

July 29, 2016

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On July 28, 2016, Curt Clifton and Pablo Nichols of Telmate, LLC (“Telmate”) and Susannah Larson and the undersigned of this firm, as counsel for Telmate, met separately with Nicholas Degani, Legal Advisor to Commissioner Ajit Pai; Amy Bender, Legal Advisor to Commissioner Michael O’Rielly; Travis Litman, Senior Legal Advisor to Commissioner Jessica Rosenworcel; and with Stephanie Weiner, Senior Legal Advisor to Chairman Tom Wheeler, Claude Aiken, Legal Advisor to Commissioner Mignon Clyburn, and Madeleine Findley, Deputy Bureau Chief of the Wireline Competition Bureau. During the meetings, Telmate discussed the Commission’s proposal to address Michael Hamden’s Petition for Reconsideration, and encouraged the Commission to pause before it imposes yet another set of new rates. If the Commission is concerned about the legal validity of its most recent *Order*, it should revisit that decision in an orderly fashion, on a full record and with a meaningful opportunity to comment.

*First*, Telmate explained the significant business cost of yet another set of ICS rate changes. The Commission’s reforms, coupled with the stays of those reforms issued by the D.C. Circuit, have already caused multiple rate changes *this year*. Just over a month ago, Telmate finished the process of implementing the FCC’s rate changes for jails, a process that required renegotiating each of its contracts with facilities, as well as developing and deploying new software and systems. This was a costly effort that diverted significant resources from Telmate’s ongoing research and development. The Commission’s proposal to change rates yet again will require Telmate to repeat this expensive and time-consuming process without any guarantee that these will be the final rates. If the Commission is determined to make these changes, it should limit industry cost and uncertainty by delaying implementation until after its decision has been subject to judicial review (or the time to seek review has passed).

*Second*, we explained that the Commission’s proposed tiered rates lack support in the record and are based on a flawed methodology, and thus cannot be saved by the proposed rate increase. Specifically, the Commission’s July 14, 2016 Fact Sheet bases its modified tiered structure on the existing rate tiers—tiers that themselves fail to account for the significant local variations in the cost of providing ICS.

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To take but one example, the basis for those tiers—average daily population (“ADP”)—does not accurately predict facility costs or the challenges of ICS deployment for a particular facility. In Telmate’s experience, two facilities with the same ADP frequently face very different costs depending on whether they are located in relatively high- or low-income areas. The facility serving a relatively high-income area will likely have a larger tax base and an accordingly higher budget than a facility serving a relatively low-income area. As a result, the facility in the relatively high-income area is likely to enjoy more resources and a better staff-to-inmate ratio. These differences materially impact the marginal cost to the facility of providing supervision, monitoring, and other services necessary to enable ICS. Further, facilities in relatively low-income areas frequently house a larger percentage of pre-trial inmates, which drastically changes the inmates’ communication needs and priorities, and impacts the way a facility must handle inmate communications. Simply adding a few cents to existing ADP-based rates will not address these local variations and enable facilities to recover their costs.

*Finally*, Telmate explained that it seeks the opportunity to compete in a rational ICS market. Telmate’s mission is to increase communications for inmates. It works to do so by focusing on technology, offering reasonable rates, and enhancing family and friend connections. Telmate has, for example, invested heavily to develop tablet-based services, including messaging and video visitation, and to price them at rates that enable inmates to communicate more with their friends and family. Telmate would prefer a regulatory structure that enables it to compete on price and technology, and that creates incentives for providers and facilities alike to offer the best services to inmates at the lowest possible price. Telmate explained that the Commission can take this step by allowing facility cost recovery through an express additional facility cost recovery charge (at a rate to be determined by the facility itself, based on its needs) collected *on each minute of ICS use*. Such a usage-based structure will link facility cost recovery to ICS minutes of use, and, in so doing, ensure incentives for facilities and providers alike to increase the amount of ICS.

If you have any questions, please do not hesitate to contact me at (202) 730-1346, or [bstrandberg@hwglaw.com](mailto:bstrandberg@hwglaw.com).

Respectfully submitted,



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cc: Nicholas Degani  
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