

March 15, 2016

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Letter

Matthew DelNero
Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-375, Inmate Calling Services Proceeding

Dear Mr. DelNero:

This letter is submitted on behalf of Pay Tel Communications, Inc. (“Pay Tel”) in connection with the request of Telmate, LLC (“Telmate”)¹ for clarification regarding whether Section 64.6030 of the Commission’s Rules, 47 C.F.R. § 64.6030, “Inmate Calling Services Interim Rate Cap,” applies to intrastate rates for inmate calling services (“ICS”).

As described below, Pay Tel believes that the Commission’s orders and rules are abundantly clear and need no further clarification by the Bureau. If the Bureau believes that such clarification is necessary, Pay Tel urges the Bureau to grant Telmate’s request and confirm that the Commission has not adopted “interim” rates affecting intrastate ICS.

As noted by Telmate, the D.C. Circuit’s Stay Order² stayed Commission Rule 47 C.F.R. § 64.6010, “Inmate Calling Services Rate Caps,” which set forth new permanent rate caps applicable to intrastate and interstate ICS calls for jails and prisons. The Stay Order did not stay, or otherwise address or discuss, Rule 64.6030. Rule 64.6030 reads, in its entirety: “No Provider shall charge a rate for Collect Calling in excess of \$0.25 per minute, or a rate for Debit Calling, Prepaid Calling,

¹ See Letter from Brita D. Strandberg, et al., Counsel to Telmate, LLC, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 (Mar. 11, 2016).

² See Order, *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016) (“Stay Order”).

or Prepaid Collect Calling in excess of \$0.21 per minute. These interim rate caps shall sunset upon the effectiveness of the rates established in Section 64.6010.”³

While it is true that the Second ICS Order⁴ revised the First ICS Order’s⁵ definition of “inmate calling service” to eliminate the prior definition’s limitation to interstate calling,⁶ this change does nothing to alter the scope of the interim rates actually approved by the Commission in its orders.

On its face, both the title of Rule 64.6030 itself and its language set forth an “interim” (i.e., temporary) rate cap. The only order that established interim rate caps was the First ICS Order and, in this regard, Rule 64.6030 merely carries forward the interim rate caps adopted in the First ICS Order—applicable now, as then, only to interstate rates.

The First ICS Order only applied to interstate rates, not intrastate rates. The Second ICS Order, by contrast, set permanent—not interim—rate caps on interstate and intrastate calls. There is no language whatsoever in the Second ICS Order purporting to establish interim rates or making findings regarding interim rate caps applicable to intrastate calling. To the contrary, the whole purpose of the Second ICS Order was to establish permanent rate caps; there was no reason for the Commission to establish “interim” rate caps on intrastate calling in the Second ICS Order, and it did not do so.

Substantive legal requirements do not spring forward by themselves. It is simply immaterial to this discussion that the definition of “inmate calling services” was altered in the Second ICS Order. Since the Commission set no interim rates for intrastate calls, Rule 64.6030 has no intrastate application. This could not be clearer and, accordingly, there is no need for any “clarification” by the Bureau.

This commonsense interpretation is supported by the Joint Statement of Chairman Wheeler and Commissioner Clyburn on the Stay Order. As they explained in a statement released March 7, 2016, “[t]he stay does not disrupt the interim rates set by the Commission in 2013.”⁷ As discussed above, the interim rates set by the Commission in 2013 apply only to interstate calls.

³ 47 C.F.R. § 64.6030.

⁴ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 15-136 (rel. Nov. 5, 2015) (“Second ICS Order”).

⁵ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 12-375, 28 FCC Rcd. 14,107 (2013) (“First ICS Order”).

⁶ 47 C.F.R. § 64.6000(j).

⁷ Statement by Chairman Wheeler, Commissioner Clyburn on D.C. Circuit Partial Stay of Inmate Calling Rate (Mar. 7, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0307/DOC-338101A1.pdf.

The Commission, of course, carried Rule 64.6030 forward in the Second ICS Order because of the delayed effective date for the new, permanent rate caps for both prisons and jails.⁸ Given that the new, permanent rate caps did not become immediately effective, the Commission had to carry forward the interim interstate rate caps established under the First ICS Order, or else ICS providers could have raised interstate rates above the First ICS Order's interim cap during the gap between issuance of the Second ICS Order and the effective date of the new, permanent rate caps.

A contrary interpretation leads to nonsensical results. To take the inmate activists' position⁹ is to argue that the Commission drafted a rule that would have been a legal nullity and of no consequence whatsoever. Assuming that Rule 64.6030 did apply to intrastate rates, in what "interim" period would the intrastate rate caps have been \$0.21 (for debit calls) and \$0.25 (for collect calls)? The answer is there would not be such an "interim" period. Given the delayed effective date of the revised permanent rate caps adopted in the Second ICS Order, any intrastate application of Rule 64.6030 would not have taken effect until the exact same dates that the Second ICS Order's permanent rate caps in Rule 64.6010 take effect—meaning the Rule 64.6010 permanent rate caps would take priority over the Rule 64.6030 interim rate caps immediately and that there is no Rule 64.6030 "interim" period as to intrastate rate caps. To argue a reading of Rule 64.6030 in which "interim" intrastate rate caps would never take effect proves the absurdity of the inmate activists' construction. Surely it cannot be contended that the Commission drafted Rule 64.6030 with a view to overcoming a court stay of permanent intrastate rates—which would be an exercise in futility given that the Commission cannot adopt a rule to circumvent a hypothetical future court order! Certainly, had this been the Commission's intent there would be some basis for such a conclusion in the text of the Second ICS Order, as well as some basis cited in the record for the adoption of interim intrastate rates.

Moreover, in addition to the absurdity (pointed out by Telmate) of setting an "interim" rate for collect calls a full \$0.24 below the cost determined by the Commission, the interpretation urged by the inmate activists would result in an "interim" intrastate rate for jails with an ADP of 0-349 that is \$0.01 below the cost determined by the Commission.

In the full context of the Commission's orders in this proceeding, it is clear that Rule 64.6030 merely addresses interim rates—which only applied to interstate calls—and the Commission's revision of the definition of "ICS" has no bearing on the actual interim rates that were adopted.

In accordance with Section 1.1206 of the Commission's rules, this letter is submitted for inclusion in the record of the above-captioned proceeding.

⁸ Second ICS Order, ¶ 336.

⁹ See Letter from Andrew Jay Schwartzman, et al., Counsel for the Wright Petitioners, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 (Mar. 11, 2016).

Please do not hesitate to contact the undersigned should any questions arise concerning this presentation.

Sincerely yours,

/s/ Marcus W. Trathen

Marcus W. Trathen

cc:

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Jonathan Sallet, General Counsel, FCC
Marlene H. Dortch, Secretary, FCC