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March 16, 2016

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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Ex Parte* Submission
Rates for Interstate Inmate Calling Services
WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Wright Petitioners hereby submit the following response to the recent submissions of Telmate¹ and Pay Tel Communications² in response to the effective date of the rules contained in the *Second Report and Order* in the above-referenced proceeding.³

In particular, Telmate and Pay Tel Communications seek "clarification" that certain rule changes set forth in the *Second R&O* do not become effective on March 17, 2016. Instead, they argue that certain rule changes contained in Section 64.6000 and 64.6030, affecting the adoption of the interim rate cap for ICS should not be read to affect current intrastate ICS intrastate rates. Both make the argument at the rules relating to the interim rate cap set forth in Section 64.6030 were not changed in the *Second R&O*, and therefore, the Commission's cap of 21 cents/minute for debit, prepaid, and prepaid collect calling and 25 cents/minute for collect calling do not apply to intrastate ICS rates. In making this argument, though, they ignore the significant changes to both rules in the *Second R&O*, and can point to no FCC or appellate order staying the effect of the changes to the rules.

Specifically, the 2013 First Report and Order adopted the following definition for Inmate Calling Services:

Inmate calling services means the offering of interstate calling capabilities from an Inmate Telephone.⁴

¹ See *Ex Parte Submission of Telmate, LLC*, filed March 11, 2016 (<http://apps.fcc.gov/ecfs/document/view?id=60001531334>).

² *Ex Parte Submission of Pay Tel Communications, Inc.*, filed March 15, 2016 (<http://apps.fcc.gov/ecfs/document/view?id=60001534818>).

³ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (Nov. 5, 2015) (the "Second R&O").

⁴ 47 C.F.R. §64.6000 (2016).

The *Second R&O* fundamentally changed the definition of Inmate Calling Services, with the following becoming effective tomorrow:

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;

The differences between the two definitions are reflected:

(j) Inmate ~~calling services~~ Calling Service means a service that allows Inmates to make calls to individuals outside the ~~offering of interstate calling capabilities from an~~ Correctional Facility where the Inmate ~~Telephone~~ is being held, regardless of the technology used to deliver the service;

Further, significant changes were made to the definition of Section 64.6030 – Interim Rate Caps. The First Report and Order’s version of 64.6030 was:

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.⁵

Whereas, the *Second R&O* version of 64.6030 that becomes effective tomorrow is:

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. These interim rate caps shall sunset upon the effectiveness of the rates established in section 64.6010.

The differences between the two sections are reflected:

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.~~ These interim rate caps shall sunset upon the effectiveness of the rates established in section 64.6010.

⁵ 47 C.F.R. 64.6030 (2016).

Thus, it is clear that the Commission intended to overhaul the definition of “Inmate Calling Services” and the definition of “Interim Rate Caps” in the *Second R&O*. Those changes to each rule will become effective on March 17, 2016.⁶ To the extent that certain ICS providers missed those changes when they decided to seek a stay of the *Second R&O*, the Wright Petitioners do not believe that the public interest would be served by a “clarification” that ignores the Commission’s clear intent and action.

Further, while it is correct that the interim rate cap for intrastate ICS rates will be lower than the rate caps set forth in Section 64.6010, there is no reason for the Commission to delay the implementation of the rates. Instead, the Commission’s expressed a willingness to review requests for waiver of the rate caps. Should there be an ICS provider that seeks a waiver of the Interim Rate Caps, it can seek a waiver. Holding up the effective date for all intrastate calls for a small subsection of all ICS calls would not serve the public interest, and has not been directed by the Court of Appeals.

Finally, to the extent that the ICS providers missed this issue when they launched their assault on the *Second R&O*, the Commission has no responsibility to bail them out on the eve of the implementation of the new rules. Stated another way, just because the ICS providers failed to include it their parade of horrors filed at the Court of Appeals doesn’t mean millions of inmates and their families should continue to experience unjust, unreasonable and unfair intrastate ICS rates.

Should you have any questions regarding these matters, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

Counsel for the Wright Petitioners

⁶ 80 FR 79135 (Dec. 18, 2015).

Marlene H. Dortch, Secretary

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cc (by/email):

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Commissioner Mignon Clyburn

Commissioner Jessica Rosenworcel

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