

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

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

When the Commission initiated the Second Further Notice last October, I observed that absent a compelling and actionable record on competition, the Commission was likely to head down a highly regulatory path that I would not have imagined possible based on the statute alone. While we received some evidence of multiple providers operating in certain facilities, it was not enough to change the proposed course of action. Therefore, the Commission today adopts detailed and excessive regulations—covering intrastate, interstate, and collect call rates, as well as ancillary fees—that far exceed our narrow legal authority. I cannot support this approach.

Despite the intentions of supporters, it is highly probable that the end result of the changes in this item will lead to a worse situation for prisoners and convicts, to which I am only so sympathetic. Any cost savings from inmate payphone calls will likely be extracted in some other form. It is simply not the case that the item will not impact incarceration conditions or overall telephone service offerings within such facilities. This notwithstanding, my main objections result from the starting point where all regulatory reviews must begin, the Commission's authority to impose such a new regime.

First, I disagree that the Commission has authority under section 276 to impose a hyper-regulatory rate structure on prison payphone providers. For those people actually involved, we remember that the provision was clearly designed to protect payphone providers that had been unable to receive fair compensation for their service from long distance carriers, or IXC's. It was not meant to give the Commission authority to cap end-user rates.

The fact that providers voluntarily bid for and enter into contracts with correctional facilities establishes that they are fairly compensated and that section 276 is satisfied. The assertions in the record that some prison payphone providers may be overcompensated as a result of these contracts could raise some legitimate policy concerns, but that is outside the scope of section 276. Moreover, the allegations in the record that these rate caps could force certain providers to discontinue service to some facilities, if true, would undermine the provision's express goal of promoting payphone deployment.

Second, since Congress addressed inmate calling, however briefly, in section 276—and intentionally chose not to address end-user rates—I do not believe that the Commission can fall back on the general “just and reasonable” language of section 201. We've seen this maneuver in other Commission items, including Net Neutrality and various enforcement actions, and it needs to stop. If section 201 were as powerful as the Commission seems to believe, then why did Congress spend so much effort enacting the provisions of the 1996 Act? The Commission continues its mockery of the principles of legislative construction to achieve its end goals.

Third, I am appalled that the Commission would try to mash together bits and pieces of different provisions in an attempt to create a new unsubstantiated legal standard: just, reasonable, and fair rates. The Commission is governed by a statute, not an optional menu. We don't get to order a la carte and make substitutions at will.

Finally, I do not support the Commission's attempt to further expand its jurisdiction by claiming that section 276 is technology neutral and seeking comment on regulating video calls. Any authority we have under section 276 is limited to *payphone* service. The fact the provision includes the term “inmate telephone service” does not give the FCC authority over non-payphone calls in correctional institutions. Rather, “inmate telephone service” is a subset of payphone service that is provided in jails or prisons. A video call is not a telephone service much less a payphone service and any decisions to the contrary

would set a harmful precedent, not supported by the statute. Skype, Facetime, Hangouts and other video calling apps should take note.

While there is no dispute that the prison payphone market as a whole does not seem to be functioning properly, we must respect the limits of our authority. The proper place to deal with any issues would be the Congress, where I suspect there may be receptivity to address specific problems. But it is not our role to create imaginary authority to serve a social agenda.

Today's item far exceeds the role that Congress assigned to the Commission. I must respectfully dissent.