

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375.

This item is defective on so many levels. It fails to provide real and necessary relief for inmate calling providers, doesn't sufficiently address the issues that produced the current stay of our ill-fated previous inmate calling items, and raises false hope for the prisoner population and their families. Indeed, it is an attempt at political and administrative expediency when cooler heads are needed to find a sustainable, long-term solution. I can't think of a sadder, more disappointing outcome.

There is no doubt that the prison payphone industry is extremely troubled. Prisons and jails have budgetary pressures, which generate demands for site commissions and exclusive provider contracts. Forced to pay these outrageous sums, inmate calling companies charge higher per minute rates and other fees. Families of prisoners without options pay higher rates and fees than would normally be expected or warranted based on the cost of service alone. That's a horrible cycle, destined to crack over time.

For those actually interested in lasting solutions, a fundamental problem is that the Commission has gone about this entire matter in the wrong way. Our first instinct should have been to go to Congress and seek specific legislative authority to make necessary and appropriate changes, such as authority to ban or limit site commissions. And I think there would have been receptivity, especially when you see the work being done on criminal justice sentencing¹ and other related issues. Alas, the Commission generally shuns working with Congress and treats the institution as a nuisance or hindrance.

Failing to do the right thing, the Commission has tried to shoehorn flawed "remedies" into inapplicable statutory provisions. The result has become so indefensible that we're now trying to rush into place a temporary patch, as if you can tape together a balloon that has already popped or spackle a crack in a dam that has already burst. While the item refers to the small rate increases as allowing "virtually all providers to recover their overall costs," they do nothing of the sort if you actually listen to the relevant providers. In fact, the major providers oppose this item, which would seem to be counterintuitive except when you realize it actually doesn't provide the relief claimed. In addition, providers will incur additional costs to renegotiate contracts—again. Even the named petitioner, a prisoner rights advocate, has stated that the item would not address the underlying problems with the prison payphone system.

Having enacted several stays of the Commission's past work on prison payphones, the courts should be given a little more credit than the Commission is providing by attempting this weak trick, hoping it can sneak it by. I have to believe that the courts can detect this charade for what it is. Instead of providing real fixes, such as permitting real payphone competition within the prison system, we double down to install broken rate regulation, throw pennies at the per minute rates and call it a day. I guess this is the Commission's version of sorry/not sorry for past efforts to stick it to the prison payphone industry and ignore judicial review.

And if this latest slapdash prison payphone order is any indication of how the Commission approaches rate regulation, then I truly fear what will be coming on special access, as that could have a devastating impact on a much larger segment of the economy.

I can't be party to such a miscarriage of justice and fairness. I dissent.

¹ I take no position on the merits of these discussions as they are outside the Commission's purview.