

**STATEMENT OF
COMMISSIONER AJIT PAI
CONCURRING IN PART AND DISSENTING IN PART**

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

Two years ago when we opened this docket with a unanimous Notice of Proposed Rulemaking, I welcomed the opportunity to address the petition filed by Martha Wright almost a decade before, when she came to the FCC seeking redress for the high rates she paid to speak with her then-incarcerated grandson. As I said then, “I am open to exploring whether there is action we can and should take, consistent with our legal authority, to address the issues identified in Martha Wright’s petition for rulemaking.”¹ That remains true today.

But I cannot support rules that lack a solid legal foundation. While I did not doubt that last year’s order was motivated by the best of intentions, I could not countenance its legal flaws—flaws that ultimately led the D.C. Circuit to stay most of the adopted rules, a stay that remains in effect today.²

When this Second Further Notice first circulated, I feared the Commission was headed down that path again. The proposals seemed to assume that the Communications Act set no limits on our authority, the data analysis was one-sided, and alternatives to highly intrusive regulation were few.

That’s why I was pleased when I reached an agreement with my colleagues that we would work together to modify the Second Further Notice so that it would be like the initiating Notice: All Commissioners would be able to ask questions, assess the data, and seek comment on alternatives. As a firm believer in the marketplace of ideas, I welcomed this inclusive process because it offered the hope that the Commission would explore all issues fully and fairly, ensuring that we would have a solid record on both the law and the facts before making a decision.

But when I offered my suggestions, some topics suddenly became off limits and the deal was taken off the table. I was told that additional questions concerning our legal authority would not be asked and that data showing that the costs of providing service at the smallest jails exceed the costs at prisons on average by 14.5 cents would not be included.³ I was shocked and disappointed at this decision—a decision which unnecessarily and unwisely rejects an open-minded, consensus-based approach to examining this issue, and one which I cannot support. I fear this decision bodes poorly for this proceeding. For if we cannot agree to gather all the evidence, and if we refuse to consider the limits of our authority, how can we possibly agree on a solution that comports with the law?

Nevertheless, I appreciate that my colleagues amended the Second Further Notice to include alternatives to their preferred course of action, and I will accordingly be voting to concur in part.

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629, 16662 (2012) (Statement of Commissioner Ajit Pai).

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14218 (2013) (Dissenting Statement of Commissioner Ajit Pai); *Securus Techs. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan. 13, 2014).

³ Table One reports the average per-minute debit/prepaid costs of prisons as 10.0 cents, 14.0 cents, and 9.9 cents using three separate methodologies. Applying those same methodologies to the smallest jails (i.e., those with average daily populations of 0–99) yields average costs of 26.3 cents, 18.8 cents, and 32.2 cents. Thus the difference in average costs ranges from 4.8–22.3 cents with an average difference of 14.5 cents.