

1050 17th Street, N.W.
Suite 1150
Washington, DC 20036
202.525.5717



Free Markets. Real Solutions.
www.rstreet.org

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

October 6th, 2017

Notice of Ex Parte

In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375

Dear Ms. Dortch,

On Wednesday, October 4th, 2017, Tom Struble and Joe Kane of the R Street Institute (“R Street”) met with Jay Schwarz, Wireline Advisor for Chairman Pai, and Nathan Leamer, Policy Advisor for Chairman Pai. During this meeting, R Street discussed the above-captioned proceeding, regarding the Commission’s efforts to regulate the rates for inmate calling services (“ICS”).¹

It has now been almost fourteen years since Martha Wright first brought the issue of exorbitant ICS rates to the Commission’s attention,² and it is truly tragic that the Commission’s three attempts to improve the situation have yielded no positive results.³ Part of the problem is a lack of legal authority — R Street agrees with the Commission’s current position that it lacks authority to regulate intrastate calling rates.⁴ However, part of

¹ See *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (Nov. 5, 2015) [“2015 ICS Order”], available at <https://goo.gl/N9Q6CF> (establishing new rates caps for both intrastate and interstate inmate calling services, after the previous caps were struck down in court); see also *Glob. Tel. Link v. FCC*, 859 F.3d 39, 45 (D.C. Cir. 2017) (striking down the rates set forth in the 2015 ICS Order because the Commission had no authority to set intrastate rates and because the interstate rates were deemed to be arbitrary and capricious).

² 2015 ICS Order, ¶ 1.

³ *Id.* ¶¶ 16–18.

⁴ See *Glob. Tel. Link v. FCC*, 859 F.3d 39, 44 (D.C. Cir. 2017) (“Following the presidential inauguration in January 2017, counsel for the FCC advised the court that, due to a change in

the problem is also that the Commission has not taken the adequate time to establish interstate ICS rates that can withstand judicial scrutiny. Not only were previous failed attempts to set ICS rates a waste of time and taxpayer resources, but they also left inmates and their families stuck with exorbitant ICS rates, decreasing the amount of contact they can maintain and likely hurting rehabilitation and recidivism rates.⁵

During the meeting, R Street implored the Commission to use its authority over interstate ICS to establish rates for these services that are neither arbitrary nor confiscatory, such that they could withstand judicial review. R Street also inquired about what authority the Commission would need from Congress in order to regulate intrastate ICS as well. For example, R Street queried whether authority to regulate intrastate ICS rates should presumptively lie at the state level, with a federal backstop — as is the case with designations for Eligible Telecommunications Carriers under Section 214⁶ — or vice versa, with the Commission setting intrastate ICS rates by default, but allowing states to reverse-preempt the Commission and set their own rates if certain conditions are met — as is the case with pole attachments under Section 224.⁷

R Street also encouraged the Commission to examine market-based solutions for lowering ICS rates, since competition is generally more effective at efficiently bringing down prices for consumers than government mandates. For example, even if exclusive contracts must be assigned in the process of building a prison in order to provide initial ICS connectivity, such exclusive deals should be term-limited with competitive bidding used to award any further period of exclusivity. The unique economic position occupied by prisons may make competitive solutions more difficult to implement than in other similar situations, such as in multiple-dwelling units, but the Commission should actively explore these competitive solutions and seek to find ways for market forces to displace regulation wherever possible.

* * * * *

In accordance with Section 1.1206(b) of the Commission's rules,⁸ this letter is being filed with your office. If you have any questions, please contact the undersigned.

the composition of the Commission, 'a majority of the current Commission does not believe that the agency has the authority to cap intrastate rates under Section 276 of the Act.'").

⁵ See, e.g., 2015 ICS Order, ¶ 3 n.3.

⁶ See 47 U.S.C. § 214.

⁷ See 47 U.S.C. § 224.

⁸ 47 C.F.R. § 1.1206(b).

Respectfully submitted,

/s/

Tom Struble
Technology Policy Manager
R Street Institute
tstruble@rstreet.org

Joe Kane
Technology Policy Associate
R Street Institute
jkane@rstreet.org

cc: Jay Schwarz
jay.schwarz@fcc.gov

Nathan Leamer
nathan.leamer@fcc.gov