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March 11, 2016

Via Electronic Filing

Matthew DelNero
Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Docket 12-375

Dear Mr. DelNero:

The Wright Petitioners respectfully submit this initial response to Telmate, LLC's letter to the Chief, Wireline Competition Bureau dated March 11, 2016.¹

The Wright Petitioners share Telmate's concern that the Commission address this matter as soon as possible. In the interest of facilitating prompt action by the Commission, this response is necessarily brief and does not comprehensively discuss all the points raised in the Telmate letter. Should circumstances require, the Wright Petitioners will address other arguments at more length in a later submission.

The critical - and dispositive - fact is that in its *2015 Order*, the Commission amended Section 64.6000(j) and, in so doing, deleted the word "interstate" from the definition of "Inmate

¹At the time that counsel received word of the Telmate letter at about noon today, it had not been posted to the Commission's ECFS system. Counsel for Telmate graciously provided a copy upon request. The letter was posted at about 1 p.m. today.

Calling Services.”² No party asked the Commission or the Court of Appeals to stay the effectiveness of this amended rule. Thus, the Commission is not only free to enforce this new definition as of March 17, 2016, it would be defying its own rules if it did not do so.

The interim rate caps adopted in 2013 remain in effect.³ The Court of Appeals previously allowed these caps to go into effect and, since the adoption of the *2015 Order*, no party has asked the Commission or the Court of Appeals to stay the interim rule. By its terms, the “Inmate Calling Services Rate Cap” says that “No provider shall charge...rate[s]” in excess of \$0.21 and \$0.25 cents for collect and other calls, respectively. The rule does not distinguish between interstate and intrastate calls. Thus, the clear impact of the changed definition of “Inmate Calling Service” is to make the interim rate caps applicable to “Inmate Calling Services” as redefined and thus extend their application to intrastate calls.

The essential thrust of Telmate’s argument is that when the Commission adopted the interim rate caps it did not intend them to apply to intrastate calls and that when it adopted the *2015 Order* it did not state any intention to apply the interim caps to intrastate calls. Even if that were true, it does not matter. The Commission did not contemplate that there would be a stay of the new, interstate and intrastate rules so it is understandable that it saw no need to discuss the interim caps which it believed would be superseded. That does not stop the Commission from enforcing its rules as written notwithstanding changed circumstances. What matters is that the Commission unquestionably, and expressly, changed the operative definition in a manner which has the effect of extending the interim caps to intrastate calls. In the absence of any change to the interim rule, the changed definition expands the scope of the rule.

²In the *2013 Order*, the Commission defined Inmate Calling Services as follows:
Inmate calling services means the offering of *interstate* calling capabilities from an Inmate Telephone;

2013 Order, 28 FCCRcd 14107, 14195 (2013) (Emphasis added.)

In the *2015 Order*, the Commission amended the definition to read as follows:
Inmate Calling Service means a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service;

2015 Order, 30 FCCRcd 12763, 12921 (2015).

³The interim rule reads as follows:

§ 64.6030 Inmate Calling Services Interim Rate Cap

No provider shall charge a rate for Collect Calling in excess of \$0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of \$0.21 per minute. A Provider’s rates shall be considered consistent with this section if the total charge for a 15-minute call, including any per-call or per-connection charges, does not exceed \$3.75 for a 15-minute call using Collect Calling, or \$3.15 for a 15-minute call using Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

Telmate also asks for clarification as to the whether the Court's stay order precludes the Commission from exercising authority under 47 U.S.C. §276. However, it is crystal clear that the Court did not block the Commission from enforcing Section 276. New Section 64.6020, governing ancillary fees, unquestionably applies to both intrastate and interstate services, and the Commission explicitly relied upon Section 276 as authority for adopting it.⁴ The Court was asked to block the enforcement of new Section 64.6020 in its entirety, but it carefully identified and stayed the application of only one subsection of that provision - the restriction on single call charges as set forth in new section 64.6020(b)(2). Thus, in allowing the remainder of new Section 64.6020 to go into effect, the Court indubitably allowed the FCC to rely upon Section 276. This is also true for the other provisions which were not stayed, including the new rules governing TTY calls (47 C.F.R. §64.6040), annual reporting (47 C.F.R. §64.6060), taxes and fees (47 C.F.R. §6070), per-call charges (47 C.F.R. §64.6080), flat rate calling (47 C.F.R. §64.6090), account balances (47 C.F.R. §64.6100) and customer disclosure (47 C.F.R. §64.6110). Thus, there is no way for Telmate to conclude that anything the Court did even suggested that the FCC was precluded from relying upon Section 276 in adopting its new rules.

The fact that the Commission has been allowed to go forward with most of the new rules adopted pursuant to Section 276 also underscores why the effect of the Court's decision is to allow application of the interim rate caps in Section 64.6030 to intrastate calls. Since the Court chose not to prohibit the use of Section 276 for the various new provisions other than rate caps and one ancillary fee, the best reading - indeed, the only possible reading - of the Court's action is that, at least for now, the Commission now has additional authority to employ Section 276 and that this extends to the interim rate caps.

Respectfully submitted,

/s/

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⁴2015 Order, 30 FCCRcd at 12859-61, ¶¶ 193-196.