ROBERT J. WITTMAN
1ST DISTRICT, VIRGINIA

HOUSE ARMED SERVICES COMMITTEE
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Congress of the United States
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Washington, DC 20515–4601

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September 18, 2014

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Room

The Honorable Tom Wheeler
Federal Communications Commission
Chairman
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

In conversations with the local governments and constituents across our Districts, we have become increasingly aware of a potential action by the Federal Communication Commission (FCC) that will have a negative impact on the states we represent.

Specifically, we refer to the expansion of *FCC 13-113 Rates for Interstate Inmate Calling Services* to include capping inmate intrastate calling rates inclusive to an as of yet undetermined structure and the potential abolishment of associated revenue share.

While we appreciate the FCC's attempt to consider outside interests, we believe that all stakeholders involved in this discussion must share the Commission's objectives. It would be useful for the FCC to hear from the localities and residents on how this potential administrative rule may impact their communities. It is also our hope that in common dialogue and good faith we can establish policy decisions that truly speak to the needs of all citizens impacted and in doing so, help the FCC find a fair and equitable solution to its concerns.

We are concerned about the financial implications of the proposed rule change and the potential impact it may have on spending priorities of already financially restricted cities and counties in our Districts. As you may be aware, the financial impact of an intrastate call rate revenue share restriction proposed by *FCC 13-113* is estimated to be over $13.5 million dollars a year just for Virginia's localities alone. This rule change comes at a time of major revenue short falls for many localities that have already had to force spending cuts of significant proportions. If the rule change is implemented, hard decisions must be made that will impact every citizen; law enforcement, correctional services, public education, social services and public health spending may have to be sacrificed should the change be permitted.

Second only to education, public safety forms the foundation of the social contract between local government and the citizens of that jurisdiction. Across our Districts there is grave concern that this rule may have a major adverse impact on law enforcements' ability to interdict and prosecute crime, inside and outside of the state's correctional facilities.

As many states like New Mexico, Alabama, and California are moving to address the FCC's concerns within their authority, we feel that our local governments can also work with the FCC to help develop policies that address the Commission's concerns in manners that also reflect the priorities and objectives of those jurisdictions.

To this point, we respectfully ask that the FCC consider the following suggestions as it considers the proposed rule change to restrict intrastate inmate call rates:

1. Refer to individual state utility commissions to establish policies and practices that address the concerns of the FCC; that reflect the policy priorities of the state or locality; and, most importantly, take into account the will of the governed;

2. Grace period implementation - If the Commission sees the need to proceed with the rule change, a grace period of 18 to 36 months is absolutely vital to prevent serious local economic dislocation. Similar federally mandated rules on localities typically have implementation periods that span years. Without a compelling governmental interest, of which none exist, there is no objective practical reason not to apply the same standard;

3. Cost recovery on incurred costs - As the FCC is considering allowing a narrowly defined application on incurred cost recovery allowances limited to the provision of a call exclusively, support for a more liberal definition that would include costs associated with crime interdiction and prosecution phone technologies would make sure that local law enforcement and state attorneys would continue to have access to these vital public safety tools. Incurred costs for system provision versus incurred costs for call provision;

4. Clarity and transparency – I respectfully ask the FCC to consider articulating a potential rule on the issue of revenue share or commission. It would be extremely beneficial for the FCC to establish a clear, concise and unambiguous public position on this issue for all interested parties to increase understanding, reduce animosity and promote cooperation.

We appreciate your full consideration of these concerns and recommendations. Should you have any further questions, please contact Congressman Wittman's office at 202-225-4261.

With kind regards, I am.

Sincerely,

Robert J. Wittman
Member of Congress

Richard B. Nugent
Member of Congress

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 4, 2014

The Honorable Rich Nugent
U.S. House of Representatives
1727 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Nugent:

Thank you for contacting me to express the concerns raised by local governments and other constituents in your district regarding the Commission's inmate calling services (ICS) proceeding. In your letter, you strongly urge that any rate changes be phased in gradually and that the Commission consider allowing recovery of incurred costs. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

On September 26, 2013, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* on ICS. In the *Report and Order*, the Commission adopted interim reforms of interstate ICS rates, requiring that providers' rates and charges be just, reasonable, and fair. The *Report and Order* also required submission of data from ICS providers on costs and usage, which the Commission received in August 2014.

The *Report and Order* recognized that security measures are an important part of ICS and made clear that it is appropriate for security costs to be recovered through ICS rates. In the associated *Further Notice of Proposed Rulemaking*, the Commission sought public comment on a number of outstanding issues regarding ICS, including reform of intrastate ICS rates and practices, and whether the Commission should adopt a rate structure that distinguishes between jails and prisons.

The *Report and Order* is already having positive results. Lower interstate rates and increased ICS usage enable more families to connect with inmates. Unfortunately, intrastate rates have increased in many states. Moreover, ICS providers are imposing an increasing array of ancillary charges, and correctional facilities are continuing to demand site commissions, or payments to facilities that are not based on their costs to provision ICS, which represent a significant portion of ICS provider gross revenues.

Under the leadership of Commissioner Clyburn, who has been spearheading the Commission's effort on this issue, the Commission adopted a *Second Further Notice of Proposed Rulemaking* ("*Further Notice*") on October 17, 2014, with a goal of comprehensively reforming the ICS system, including both interstate and intrastate rates. The *Further Notice*

seeks comment on the data submitted by ICS providers in August, which includes cost data for jails and prisons of all sizes. The *Further Notice* seeks comment on the data and whether rules should account for the differences in costs to serve different types of facilities.

Your letter raises several important issues, and the *Further Notice* recognized these issues and seeks comment on how to address them. For example, with respect to your concerns related to the recovery of incurred costs, the *Further Notice* seeks comment on whether correctional institutions incur any costs in the provision of ICS and, if so, how facilities should recover such costs if the Commission otherwise determines to prohibit the use of site commissions. And, with respect to your suggestion of a "grace period" for implementation, the *Further Notice* seeks comment on providing a multi-year transition period to provide sufficient time for correctional facilities to adjust their budgets.

Please be assured that we will take into consideration the issues and concerns presented by all stakeholders engaged in this proceeding, including, as you suggest, representatives of state and local governments. The goal of the *Further Notice* is to reform the ICS system comprehensively, while also ensuring appropriate cost recovery and transition periods for correctional facilities.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 4, 2014

The Honorable Rob Wittman
U.S. House of Representatives
2454 Rayburn House Office Building
Washington, D.C. 20515

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