



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 20, 2020

Brandon Presley
President
National Association of Regulatory Utility Commissioners (NARUC)
1101 Vermont Avenue, NW, Suite 200
Washington, DC 20005

Dear Commissioner Presley:

As you know, access to affordable communications services is more critical than ever. As the COVID-19 pandemic continues to cause unprecedented disruptions to our daily lives, all Americans must have the ability to remain connected to their family and other loved ones.

Those who are incarcerated are no exception. Their need to stay connected is arguably greater than most, given the pandemic's effect on correctional institutions, including in some cases the elimination of in-person visitation. Communications services—and inmate calling services in particular—may offer the only links the incarcerated have with the outside world.

Yet high rates and charges for inmate calling services can impede the ability of these individuals and their families to stay connected by making it prohibitively expensive for inmates and their families to stay in touch. This can have devastating impacts. Regular contact with family has been shown to reduce inmate recidivism, and children who stay in touch with an incarcerated parent exhibit fewer disruptive and anxious behaviors. These and other benefits cannot be realized if the rates and charges for inmate calling services are excessive, especially given that inmates' families typically bear the burden of paying for these important calls.

As you may be aware, the FCC has previously addressed unreasonably and excessively high *interstate* inmate calling services rates and charges. As a result of these efforts, the Commission maintains rate caps of 21 cents per minute for interstate debit or prepaid calls and 25 cents per minute for interstate collect calls; bars per-call charges (or "first-minute" charges) that exceed those caps; and regulates the ancillary service charges that apply to interstate inmate calling services. We also continue to collect data annually from inmate calling services providers on their interstate, intrastate, and international rates, and have recently collected additional data, including detailed cost information, for inmate calling services. Based on extensive FCC staff analysis of this data, I recently circulated a proposal to my fellow Commissioners to comprehensively reform rates and charges for the inmate calling services within the Commission's jurisdiction. Specifically, on August 6, 2020, the Commission will vote on proposing to lower the FCC's current interstate rate caps to 14 cents per minute for debit, prepaid, and collect calls from prisons and 16 cents per minute for debit, prepaid, and collect calls from jails. My proposal would also cap rates for international inmate calling services, which remain uncapped today.

However, the FCC's legal authority is limited. Section 2 of the Communications Act, by its terms and as interpreted by the U.S. Court of Appeals for the D.C. Circuit, makes clear that the FCC lacks jurisdiction to address unreasonably and excessively high *intrastate* inmate calling services rates. This severely limits our regulatory latitude in this area, for the overwhelming majority of inmate calls—

roughly 80%—are reported to be intrastate. I have repeatedly expressed my desire to work with Congress to fill this gap, but it remains the law today.

This gap has had serious real-world consequences. FCC staff analysis has revealed that providers of inmate calling services are charging egregiously high intrastate rates across the country. Intrastate rates for debit or prepaid calls substantially exceed interstate rates in 45 states. Thirty-three states allow rates that are at least double the current federal cap, and 27 states allow excessive “first-minute” charges up to 26 times that of the first minute of an interstate call. Here are some numbers: For an interstate call, the first-minute charge may not exceed 25 cents today, but for an intrastate call, first-minute charges may range from \$1.65 to \$6.50. Indeed, Commission staff have identified instances in which a 15-minute intrastate debit or prepaid call costs as much as \$24.80—almost seven times more than the maximum \$3.15 that an interstate call of the same duration would cost.

Here’s an example of how these high rates harm incarcerated Americans and their families. I recently received an email from a woman in New York asking the FCC to address the extremely high rates she had to pay for calls from her family member in an in-state county facility. I asked Commission staff to get in touch with her. When they did, they learned that she had been charged more than double the amount for a 10-minute intrastate call than would be permissible under the FCC’s current interstate rate caps. That’s not right. And again, it’s unfortunately a problem the FCC is powerless to address. Only the New York Public Service Commission in this case, and state commissions around the country in similar cases elsewhere, can do something about it.

This unacceptable state of affairs is why I write to you, as the head of the National Association of Regulatory Utility Commissioners.

Notwithstanding the unjust and unreasonable rates being charged for intrastate inmate calling services, NARUC has consistently made clear its view that the FCC has no authority, and should not attempt to exercise authority, to regulate intrastate rates. In 2015, NARUC submitted comments in the FCC’s inmate calling services proceeding pointedly noting that “[w]hile NARUC has specifically endorsed FCC action on INTERstate rates, our resolution and comments have been very clear that individual States remain in the best position to oversee and investigate matters relating to ICS INTRAstate rates and service quality.” In 2016, NARUC took the position in litigation that “the Commission has no authority to regulate these intrastate calls.” And in 2017, NARUC issued a press release stating that “the fact is, Congress simply did not give the [FCC] authority to cap intrastate rates for these services.”

Additionally, it must be noted that the burden of egregious rates for intrastate inmate calling services does not fall equally on everyone. Across the country, African-Americans are disproportionately represented among the incarcerated. They and their families are thus disproportionately reliant on inmate calling services. Yet they and their families tend to have lower incomes, making them particularly vulnerable to these exorbitant intrastate rates.

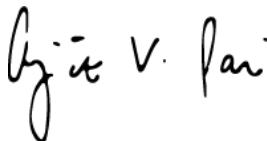
I know that NARUC is aware of disparate racial impacts in American society, having made many statements on the topic. For instance, on June 4, 2020, NARUC issued a statement asserting its belief that “we all have a moral obligation to do more within our respective organizations to address the blatant discrimination occurring daily in the lives of people of color.” And on June 3, you tweeted that “as @NARUC President, I believe it is very important for us, as a nat[iona]l org[anization], to acknowledge racial injustices and pain.”

These are noble *sentiments*. But it is time for these sentiments to manifest in *action*. Given the alarming evidence of egregiously high intrastate inmate calling rates and the FCC’s lack of jurisdiction here, I am calling on states to exercise their authority and, at long last, address this pressing problem. Specifically, I implore NARUC and state regulatory commissions to take action on intrastate inmate calling services rates to enable more affordable communications for the incarcerated and their families.

Prompt and meaningful state action on intrastate rates will provide much-needed relief to inmates and their loved ones during the COVID-19 pandemic and beyond.

Thank you for your consideration of this important matter. The FCC would welcome the opportunity to discuss this matter with you or any of your members.

Sincerely,



Ajit V. Pai

cc: Bradford Ramsay (NARUC)
 Commissioner Twinkle Andress Cavanaugh (AL)
 Commissioner Ted Thomas (AR)
 Commissioner Bob Burns (AZ)
 Commissioner Marybel Batjer (CA)
 Commissioner Jeffrey Ackermann (CO)
 Commissioner Marissa Paslick Gillett (CT)
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