

**STATEMENT OF  
COMMISSIONER AJIT PAI**

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

This *Order* proclaims that “Pay Tel is entitled to have the representation it desires, and its outside counsel is entitled to have access to all the information it needs to zealously represent its client,”<sup>1</sup> that Pay Tel’s “outside counsel does need access to the information at issue in order to meaningfully participate in this proceeding,”<sup>2</sup> and that the FCC will not “tie one hand behind counsels’ backs.”<sup>3</sup> I couldn’t agree more.

But it’s a little late for such high-minded rhetoric. For two years, Pay Tel’s outside counsel has patiently waited for access to the cost data in this proceeding.<sup>4</sup> This is the cost data that the FCC demanded from inmate calling service providers in August 2013 to inform its ratemaking.<sup>5</sup> This is the cost data that the FCC analyzed to propose rate caps in October 2014.<sup>6</sup> And this is the cost data that the FCC used to justify rate caps in November 2015.<sup>7</sup> Indeed, the FCC cited confidential data 40 separate times in its most recent order—and had to redact each citation from the public version of that order.<sup>8</sup>

How was Pay Tel’s outside counsel supposed to “zealously represent its client” or “meaningfully participate” in this rulemaking with “one hand [tied] behind counsels’ backs”? The *Order* offers no answer. Nor does it offer any reason for the long delay in adjudicating this dispute. Although I support today’s order—the proverb “better late than never” comes to mind—I am disturbed that we may have deprived a party of its administrative rights through inaction. That’s unacceptable and yet another troubling sign that the FCC’s processes are in desperate need of reform.

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<sup>1</sup> *Order* at para. 26.

<sup>2</sup> *Id.*

<sup>3</sup> *Order* at para. 22.

<sup>4</sup> Both counsel signed the required acknowledgement of confidentiality in January 2014. See Letter from Timothy G. Nelson, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (Jan. 17, 2014).

<sup>5</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14172, para. 125 (2013).

<sup>6</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13191–94, paras. 49–59 (2014).

<sup>7</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12788–97, paras. 50–70 (2015).

<sup>8</sup> *Id.* at 12787, para. 49; *id.* at 12788, para. 49 & n.154; *id.* at 12790, n.174 (twice); *id.* at 12791, para. 55; *id.* at 12793, n.186; *id.* at 12795, para. 63 (twice) & nn.192 (twice), 194 (seven times), 195 (thrice), 196, 197 (thrice); *id.* at 12796, para. 64 (twice) & nn.198, 199, 200, 201 (twice), 202; *id.* at 12797, n.204; *id.* at 12799, n.217; *id.* at 12800, n.221; *id.* at 12801, paras. 74, 75; *id.* at 12806, n.265 (twice).