

# SB 303 STUDY: FEDERAL COMMUNICATION COMMISSION INMATE CALLING ORDERS

## FEDERAL COMMUNICATION COMMISSION BACKGROUND

These days, many people may not give a second thought to how much a phone call costs. However, for roughly two million men and women incarcerated across the country and for anyone whom they talk to, a phone call likely costs many times more because of how the calls are regulated or not regulated. In Montana, the 2021 legislature passed Senate Bill 303 requiring an interim study of inmate telephone communications that affect more than 2,500 prisoners.

The issue was raised nationally in 2003 when Martha Wright filed a petition with the Federal Communication Commission (FCC) seeking lower calling rates for calling her incarcerated grandson. The FCC is an independent U.S. government agency that oversees all interstate and international communications.

The FCC has twice set caps on inmate calling rates. A federal court struck down the first attempt in 2015. In 2021, the FCC set new inmate interstate calling rates, but Montana State Prison is the only detention facility the new rates apply because the number of incarcerated inmates is over 1,000 on a daily average.

## FCC INMATE CALLING ORDERS 2007-2020

Ms. Wright sought to end exclusive inmate calling services and collect-call-only restrictions in correctional facilities. In 2007 Ms. Wright and fellow petitioners filed an alternative petition emphasizing the urgency for the committee to act.

In 2015 the FCC issued its first permanent inmate calling order. The order limited ancillary service charges and set permanent rate caps for interstate and intrastate inmate calling services. In addition, the FCC set tiered rates caps of \$.11 per minute for prisons, \$.14 per minute for jails with average populations over 1,000, \$.16 per minute for jails with an average population of 350 to 999, and \$.22 per minute for jails having an average population of 350. The FCC revised its 2015 order in January of 2016. The 2016 order adjusted the rate caps and allowed site commission payments. Additionally, the FCC revised its tiered rates caps to \$.13 per minute for prisons, \$.19 per minute for jails with average populations over 1,000, \$.21 per minute for jails with an average population of 350 to 999, and \$.31 per minute for jails having an average population of 350.

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SERVICES DIVISION

FCC Inmate Calling Orders

In 2017, inmate call service provider GTL sued the FCC, and the D.C. Circuit Court struck down the permanent rate caps. The Court held that the FCC lacked the statutory authority to cap intrastate calling service rates. The Communications Act of 1934, specifically § 276 of the act, limits the FCC's jurisdiction.

FEDERAL COMMUNICATION COMMISSION MAY 2121 INMATE CALLING ORDER

The D.C. Circuit Court held the FCC lacked the statutory authority to cap intrastate calling service rates.

On May 20, 2021, the FCC again set rate caps for interstate inmate calling services. The order established rates at \$.12 per minute for prisons and \$.14 per minute for jails with an average population of 1,000 or more. The FCC also: 1) set a cap for site commission fees at \$.02 per minute; 2) establish caps for international calling services rates at prison and jail for the first time; and 3) eliminate a higher rate cap for interstate collect calls, caps ancillary charges at \$6.95 for third-party financial transaction fees; and 4) adopted a new mandatory data collection to gather data to set future rates. The formula uses one standard deviation to the industry-wide mean to establish both a high and a low boundary of "fairly compensated." The commission also established a waiver system to allow providers to seek exemptions from the caps for any site where its actual costs do not allow the company to offer services profitably.

The chart below illustrates the most populated correctional and detention facilities in Montana. Montana State Prison is the only facility the new FCC rate caps because it exceeds 1,000 inmates. Montana State Prison amended its contract with ICS Corrections on April 27, 2021. The amended contract reduced call rates, including intrastate and interstate, in state facilities from \$.143 to \$.10, \$.02 less than required by the 2021 FCC order.

FACILITIES WITH THE TOP INMATE POPULATIONS IN MONTANA

Facility Name	Prisoners	Type
<b>Montana State Prison</b>	<b>1,456</b>	<b>State Correctional Facility</b>
Crossroads Correctional Center	759	Contract Correctional Facility
Cascade County Regional Jail	362	Local Detention Center
Montana Women’s Prison	233	State Correctional Facility
Gallatin County Detention Center	143	Local Detention Center
Dawson County Correctional Facility	143	State Correctional Facility
Pine Hills Correctional Facility	30	State Correctional Facility
Riverside Correctional Facility	25	State Correctional Facility