, helping more families and individuals feel empowered to report issues with communications services and advocate for their rights.

III. The Commission Should Identify and Endorse Best Practices for Service Quality.

The FCC should also take at least two immediate steps to endorse service quality best practices. First, the FCC should document industry-standard best practices for various quality measures to establish a clear benchmark for service providers, ensuring consistency and reliability in service delivery. Second, the FCC should endorse model contract language for carceral communication providers to standardize contracts and safeguard the rights of incarcerated individuals, leading to fairer and more transparent communications services. These measures would collectively elevate the quality and fairness of communications services in carceral environments.

A. The Commission Should Document Industry Best Practices for a Range of Quality Measures.

The FCC asks whether there are any existing service quality standards or regulations in the IPCS marketplace today.³⁴ In light of the danger of substandard communications services, Commenters urge the Commission to identify and document

³⁴ FNPRM at ¶ 616.

best practices and standards for service quality. Poor service – featuring frequent call drops, static, or delayed connections – fails to meet the communication needs of incarcerated individuals.³⁵ For communication to be effective, it must be reliable, so incarcerated individuals receive the full support and connection that these services aim to provide. Collecting and documenting best practices and standards will open the door to ensuring communicating services can be of high quality and reliability in the long term.

UCC Media Justice’s report identifies a series of metrics that can be useful to assess quality, such as call quality assurance, service continuity, technical issue resolution, call drop rate, call failure rate, latency, jitter, packet loss, and call setup time. The meaning and use of these terms is detailed in the report at Appendix A and in Appendix C with regard to data collection.³⁶ Further, Commenters recommend consulting resources such as state public service commissions and local franchise agreements, which may provide additional sources of quality of service metrics and standards.³⁷ The National Consumers League has adopted a series of principals that can inform this research.³⁸ These metrics will ensure that incarcerated individuals, providers, and civil society organizations are all aware of the landscape of

³⁵ Wiener, *supra* note 12.

³⁶ UCC Report at 22–25, 27–28.

³⁷ *Id.*; see also, e.g., California Public Utilities Commission, *Service Quality, Minimum Service Standards for Wireline Carriers* (Oct. 21, 2024, 6:30PM), <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/network-performance-and-public-safety/service-quality>; NYC, Office of Technology Innovation, *Cable TV Franchises* (Oct. 21, 2024, 6:30PM), <https://www.nyc.gov/content/oti/pages/franchises/cable-tv-franchises>; Verizon-New York City; Proposed Cable Franchise Agreement, Appendix A (Consumer Protection Standards) (May 15, 2018) <https://www.nyc.gov/assets/oti/downloads/pdf/cable-tv-franchises/verizon-appendix-a-k.pdf>.

³⁸ National Consumers League, *Where We Stand, Telecommunications* (Oct. 21, 2024, 6:30PM), <https://nclnet.org/where-we-stand/consumer-protection/>.

communications services and have access to reliable and high-quality communications services.

B. The FCC Should Endorse Model Contract Language for Carceral Communication Providers.

The FCC also asks whether contracts between correctional institutions and providers include service quality standards.³⁹ Too often, contracts do not include these important standards. Specifically, as documented in UCC Media Justice’s report, typical consumer agreements, including these from carceral communications service providers, often limit consumers’ ability to seek recourse for issues like poor service quality and connectivity failures.⁴⁰ These agreements frequently include fine-print clauses that disclaim any guarantees of service quality, limit liability, and use arbitration clauses or class action waivers to avoid legal accountability. As the report explains:

Most phone companies – including the two leading providers of carceral communications – include contract terms such as arbitration clauses, class action waivers, warranty disclaimers, limitations on liability, and other provisions expressly disclaiming uninterrupted or error-free service.⁴¹

The UCC Media Justice report, therefore, urges state and local authorities contracting for services to include such provisions in their agreements for service.⁴² The practice of including quality of service provisions in a contract for service would likely become more widespread and well-understood if the Commission endorsed the practice and provided recommended language.

³⁹ FNPRM at ¶ 616.

⁴⁰ UCC Report at 9–13.

⁴¹ *Id.* at 10.

⁴² *Id.* at 25–26.

Model language will be especially important as several states have begun requiring correctional facilities to cover communications costs and hopefully more states will follow suit.⁴³ Carceral facilities may need assistance crafting language to ensure that this shift does not result in lower service quality due to limited oversight or budget constraints. To aid state and local contract negotiators, model contract provisions from the FCC could establish clear guidelines for holding providers accountable, ensuring prompt responses to technical issues, and requiring subcontractors to meet the same standards. Parties could then start with the FCC's template language and adjust it as appropriate for their own agreements.

The UCC Media Justice report explains that consumer protections should be built into contracts for carceral communication services and lays out several recommendations with respect to contract language.⁴⁴ Specifically, the FCC should endorse contract language that ensures providers cannot use evasive legal terms to escape responsibility, enforces specific quality standards, holds providers accountable for the performance of third-party subcontractors, and implements penalties for failing to resolve service issues in a timely manner.⁴⁵ Model language for such provisions is needed because contract negotiations for communications services for incarcerated people often are not fair. In cases where the cost of communications services is covered by the state or locality, contracts are typically negotiated between phone companies and

⁴³ Worth Rises, *The Ultimate Connecting Families Campaign Guide*, 2 (rel. Sept. 2023), <https://finesandfeesjusticecenter.org/content/uploads/2023/09/2023-Connecting-Families-Campaign-Guide-FINAL-3-1.pdf>.

⁴⁴ UCC Report at 7–11.

⁴⁵ *Id.*

correctional facilities without direct involvement from the incarcerated individuals who rely on these services.⁴⁶ Negotiated in the absence of the people who rely on these services, these contracts often fail to address or even consider service failures, leading to inadequate protections for incarcerated individuals and their families.⁴⁷ To address these issues, the FCC should establish rules that codify key consumer protections in carceral communications contracts.

In addition, the Commission should also endorse the involvement of advocates or representatives for incarcerated individuals in the contract negotiation process. As the report discusses, this would be one way to ensure that the most affected parties' needs and perspectives are represented.⁴⁸ Additionally, the FCC should consider how to share non-confidential information about user complaints and past performance of carceral communications service providers with the public so that this information can be taken into consideration by carceral facilities considering or renewing contracts, ensuring that only providers with a proven track record of reliability and service quality are awarded agreements.⁴⁹

For a more detailed analysis of this issue, please refer to the attached report.

Conclusion

UCC Media Justice and NCLC urge the Commission to ensure that communications services for incarcerated people meet high quality standards, as

⁴⁶ *Id.* at 8.

⁴⁷ *Id.*

⁴⁸ *Id.* at 10.

⁴⁹ *Id.*

required by the Communications Act. The Commission should enhance its oversight by monitoring service quality more proactively, collecting pertinent data, and establishing a robust complaint system to allow incarcerated individuals and their families to report poor service. In addition, the FCC should set clear best practices and offer model contract language to help policymakers maintain high service standards. These actions are necessary to protect family connections, mental and emotional well-being of incarcerated individuals and their families, and the fair treatment of incarcerated individuals.

/s/

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Ensuring Access to Quality Communications for Incarcerated People: Options for Advocates and State Legislators

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United Church of Christ
Media Justice Ministry
Faithful Advocacy for Communication Rights

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Introduction

The United Church of Christ Media Justice Ministry (UCC Media Justice) has been working on just rates for incarcerated people and their families for more than a decade. For many years, in some cases, the rates charged for communicating with a child, grandparent, or clergy can reach almost a dollar a minute. Over the years, UCC Media Justice has successfully advocated vigorously at the Federal Communications Commission for lower rates and in Congress to give the FCC the authority it needs to act. At the same time, advocates around the country have begun to successfully persuade states to take on the full cost of calling—meaning incarcerated people and their families pay nothing. This is a tremendous victory that has taken the work of advocates around the country pressing for just treatment and for keeping families together during difficult times.

As victory comes in the form of lower rates or free communication, unfortunately, in some cases other challenges arise. As rates have come down or are not burdensome to callers, the rate of usage has appropriately gone up—evidence of a successful strategy to keep families together and incarcerated people linked to their communities. At the same time, call quality has gone down in some correctional facilities, marring the success of these efforts. This report aims to get ahead of this problem to prevent it from becoming endemic by aiding groups working together—from incarcerated people and their families to grassroots organizations to legislators and other government officials—in resolving and preventing call quality issues through legislative reform that would

United Church of Christ Media Justice Ministry would like to thank Georgetown Law's Communications and Technology Clinic for assistance in preparing this report, especially student attorneys Azam Chaudry and Lana Wynn.

establish quality standards, codify procurement practices, and provide means of enforcement.

Carceral Communications and Reform Efforts

Carceral communications providers have historically imposed exorbitant costs on incarcerated individuals and their families. Contracts for carceral communications services often provide financial payment, called commissions, to correctional institutions, which discourages officials from negotiating for fair and reasonable rates. Phone rates inflated by these commissions, or kickbacks, are typically passed on to incarcerated individuals' support networks and can place a huge financial strain on families. Because of these predatory rates, one in three families go into debt attempting to maintain contact with incarcerated loved ones.¹ UCC Media Justice successfully mobilized to address these issues on a national level. As a result of its efforts, the federal government adopted new, lower rate caps for voice calls and first-ever rate caps for video communication in July 2024.²

In addition to the forthcoming federal rate caps, states and counties across the nation have taken further steps to ease the financial burden on incarcerated individuals' families. After efforts spearheaded by the non-profit Worth Rises, five states have recently enacted statutes to provide free calls for prisons: California, Colorado, Connecticut, Massachusetts, and Minnesota. Major counties and cities—including New

¹ Ella Baker Center, *Who Pays?* at 9 (2015), <https://ellabakercenter.org/who-pays-the-true-cost-of-incarceration-on-families>.

² *FCC Votes to Significantly Lower Costs for Incarcerated Communications Services After Years of Exploitation from Telecom Companies (July 18, 2024)*, <https://uccmediajustice.org/fcc-votes-to-lower-costs-incarcerated-communications-services/>.

York City, San Francisco, Los Angeles, Miami-Dade County, and San Diego County—passed similar legislation to provide free calls in jails.³

Furthermore, as the kinds of communication available to incarcerated people has expanded, the concerns relating to traditional phone calls have expanded to digital text or email communication and video communication. While this report has been written primarily with traditional phone service in mind, many of the techniques could be applied to other communications service—but not all. For example, in many states a state utility commission might have authority over telephone service but not over other kinds of communication. Legislation, however, can address a wider scope of services.

Communication Quality Problems

Successful regulatory efforts mean that families are finally able to stay in communication with each other without drowning in debt due to high phone costs. In some jurisdictions, however, families are facing problems with the quality of phone calls to their incarcerated loved ones. Users of carceral communications services in California, for example, have reported service quality issues including connectivity problems, problems accepting calls, excessive repetition of the message that “this call is being recorded,” severe delays in sending and receiving pictures, crossed-lines where callers hear other people’s conversations, and delays or denials in receiving text messages.⁴ Likewise, new anecdotal reports from Massachusetts indicate similar problems might be occurring there. As free call statutes for incarcerated persons

³ The Ultimate Connecting Families Campaign Guide (Sept. 2023), <https://finesandfeesjusticecenter.org/articles/the-ultimate-connecting-families-campaign-guide/>.

⁴ Empowering Women Impacted by Incarceration (EWII) Survey, *CDCR/Viapath Communications Challenges: Key Findings* (June 28, 2023).

expand, advocates must make sure that other problems do not prevent the full and robust communication families need. It may be possible to pass legislation following up on free call legislation, or to add language to proposed and pending free call bills, to address communication quality while addressing costs. This report seeks to inform advocates, grassroots organizations, and government officials of potential legislative solutions to resolve or prevent any existing or potential future call quality issues.

Solutions

UCC Media Justice has identified various legislative paths for advocates to consider alongside grassroots organizations, affected individuals, state entities, and other actors to prevent or solve any call quality problems for correctional facilities in their states. These options, detailed below, include (1) setting clear quality service standards for carceral communication services; (2) codifying best practices to protect consumers in the contract procurement process; (3) collecting various kinds of data on call quality issues; and (4) holding communication providers accountable when they fail to provide quality phone service.

This report describes various solutions in the body of the report and offers technical language to implement these recommendations, thus hopefully providing a resource to many different advocates.

Quality Service Standards

The most obvious way to address call and video quality is to regulate it directly. State legislators, or maybe regulators acting under existing authority, can require carceral communications providers to provide a minimum level of quality. To this end, the proposed language in Appendix A establishes clear benchmarks for service

providers. States can implement these standards in several ways. The legislature can adopt specific standards or direct state regulatory agencies, such as a State Public Utilities Commission, to define and implement these standards. The proposed model law sets forth specific service quality requirements, including:

- **Call Quality Assurance:** The state utility commission or other regulatory body will define standards for call clarity and continuity, including setting a minimum Mean Opinion Score (MOS), evaluating users' numerical measure of audio quality perceived by users, typically ranging from 1 (poor quality) to 5 (excellent quality).⁵
- **Service Continuity:** A phone company serving a carceral institution must conduct maintenance and updates during periods of low call activity, such as late at night. Additionally, both the carceral staff and the incarcerated individuals must be informed in advance about the scheduled downtime.
- **Technical Issue Resolution:** Phone companies serving carceral institutions must institute and maintain a quick-response system for fixing any call quality or access issues for incarcerated people. Communications must offer a special line just for reporting these problems and are required to respond and remedy them out within a day of being told about them to make sure that quality issues are handled quickly and do not interfere with incarcerated people's communications.
- **Call Drop Rate:** This metric reflects the stability and reliability of the communication service. A call drop rate below 1% monthly indicates that fewer than 1 out of 100 calls are unexpectedly terminated by the network, ensuring a

⁵ Lamberti, A., *How to measure VoIP Quality & MOS score*, Obkio (Apr. 27, 2022).

stable connection for the majority of calls. This low threshold is crucial for maintaining uninterrupted conversations, allowing incarcerated individuals to communicate effectively without the frustration of frequent call drops.⁶

- **Call Failure Rate:** This measure assesses the network's ability to successfully initiate calls. A maximum failure rate of 1% monthly ensures that nearly all attempts to make a voice or video call connect successfully, underscoring the network's reliability in establishing communications between incarcerated individuals and their contacts outside the facility.
- **Latency:** Latency refers to the time it takes for voice or video data to travel from the sender to the receiver. A mean latency of 100 milliseconds or less for 90% of calls during peak hours means that the delay in communication transmission is minimal, promoting clear and real-time conversations without noticeable lag, which is essential for both voice clarity and synchronization in video calls.
- **Jitter:** Jitter measures the variability in packet delivery times within the network. Keeping jitter under 50 milliseconds for at least 90% of calls during peak hours ensures that the variability in communication delivery is low, preventing obscure or distorted audio and video, which can significantly disrupt the quality of the communication experience.
- **Packet Loss:** This metric indicates the percentage of data packets that are lost in transmission. Keeping packet loss to less than 1% monthly is essential for clear and consistent voice and video transmissions. High packet loss can lead to

⁶ California Public Advocate's Office, *Opening Testimony Regarding Video Calling Service Quality and Reliability for People who are Incarcerated*, (Sept. 19, 2022).

missing audio snippets or frozen video images, detracting from the overall communication quality.

- **Call Setup Time:** This standard evaluates the efficiency of the network in connecting calls. Ensuring the call setup time does not exceed ten seconds enhances the user experience by reducing wait times for call connection. A swift call setup is indicative of a responsive and efficient communication service, allowing for more immediate and stress-free connections.

This proposed framework, by establishing service quality benchmarks, aims to ensure reliable and high-quality communication for incarcerated individuals, a fundamental step towards supporting their connections and reintegration into society. Regulatory authorities could be given, or may already have, the flexibility to update and adapt these provisions to accommodate technological advancements.

Contract Procurement Practices

Typical telephone company consumer agreements—including both carceral communication service providers and general consumer providers—limit consumers’ ability to seek recourse for quality and connectivity phone issues through a variety of techniques.⁷ Therefore, to protect the most vulnerable consumers, states should require carceral facilities—both prisons and jails—to build consumer protections into contracts for carceral communication services.⁸

Companies usually write contracts to dodge consumer protections. For instance, phone companies often state in fine-print consumer contracts that they do not

⁷ Stephen Rahe, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 HASTINGS RACE & POVERTY L.J. 3, 23, 33-35 (2020).

⁸ Other confinement facilities like juvenile detention or secure mental health facilities should also benefit from these protections.

guarantee any level of service to avoid liability for making a false representation under consumer protection statutes. These disclaimers also limit consumers' ability to bring breach of contract claims against phone companies. Phone companies are generally upfront about potential quality or connectivity problems in consumer contracts and on their websites. Additionally, most phone companies—including the two leading providers of carceral communications—include contract terms such as arbitration clauses, class action waivers, warranty disclaimers, limitations on liability, and other provisions expressly disclaiming uninterrupted or error-free service.⁹

In cases where a state or locality takes on the cost of communication, contracts are not likely to involve incarcerated people. Rather, contracts are between phone companies and correctional facilities. In other cases, the facility negotiates the contract with the phone company and the phone company also has a contractual relationship with the incarcerated people and the people outside with accounts paying for calls—but the consumers have no choice about which company they use. In both cases, the prisons and jails may not care about how well the phone system is working, and thus, they may ignore system failures and fail to negotiate for fair terms.

While contractual disclaimers and exceptions included in current carceral communications contracts provide poor protection for incarcerated people, regulators can take action to circumvent these shortcomings. States can take action in several ways. Several states have legislated procurement practices, including the context in which

⁹ See Securus Technologies, *General Terms and Conditions*, <https://securustech.net/friends-and-family-terms-and-conditions> (Apr. 5, 2024); Viapath Technologies, *Terms of Use*, <https://www.viapath.com/terms-of-use> (Dec. 20, 2023). See also Verizon, *My Verizon Wireless Customer Agreement*, <https://www.verizon.com/support/customer-agreement>; T-Mobile Legal Center, *Terms and Conditions* (May 15, 2023), <https://www.t-mobile.com/responsibility/legal/terms-and-conditions>; AT&T, *AT&T Consumer Service Agreement*, <https://www.att.com/legal/terms.consumerServiceAgreement.html>.

government vendors may limit liability.¹⁰ If the state takes on the cost of calling, the entities negotiating the contract may have a greater incentive to use its bargaining power in negotiating with phone companies than average consumers, who are typically offered boilerplate, adhesive contracts. Thus, state governments could use their leverage to include contractual terms designed to protect phone service users and prevent phone companies from avoiding accountability. Additionally, high quality contracts will detail the consequences communications providers will face should they fail to provide quality service. Contracts should provide for liquidated financial penalties for failure to remedy service problems within a certain period of time; explain grounds for the termination of contracts; and incorporate past performance and quality service as a consideration for future contract bidding processes. Further analysis of contractual provisions related to enforcement can be found in Appendix D.

Because carceral facilities have not shown themselves to typically take into account the needs of incarcerated people in their contract negotiation, the best practice is for states to codify the procurement practices for both state prisons and local jails.

Legislation should require that state governments include specific provisions in their carceral communications contracts: (1) refusing to allow phone companies to escape any legal liability through slippery terms; (2) requiring the phone companies to meet a specific quality standard; (3) demanding the phone companies fix practical or structural problems causing poor call quality issues and take responsibility for third-party sub-vendors; and (4) outlining the penalties phone companies will face if they fail

¹⁰ See, e.g., Iowa Admin. Code r. 11-120.5(8A); *Gaining Traction on the Road to Win-Win: Limitations on Liability in State IT Contracting*, National Association of State Chief Information Officers (March 2010), <https://www.nascio.org/wp-content/uploads/2019/11/NASCIO-GainingTraction.pdf> (discussing state policies on allowing IT vendors to limit liability in government contracts).

to provide quality service. Further analysis of these recommendations can be found in the chart below, and suggested legal language to codify these requirements can be found in Appendix B.

When states negotiate carceral communications contracts, someone should be at the table to share the perspective of affected individuals or families who use these services. Their viewpoint can help draft a better contract. Depending on the state, the appropriate person to fill this role could be a correctional ombudsperson, someone involved in advocacy for incarcerated people, or another affected individual who can represent the interests of incarcerated people and their loved ones. States in which agency boards review contractor bids could appoint such individuals to the appropriate board, or states could require that a correctional ombudsperson approve of contracts in the procurement process. Additionally, states should consider users' complaints and reviews about service providers' past performance before renewing procurement contracts.

Suggested Consumer Protection Provisions and Practices in Contracts:

Problem	Suggested Solutions
Phone providers cannot be held responsible for breach of contract claims or consumer protection violations due to contractual disclaimers	Legislation should require state procurement officials to refuse to permit any disclaimers of liability, disclaimers of any implied or guaranteed warranties of fitness for a particular purpose, or any related provisions denying that the service provider has any responsibility to provide quality voice communications services.
Phone providers have no requisite level of	Contracts should provide that providers agree to meet a specified minimum quality standard. This provision will

Problem	Suggested Solutions
service quality to meet	clearly define the expected benchmark for the provider to meet and for the state entity to take action should the provider fail to meet it. State authorities can find recommendations for quality standards in Appendix A.
No obligation for carceral communications providers to maintain adequate infrastructure or investigate the practical causes of problems	Contracts should ensure that service providers are responsible for maintaining adequate infrastructure, investigating the causes of call quality issues within 24 hours, and repairing or otherwise remedying the root causes of quality problems within a reasonable time frame of seven days, barring circumstances that require a longer remedy period. If the remedy or repair will take longer than seven days, the provider should inform the other party to the contract, the affected correctional facilities, and the affected users, and it should provide substitute or alternative methods of service in the meantime.
Lack of accountability over subcontractors providing services integral to the functioning of communications	Contracts should mandate quality outcomes or ensure that service providers are responsible for remedying any problems that arise from third-party subcontracts to carceral communications services, such as internet service providers (“ISPs”). States should require communications service providers to seek state approval before entering into any contracts with third parties. At the very least, communications service providers should keep the state apprised of the specifics of any subcontract agreements with third-party vendors. Contracts should mandate that phone providers are liable and can be held accountable for any mistakes, failure to provide quality service, or any other related issues stemming from the subcontractor.
States and users of carceral communications services lack pathways to holding phone companies accountable.	<p>Clear standards include declaring grounds or triggers for contract termination upon failure to provide quality service, restricting eligibility for bidding for future phones service contracts, and imposing self-effectuating liquidated damages upon failure to provide the agreed upon service. Liquidated damages would be calculated via a formula that imposes a fine that increases due to the duration and severity of non-compliance.</p> <p>Please see Appendix D for detailed options of contractual enforcement mechanisms and suggested legal language.</p>

Reporting Requirements

The government should collect data on the number of complaints and the kinds of call quality problems detailed in complaints. This data can be essential in: providing affected users specific relief; compiling the evidence necessary for legal recourse; promoting public awareness of call quality issues; and assessing which problem areas most need attention. Reporting requirements can be imposed alongside the other recommended solutions or as a stand-alone. Optional sources for this data include incarcerated people and their families or other users of carceral communications services, phone service providers' records, or both.

Reporting by incarcerated people and their families can take two roles. For instance, reporting could be used to permit individuals to find relief for a particular problem, to obtain a refund, or to seek other corrections for their accounts. Additionally, states should collect data from affected users to track overall statistics of quality issues. Incarcerated people and their loved ones will have firsthand knowledge of quality problems. In either case, incarcerated individuals and their loved ones may face practical limitations, such as lack of resources, knowledge, or fear of retaliation. As a result, the government may not receive an all-encompassing sample of quality problems users experience. These practical limitations require advocates to consider different solutions. For example, if incarcerated people are discouraged from filing complaints due to a fear of retaliation, it may be best to direct their complaints to a state agency removed from the correctional facility or allow them to complain anonymously. Model legal language and pathways to facilitate a complaint system are detailed in Appendix C.

State and local officials can require phone companies to provide data for tracking call quality problems. Phone service providers are better positioned to provide complete

information on quality problems, but they may be less motivated to provide a complete or accurate picture of these issues. However, states may be able to avoid this potential limitation by imposing statutory reporting requirements and potentially auditing those reports. Sample language in Appendix C details a model for a statutorily-imposed reporting requirement.

Data collection could also be used in conjunction with contract terms. A contract could include provisions requiring action if complaints on a particular topic hit a certain level. For example, if a specific number of complaints are left unresolved, contractual provisions could impose liquidated damages or terminate the contract and trigger procurement officials to seek alternate service providers. Alternatively, if enforcement is in the hands of an independent entity, such as an Attorney General, the data could offer grounds for initiating an investigation. Data can highlight persistent and systemic phone quality issues. Requiring a public report of the data can inform affected individuals, taxpayers, and other advocates.

If advocates are seeking improvements in communication quality, it is possible it will be easier to pass legislation on data collection more easily than obtaining more concrete action, such as enforcement rules or binding service quality standards. Then, advocates can later use this data as evidence that further reforms are needed.

Options for Complaint Systems for Incarcerated Individuals and Other Affected Users

Complaint Mechanism	Analysis
<p>Incarcerated individuals and other users of carceral communications services submit service tickets to providers detailing the time and type of call quality issue experienced.</p>	<p>Practical Application: This complaint mechanism is currently in use in at least some correctional facilities. Incarcerated individuals file “tickets” with the service provider to report call quality problems.</p> <p>Benefits: A potential benefit of this option is that it directly communicates problems to the service provider, which would ensure the provider (who ultimately holds the power to resolve service quality problems) is aware of any problems they are responsible to fix. This could result in more prompt remedial action.</p> <p>Drawbacks and Limitations: Potential drawbacks and limitations include (1) the lack of government oversight, which leaves state entities unaware of any quality problems and (2) service providers could ignore complaints.</p> <p>Addressing Limitations: Other government action, such as reporting schemes and accountability or enforcement requirements, can supplement this option’s shortcomings.</p>
<p>Incarcerated individuals and other users submit a service complaint to the correctional facility or another state entity, which forwards data to the service provider and follows up on its resolution.</p>	<p>Practical Application: States could use federal complaint systems, such as those provided by the Federal Communications Commission or Consumer Financial Protection Bureau, as a model. Under this model, phone service users could submit complaints by calling a dedicated toll-free number, by mail, or via an online portal. These complaints could be submitted to the correctional facility or a third-party state entity. The communications provider must be required to permit access to these tools.</p> <p>Benefits: The facility or state entity can easily collect data on the number and kinds of complaints. States can use this data gained from their position facilitating complaints between users and providers to take further enforcement steps should providers fail to remedy problems. Additionally, this process allows incarcerated individuals and their loved ones a voice to advocate for recourse that will directly benefit them.</p> <p>Drawbacks and Limitations: If correctional facilities collect complaints, incarcerated individuals may face a risk</p>

Complaint Mechanism	Analysis
	<p>of backlash from carceral personnel. Incarcerated individuals likely face various practical limitations in submitting complaints, as they are limited in what phone numbers they can call and are prohibited from accessing the open internet. Furthermore, incarcerated individuals and their loved ones may be unaware of their right to complain or may lack resources to persistently pursue complaints.</p> <p>Addressing Limitations: The risk of backlash from correctional authorities can potentially be avoided by directing incarcerated individuals' complaints to a removed, third-party state entity. This option could be combined with the suggestion below by requiring a third-party state entity to take enforcement steps in addition to facilitating complaints between users and service providers. Practical limitations may be avoided if the state or facility were to allow all incarcerated individuals to call a designated toll-free number or to access an online complaint portal. Incarcerated individuals and their families could be informed of their rights and methods to complain by correctional facilities and/or through prison news sources and other relevant outreach efforts.</p>
<p>Incarcerated individuals and other carceral communications service users could submit complaints directly to a third-party state entity, who then takes enforcement steps.</p>	<p>Practical Application: Incarcerated individuals can complain directly to a third-party state entity about any call quality issues. The appropriate entity may differ by state but could be an Attorney General, official from the administrative agency overseeing telecommunications, or ombudsman within the Department of Corrections, among other positions. Upon hearing complaints, this third party would be responsible for taking steps to enforce contractual provisions or statutory requirements mandating quality service.</p> <p>Benefits: This option avoids the risk of backlash for incarcerated individuals who complain. Additionally, it provides the appropriate government entity the authority and evidence it needs to take enforcement action and obtain a remedy for call quality problems.</p> <p>Drawbacks and Limitations: This option faces many of the same drawbacks as the above-listed alternative: namely, practical limitations on incarcerated individuals' ability to submit complaints and potential lack of awareness on their</p>

Complaint Mechanism	Analysis
	<p>right to complain. The responsible state entity will also have to determine the appropriate time to take enforcement action. States should consider whether they should require enforcement action upon a certain number of complaints; whether they should offer service providers a period to cure the problems; and what enforcement action is appropriate.</p> <p>Addressing Limitations: The above-listed suggestions to address practical limitations would work here, as well. The state entity deemed responsible for enforcement should consider its ability and available resources to pursue recourse and the most effective ways to remedy the problems in pursuing recourse.</p>

Enforcement

Without enforcement, service quality standards or contractual provisions are useless. Thus, we recommend that states implement 1) contractual, 2) statutory, and 3) legal enforcement provisions in their free communications bills.

As noted above, **contractual provisions** act as a first line of defense, embedding consequences directly into the agreements with service providers. These provisions include financial penalties for providers who fail to meet quality standards, as well as provide for termination of contracts if a provider consistently falls short. This approach gives providers a financial incentive to adhere to their commitments.

Furthermore, by incorporating service quality history into the bidding process for new contracts, the state encourages a culture of compliance and continuous improvement.

Appendix D includes the following three provisions:

- **Liquidated Damages Clause:** This clause is a pre-set penalty for the phone company if phone quality does not meet statutory standards. The exact amount

will be based on a reasonable estimation of damages as informed by state law on liquidated damages and written into the contract. Enforcement of this payment may still necessitate legal action if the provider does not voluntarily comply.

- **Contract Cancellation Clause:** This clause provides a clear consequence for significant non-compliance, leading to immediate contract termination.
- **Re-Bid Requirement Clause:** This clause encourages ongoing compliance and high service quality by automatically seeking alternate phone or video providers if performance falls below a certain level.

In addition to contractual measures, **statutory actions** empower a specific regulatory agency to enforce standards through fines. These penalties should be carefully outlined in the law and provide a clear, immediate financial repercussion for each violation. This not only punishes poor phone service, but also discourages it from happening in the first place. Appendix D sets forth a statutory fine provision; this clause sets a statutory limit on fines, providing a clear, enforceable penalty for service failures.

Lastly, when a provider breaches its contractual or statutory obligations, **legal recourse** provides the state with the means to hold them accountable. This could involve the state initiating lawsuits to seek damages, enforcing specific contractual terms, or obtaining court orders to correct the non-compliance. The state must have the tools to take serious actions to protect the rights of incarcerated individuals and their families. Thus, Appendix D has a Legal Action Clause; this clause empowers state entities, such as the Attorney General to take legal action, such as compensatory damages, injunctive relief, liquidated damages, specific performance, or other equitable remedies deemed appropriate by the court. This ensures that remedies are available for any breach. Specifying the AG enforcement authority in statutes is crucial for clear,

effective regulation. It removes any ambiguity about who enforces the law, provides a solid legal basis for action, serves as a strong deterrent against violations, and aligns with best practices in consumer protection. This explicit designation ensures all parties are aware of the enforcement mechanisms and upholds consumer rights effectively.

Advocates might prefer one enforcement option over another based on the specific context and strategic considerations of their state. Contractual measures could be favored for their direct impact and ease of implementation, while statutory and legal actions may be pursued for their broader and more permanent systemic change. The choice often hinges on the balance between immediate enforceability and the desire for comprehensive, long-term solutions to protect the rights of incarcerated individuals and their families. It also may depend on whether advocates believe the state attorney general or other similar enforcement official is likely to take seriously the concerns and needs of incarcerated people.

The table found in Appendix D details each enforcement mechanism and offers a guide for advocates and legislators to create robust, actionable laws that uphold the dignity and rights of those affected by incarceration.

Conclusion

This report offers options for advocates to make sure that incarcerated people and their families receive good quality communications whether they pay for communications or not. As the report indicates, these recommended measures represent a holistic strategy to dismantle the barriers of silence and distance. The proposed legal frameworks and standards are designed as enforceable rights to guarantee that communication—a lifeline for those incarcerated—remains unbroken and clear. With this report, UCC Media Justice lays down a legislative blueprint that, if followed, promises to uphold the dignity of incarcerated individuals and their families by ensuring their voices are heard and connections maintained and ultimately aiding in their successful reentry into society.

Appendix A: Quality Standards

Model service quality statutory language:

Service Quality Standards for Incarcerated Individuals' Communication Services

(a) General Provisions:

- Recognizing the critical role of high-quality communication in maintaining connections for incarcerated individuals and supporting their successful reintegration into society, the [state] establishes comprehensive service quality standards for voice and video communication services provided within state or local correctional or detention facilities.

Option 1: (b) Service Quality Standards:

- **Authority to Set Standards:** The [State Public Utilities Commission], or other designated regulatory entity shall have the authority to define and set these technical standards to ensure high-quality communication services. The [State Public Utilities Commission] or another designated regulatory entity shall establish and enforce technical standards for voice and video communications, including detailed standards for call clarity, including a minimum Mean Opinion Score (MOS) for audio quality and specific maximum allowable drop rates for calls.

Option 2: (b) Service Quality Standards:

- **Service Continuity:** Providers must limit service disruptions. Scheduled maintenance potentially impacting service must occur during periods of minimal call activity, based on historical usage data, with advance notification to both facility administrators and incarcerated persons.

- **Technical Issue Resolution:** Providers must set up a protocol for swiftly addressing technical problems affecting service quality or accessibility, including a dedicated support line for reporting issues, with mandated corrective action within 24 hours of issue reporting.
- **Call Drop Rate:** Service providers must ensure that the percentage of voice and video calls prematurely terminated by the network does not exceed a monthly average of 1 percent.
- **Call Failure Rate:** The rate of voice and video calls that cannot be initiated due to network issues must not surpass a monthly average of 1 percent.
- **Latency:** Voice and video communications must have a mean latency of 100 milliseconds or less during peak hours for at least 90 percent of calls. This criterion ensures that the delay in transmitting voice or video packets is minimal, thereby enhancing the quality of communication.
- **Jitter:** The network must maintain a mean jitter of 50 milliseconds or less during peak hours for at least 90 percent of voice and video calls. This requirement aims to reduce the variability in packet delay, which is crucial for the clarity and consistency of voice and video transmissions.
- **Packet Loss:** Service providers are required to limit the percentage of data packets lost during transmission to an average of less than 1 percent monthly. Reducing packet loss is essential for maintaining the integrity of voice and video communications.
- **Call Setup Time:** The average time taken to initiate a voice or video call, from the moment the call is initiated to when it is successfully connected, should not

exceed ten seconds. This standard is set to minimize wait times and improve the efficiency of communication services provided.

Appendix B: Contract Provisions/Practices

Suggested Model Language for Codification of Contract Procurement Practices for Carceral Communications Services

- (a) In entering contracts for carceral communications services, [state procurement officials] must contract for provisions that:
- (i) require phone service providers or vendors to meet [the defined minimum level of service quality standards];
 - (ii) mandate that service providers are responsible for maintaining adequate infrastructure, investigating the causes of call quality issues within 24 hours, and repairing or otherwise remedying the root causes of quality problems within a reasonable time frame of seven days, unless:
 - (1) the remedy will require longer than seven days to repair, in which case the provider shall inform the state procurement official, affected correctional facility or facilities, and affected users and shall provide substitute or alternative methods of service during the outage.
 - (iii) make phone service providers responsible for any services provided by third-party subcontractors. Requirements must include:
 - (1) mandating quality outcomes;
 - (2) ensuring service providers are responsible for remedying any problems that arise from third-party subcontracts;
 - (3) requiring communications service providers to seek state approval before entering into any contracts with third parties and providing information on the subvendor contracts; and

(4) mandating that phone providers are liable and can be held accountable for any mistakes, failure to provide quality service, or any other related issues stemming from the subcontractor.

(b) Contracts for carceral voice or video communications shall not include provisions through which the communications service provider disclaims liability, implied or explicit warranties of merchantability or fitness for a particular purpose, or any related provisions denying that the service provider has any responsibility to provide quality voice communications services. Contracts including such provisions shall not be valid.

Appendix C: Reporting Requirements

Suggested Model Language for Reporting Requirements

Reporting Requirements for Carceral Communications Services

(a) Carceral communications service providers must conduct ongoing service quality assessments and submit quarterly performance reports to the [State Public Utilities Commission or equivalent appropriate authority] that outline metrics on the total number of calls, call quality, connectivity, disruption frequency, and resolution efficiency. This includes but is not limited to:

- (i) Call Drop Rate: Percentage of calls prematurely terminated, averaged monthly.
- (ii) Call Failure Rate: Percentage of calls unable to initiate, averaged monthly.
- (iii) Latency: Percentage of calls with a mean latency of more than 100 milliseconds during peak hours.
- (iv) Jitter: Percentage of calls with a mean jitter of more than 50 milliseconds during peak hours.
- (v) Packet Loss: Percentage of data packets lost, averaged monthly.
- (vi) Call Setup Time: Average setup time for call initiation.

(b) Carceral communications service providers must compile and submit quarterly reports to the [insert appropriate state entity here] on:

- (i) complaints submitted to the phone service provider, including:
 - (1) the number of complaints or service tickets related to poor quality voice communications services from incarcerated people;
 - (2) the number of complaints related to poor quality voice communications services from non-incarcerated users of the

vendor's services;

(3) the substance of the complaints of poor quality communications services

(c) The [insert appropriate state entity here] must conduct an annual audit to confirm that the information provided by the phone service provider is correct or complete. Incomplete or inaccurate information will result in enforcement action as provided by [appropriate statute here.]

(d) The [insert appropriate state entity here] must publish and make easily available an annual report detailing:

- (i) its findings from the data collected, including but not limited to the number and nature of complaints received;
- (ii) corresponding remedial action taken;
- (iii) trends in service quality issues;
- (iv) decisions or updates on the phone service provider relationship; and
- (v) other relevant information.

Appendix D: Enforcement Provisions

(a) Contractual Enforcement

- **Liquidated Damages Clause:** In the event that the service provider fails to adhere to the defined quality service standards, including but not limited to maintaining a Call Drop Rate and Call Failure Rate of less than 1% monthly average, ensuring a mean Latency of 100 milliseconds or less for at least 90% of calls during peak hours, maintaining a mean Jitter of 50 milliseconds or less for at least 90% of calls during peak hours, limiting Packet Loss to an average of less than 1% monthly, and achieving a Call Setup Time of ten seconds or less, liquidated damages will be imposed. These damages will be calculated based on a [specified dollar amount or a formula reflecting the duration and severity of non-compliance]. While the damages are pre-determined to encourage compliance, recovery of these damages may require initiating legal proceedings if not voluntarily paid by the provider.
- **Contract Cancellation Clause:** Should the provider fail to meet the quality standards as outlined herein, the state [or relevant regulatory body] reserves the right to terminate the contract with immediate effect upon the determination of such failure.
- **Re-Bid Requirement Clause:** Future contract bidding will prioritize historical service quality and compliance. Providers with records of non-compliance will face bid eligibility restrictions or disqualifications.

(b) Statutory Enforcement

- a) **Statutory Fine Provision:** Should the service provider fail to adhere to the service quality standards as established by [relevant statute], the [relevant regulatory body] is hereby authorized and directed to impose fines. Each incident of non-compliance will be subject to a statutory fine not to exceed [specific dollar amount], as determined by the [relevant regulatory body].

(c) Litigation Enforcement

- a) **Legal Action Clause:** Upon breach of statutory or contractual obligations regarding service quality, the state, represented by the [Attorney General's office/other legal entity], is authorized to initiate legal proceedings to seek remedies including, but not limited to, compensatory damages, injunctive relief, liquidated damages, specific performance, or other equitable remedies deemed appropriate by the court.

Appendix E: Summaries of free call statutes

State	Year	Statute	Summary of Statute
CT	2021	Public Act No. 21-54 - An Act Concerning Communication Services In Correctional And Juvenile Detention Facilities.	Mandates free communication services for individuals in Connecticut’s correctional and juvenile detention facilities starting October 1, 2022. The Act prohibits using these services to replace in-person visits and ensures that all forms of communication, including voice, video, and email, are provided at no cost to the incarcerated individuals. Additionally, it stipulates that the state will not generate revenue from the provision of these communication services.
CA	2022	CA Pub. Util. Code § 2899 - Keeping Families Connected Act	Mandates free communication services for individuals in custody within the state’s prisons and juvenile facilities, prohibiting revenue generation from these services by state and local agencies. This Act emphasizes the importance of family connections to aid in the reintegration of incarcerated persons into society. Additionally, it mandates the Public Utilities Commission to set quality standards for these communication services, ensuring reliable access for incarcerated individuals to maintain contact with their families and support networks.
CO	2023	HB1133 - Cost Of Phone Calls For Persons In Custody	Mandates that the state’s Department of Corrections provide free voice communication services, which may include video and email services, without generating revenue from these services. The bill stipulates a phased implementation for covering communication costs, starting with 25% of costs covered from September 2023, increasing to 35% by July 2024, and covering 100% of costs by July 2025. Additionally, it includes provisions for juvenile detention facilities.
MN	2023	SF 2909 - Judiciary and Public Safety Budget Bill, Sec. 11. [241.252]	Mandates state adult or juvenile facilities provide free voice communication services to incarcerated individuals, with the option to add video and electronic messaging services, ensuring no charges for communication. It sets restrictions to uphold protection orders, prohibits state revenue from these services except for pre-2023 commissions, and maintains in-person visits with certain exceptions. Requires annual reporting by the Department of Corrections on renegotiating communication contracts, including rate details, fund usage, and service statistics to boost transparency and accountability in providing communication services to incarcerated people.
MA	2023	H. 4052 - An Act providing for unlimited free phone calls to incarcerated individuals	Mandates the Department of Correction and sheriffs provide unlimited free voice communication services, including phone calls, to individuals in state and county correctional facilities. The Act mandates that the level of access to these services should not be less than what was available on July 1, 2023, ensuring that facilities maintain or enhance current communication standards. It also emphasizes the need for adequate infrastructure to support these services and affirms that the provision of free voice communication does not affect the availability of in-person visits, highlighting a comprehensive approach to maintaining connections between incarcerated individuals and their communities.

Comparison of Key State Law Provisions

Key Provisions (note that quoted language below is keyed to specific states as indicated by number)	CT	CA	CO	MN	MA
Free Calls <i>“Communication service shall be provided free of charge”</i>	✓	✓	✓	✓	✓
Revenue <i>“A state agency shall not receive revenue from the provision of voice communication services”</i>	✓	✓	✓	✓	✓
Access 2) <i>“Provide persons in their custody and confined in a correctional or detention facility with accessible, functional voice communication services free of charge”</i> 3) <i>“Access to communications services must not be limited beyond what is necessary for routine facility operations”</i> 4) <i>“To the extent that voice communication services are provided, which must not be limited beyond program participation and routine facility policies and procedures...”</i> 5) <i>“Voice communication services shall be maximized to the extent possible and no facility shall offer access to voice communication services less than were offered and available at such facilities on July 1, 2023...”</i>	✗	✓	✓	✓	✓
Reporting 3) <i>“Each penal communications service provider shall submit such records and data in a report to the public utilities commission within fourteen days after the end of each quarter”</i> 4) <i>“...must include the following information ... in its annual performance report.... its efforts to renegotiate the agency's communication contracts, including the rates the agency is paying or charging incarcerated people or community members for any and all services in the contracts; 229.9”</i> 5) <i>“...shall report to the house and senate committees on ways and means and the joint committee on the judiciary on the status of any communication services contracts and plans to consolidate contracts to maximize purchasing power for voice communication services...”</i>	✗	✗	✓	✓	✓
Quality 2) <i>“The Commission shall establish service quality standards for incarcerated persons calling services...”</i> 5) <i>“...the department of correction and sheriffs shall ensure adequate infrastructure for voice communication services...”</i>	✗	✓	✗	✗	✓

