

**STATEMENT OF  
COMMISSIONER MIGNON CLYBURN**

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

If ever there were a time to stand up for fundamental fairness, this is it. As one of America's most beloved heroes famously observed: "The moral test of government, is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped." That great man was Vice President Hubert H. Humphrey, a leader who put humanity before politics. And as I think about the action we took last year, I believe he would have been proud.

For nearly a decade, the earnest efforts of beleaguered lawyers and loved ones of American inmates fell short in the pursuit of equity and due process. Their quest for something as basic as making a phone call to family and friends-- at a reasonable and affordable price-- was set aside as the FCC pursued some more lofty goals. But for the persistent pleas of an unlikely heroine—Mrs. Martha Wright, a grandmother from Washington, D.C., who wanted nothing more than to stay in touch with her grandson -- thousands of mothers, fathers, and families of inmates would not have more of an opportunity to do what the rest of us take for granted--to stay in touch with the people we care about the most.

When the FCC took its first steps to provide relief to the families of inmates, we struck a chord for the public interest. We brought scores of families closer to parity with other Americans, who are able to call anywhere in our country without making critical economic trade-offs.

With the support of my colleague Commissioner Rosenworcel, the impact of the first phase of reform of our nation's inmate calling regime has been tremendous. Our decision shows that doing the right thing can have reverberating benefits. Since February, when the interstate rate caps of \$0.21 for debit/prepaid calls and \$0.25 for collect calls went into effect, call volumes across state lines have increased nearly 70% in some facilities, and over 300% at one state department of corrections.

These are not just empty statistics. More affordable rates can help bring about increased and regular contact between inmates and their families. Studies show that having meaningful communication beyond prison walls can make a real difference when it comes to maintaining community ties, promoting rehabilitation, and reducing recidivism.

And recent data underscore the critical need, to reduce recidivism rates in our nation. In April 2014, the Department of Justice released a report analyzing the five-year recidivism rates for over 400,000 prisoners in 30 states and the results are troubling. Two-thirds were rearrested within three years, and three-quarters were rearrested within five years. These trends come with enormous societal costs. In addition to more crime, crowded correctional facilities, more expensive prisons, and the judicial time required to prosecute these offenses, it costs an average of \$31,000 per year to house each inmate.

But what the statistics do not show, is the personal impact: 2.7 million children, who have committed no crime, are being punished by an unjust and unreasonable inmate calling structure. In addition to the anxiety associated with a parent who is absent on a daily basis, these young people suffer severe economic and personal hardships and more likely to do poorly in school all exacerbated by an unreasonable rate regime.

While an affordable calling structure will not solve every problem, by reforming the inmate calling regime, we can make a difference for struggling families wishing to maintain contact. And as a public servant, I strongly believe that those who have the power and the ability to promote the public interest should not make excuses or hesitate to do so.

While the results from last year's Order are significant, we have a lot more work left to do. The majority of calls from facilities are to friends, family and legal representatives within the same state, and our Order did not address these intrastate calls. While I sincerely hoped that the states which have yet to

reform their intrastate inmate calling rate structures would have followed the FCC's lead, only a few have elected to do so.

And what has been the result of that inaction? Since our Order was released, we have witnessed disturbing trends. New and increased ancillary charges have appeared, intrastate rates have inched higher than the already outrageous costs, and payments from the providers to those facilities – known as site commissions – have skyrocketed to as high as 96% of gross revenues. While I made it clear early on that I prefer to refrain from regulation, in this instance the record shows, that a comprehensive approach which addresses all rates and fees to enable this market to function properly is warranted.

In my 16 years as a regulator, this is the clearest, most egregious case of market failure I have seen. Instead of getting better, rates and fees for consumers are more onerous. Thus, it is imperative for us to move quickly to adopt an Order for total reform.

While we sought comment on permanent interstate and intrastate reforms last year, intervening developments necessitate launching a Second Further Notice of Proposed Rulemaking, to ensure we are on solid ground, to reform to address all aspects of inmate calling services. The Commission has concluded tentatively, that Congress gave it express authority in Section 276, to establish a per-call compensation plan “for each and every intrastate and interstate call” and it also directs that the Commission “shall preempt” any inconsistent state regulations. Congress's directive could not be more clear here, and it is past time for the FCC to act consistent with the statute and bring certainty to the industry and consumers.

Launching this Second Further Notice also gives us the unique opportunity to evaluate the impact our reforms have had on inmates, consumers, providers and correctional facilities, and ask how best to structure comprehensive reforms, for interstate and intrastate rates. There have also been intervening developments that would benefit from comments from the public, including the submission of data from inmate calling providers in August of 2014, as required by last year's Order proposals, for comprehensive reform filed by several ICS providers, and action by the Alabama Public Service Commission, which included the adoption of caps on ancillary charges.

While I continue to support the cost-based approach in the Order, moving forward with comprehensive reform allows us to seek comment on a simpler framework with the goal of allowing market forces to put pressure on rates, rather than the Commission setting up a more regulatory, separate rate tied per facility. Such framework was not possible with the incremental interstate only approach. To the contrary, as we have seen, intrastate rates and fees can circumvent some of the benefits of interstate-only reforms. The disturbing trends of higher site commissions, coupled with new and increasing ancillary charges, underscore the fact that we need a comprehensive approach that addresses all rates and fees for the market to function properly.

This Second Further Notice represents a balanced approach that includes rates that are higher than I would have proposed, and transitions that are longer than I would have preferred, but it addresses concerns raised in the record and strikes a reasonable path forward that is administratively simple and less burdensome for consumers, providers, facilities and the Commission.

I want to thank my colleagues for their collaboration on this item. I am extremely thankful to the Chairman for continuing to make this issue a priority for the agency. And I will be forever grateful for the continued assistance of my friend Commissioner Jessica Rosenworcel, whose support today, and vote last year, has enabled this nation to realize the tremendous results we see today. And I appreciate the constructive input of Commissioner O'Rielly, including his suggestion to seek comment on others ways to promote competition in this industry without regulation.

For as long as I can remember, the benefits and trade-offs from compromises have netted some impressive policy results. We should not, however, compromise the means we possess to grant relief to the most vulnerable in our society. All told, we offered edits to nearly 45% of the paragraphs in the item in the spirit of compromise.

But I could not agree to seek comment on a reading of the statute that suggested Congress intended section 276 to require the payment of site commissions, nor could I agree to questions that undercut last year's Order or previous decisions made by this agency. Today, I can say with comfort and good conscience that I cast my vote knowing that I did everything possible to reach a good faith consensus, and I am pleased to offer my full support of this Second Further Notice. As Hubert Humphrey said: "You can always debate about what you should have done. The question is what are you going to do?"

While today's vote cannot make up for the inactions of the past, it is my hope that an expeditious move to a final order will finally bring relief to the 2.7 million children who just want to hear their parents' voice and show that the process can work for them too.

Mr. Chairman, as I yield, allow me to thank the small but dedicated team of the Wireline Competition Bureau led by Julie Veach, including Kalpak Gude, Lynne Engledow, David Zesiger, Rhonda Lien, Don Sussman, Doug Galbi as well as the support of Patrick Halley on behalf of the Chairman's office, Valery Galasso from Commissioner Rosenworcel's office, my law clerk Christine Sanquist and my legal advisor Rebekah Goodheart.