

ORAL DISSENTING STATEMENT OF COMMISSIONER AJIT PAI

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

The Commission's decision today is well-intentioned, and I commend the efforts of those working to reduce the rates for inmate calling services. Unfortunately, I cannot support these particular regulations because I believe that they are unlawful. As I will detail in my written statement, this *Order* exceeds the Commission's legal authority and fails to comply with the Administrative Procedure Act. This morning, however, I would like to focus attention on another pressing issue involving prisoners and phones: inmates' use of contraband cellphones.

Last week, I visited a maximum-security prison in Jackson, Georgia to learn more about this problem. To put it mildly, I was disturbed by what I heard. Georgia Department of Corrections Commissioner Homer Bryson, Warden Bruce Chatman, and other corrections officers told me that contraband cellphones are flooding into Georgia prisons. They are flown into institutions via drones. They are thrown over prison fences stuffed into everything from footballs to dead cats. They are smuggled into facilities within everything from underwear to legal papers. Contraband cellphones have even made their way into the most secure part of the prison: death row. This year alone, Georgia corrections officers have seized over 8,305 illicit cellphones, and the pace of confiscations is on the rise.

Those are only the contraband devices that are caught. Those that aren't caught are used by inmates to perpetrate a wide range of criminal activities. For instance, prisoners use contraband cellphones to extort the family and friends of the incarcerated, putting inmates' safety and lives at risk. For example, the wife of one Georgia prisoner received a text demanding \$1,000 from inmates in the same prison as her husband. And when she couldn't gather the money, she was texted an image of her husband with burns, broken fingers, and the word "RAT" carved into his forehead. In another case out of Georgia, a woman received images on her phone of her incarcerated boyfriend being strangled with a shank held to his head. She was told that unless she forked over \$300, the beatings would continue. She could only afford to send about half that amount. Sadly, the assaults didn't stop, and after a severe beating, he died.

The problems aren't limited to any one state. In Maryland, an inmate being held in the Baltimore City Detention Center on murder charges used a contraband cellphone to order the murder of a witness to his crime. Shortly thereafter, a 15-year-old gang member shot the witness three times, killing him in the process. An inmate in South Carolina orchestrated a "hit" on a prison guard through his contraband cellphone. The guard was shot six times but miraculously survived. And across the border in North Carolina, a high-ranking member of the Bloods street gang serving a life sentence used a contraband cellphone to mastermind the kidnapping of the father of the Assistant District Attorney who had prosecuted him. During the abduction, the kidnapers and the inmate exchanged at least 123 calls and text messages as they discussed how to kill and bury the victim without a trace. Fortunately, the FBI was able to rescue the victim and save his life.

During my prison visit, I also learned that inmates frequently conduct phone scams. In one popular scheme, inmates pretend to be calling from the local sheriff's office and tell the person on the other end of the line that there is a warrant for his or her arrest for failing to show up for jury duty. They then indicate that unless the person receiving the phone call pays a hefty fine, he or she will go to jail. Those who are fooled into paying up are then told to purchase prepaid debit cards, such as Green Dot MoneyPaks, and relay those cards' serial numbers to the caller. Inmates are then able to transfer money from those cards to their own accounts. In one Georgia case, a 78-year-old man purchased \$734 worth of cards at the behest of an inmate serving 30 years in jail for drug offenses. The money ended up on the prepaid Visa card of someone dating the inmate's brother. The inmate then called his brother, who moved some of the money onto more prepaid cards and spent the rest at barbecue restaurants and

convenience stores. Unfortunately, stories like this are commonplace because prisoners across the country are using contraband cellphones to defraud vulnerable people on a daily basis.

When it comes to the use of contraband cellphones by prison inmates, the status quo is entirely unacceptable. One reason we imprison criminals is to incapacitate them; that is, to prevent them from committing additional crimes. But with contraband cellphones, prisons have become a base of operations for criminal enterprise. While behind bars, inmates are running drug operations. They are managing gang activities. They are ordering hits. They are running phone scams.

The time has come to end this crime wave.

The bad news is that it's just not possible for corrections officers to keep all cellphones out of prisons. Contraband has always made its way in, and it always will. But the good news is that the FCC has a positive role to play. In 2013, the Commission issued a Notice of Proposed Rulemaking that aimed to spur the development of technological solutions to combat the use of contraband wireless devices in correctional facilities. The factual record we've developed has long since been complete. And in the intervening two years, the problem has only become worse. The message I took from Georgia—one I suspect most people around the country would deliver—is that the Commission needs to take further action, and soon, to protect the public.

Solving this problem won't be easy. There are both technological and legal obstacles to overcome. But I'm convinced that we can make substantial progress if the FCC, wireless carriers, technology companies, and dedicated corrections officers like the ones I met in Georgia work together in good faith. In the weeks and months ahead, I intend to work closely with all stakeholders to see if we can find common ground. We owe it to all Americans—victims, witnesses, inmates, corrections officers, and the many others who have been harmed through the use of contraband cellphones—to get the job done.