

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

COMMENTS OF TELMATE, LLC

Brita D. Strandberg
Susannah J. Larson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W.
Eighth Floor
Washington, D.C. 20036

Counsel for Telmate, LLC

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I. Introduction

For nearly 20 years, the Commission has worked to understand the market for inmate calling services (“ICS”) and the extent of its authority to regulate ICS.¹ Yet, the Commission has struggled to fully implement a legal path to the desired “market-based approach to encourage competition in order to reduce rates to just and reasonable levels and to ensure fair but not excessive ICS compensation.”² Now, with the regulatory status of even basic ICS rates still unsettled, the Commission turns its attention to the world of video calling and other advanced inmate communications services far outside its traditional authority to regulate inmate telephony—allowing but a few days for providers to explain these even more complicated markets. This is unwise, and it risks injuring a nascent industry with the potential to revolutionize positive inmate interaction with the outside world. Telmate invites the Commission to pause, visit correctional facilities, speak with providers and correctional officers, and take a careful and deliberative approach to the complicated, non-telephone business and technology beyond ICS.

The Commission’s *Third FNPRM* again opens with the central challenge presented by this proceeding: how to harness market forces to discipline the inmate calling service (“ICS”)

¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Petition of Martha Wright et al. for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket No. 96-128 (filed Nov. 3, 2003) (First Wright Petition); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Petitioners’ Alternative Rulemaking Proposal*, at 4-6, CC Docket No. 96-128 (filed Mar. 1, 2007) (Alternative Wright Petition); *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, FCC 12-167, 27 FCC Rcd. 16,629, 16,662 (2012) (Interstate Inmate Calling Notice).

² *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, FCC 14-158, 29 FCC Rcd. 13,170, 13,174 ¶ 6 (2014).

market.³ Telmate supports the Commission’s efforts to bring reforms that ensure that incarcerated individuals, their families, correctional facilities, and providers all benefit from a properly functioning market for ICS. Unfortunately, contrary to the central challenge presented, the questions the Commission presents in this *FNPRM* appear focused on expanding the heavy-handed price regulation adopted in the previous ICS Orders. Rather than seeking proposals to properly align market incentives (such as by addressing site commission payments and administrative support payments),⁴ or considering proposals that would move towards holistic and legally sustainable ICS reforms,⁵ the Commission now asks about rate-setting for additional services.

³ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, 30 FCC Rcd. 12,763, 12,900 ¶ 291 (2015) (“*2015 Order and Third FNPRM*”) (“[T]he Commission generally prefers to rely on competition over regulation. We seek additional comment on whether there are ways to promote competition within the ICS market to enable the Commission to sunset or eliminate our regulations adopted herein in the future. We also seek comment on the extent to which the reforms adopted today facilitate a properly functioning market”).

⁴ *See, e.g., 2015 Order and Third FNPRM*, ¶ 122 (explaining that site commissions “distort[] the ICS marketplace”); *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113, 28 FCC Rcd. 14,107, 14,125 ¶ 34 (“*2013 Order*”); *see also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand & Notice of Proposed Rulemaking, FCC 02-39, 17 FCC Rcd. 3248, 3252 ¶ 10 (2002) (explaining that site commissions are generally the largest factor affecting ICS rates). Any effort to address site commissions should provide facilities with an opportunity to recover the costs they incur to provide access to ICS.

⁵ *See* Letter from Brian D. Oliver, Chief Executive Officer, GTL, Richard A. Smith, Chief Executive Officer, Securus, and Kevin O’Neil, President, Telmate, to Chairman Tom Wheeler, Chairman, FCC, at 2-5, WC Docket No. 12-375 (filed Sept. 15, 2014).

This approach is flawed in the first instance because the Commission does not have authority to impose price regulation on advanced services.⁶ Section 201 reaches only common carrier services, not advanced information services like email or video visitation. Section 276 likewise directs the adoption of regulations to ensure fair compensation for all *calls*, but does not otherwise authorize the Commission to set pricing or other requirements for stand-alone services like video visitation and tablet services. Section 276 certainly does not provide authority to cap compensation for advanced services.

Even if the Commission could regulate advanced services, it should refrain from doing so. These services represent the future of inmate interaction, and if allowed to develop in a free market, they have the potential to bring benefits beyond traditional inmate calling. Rather than risk stifling this potential with rate regulation, the Commission should continue to explore solutions that encourage competition and ensure continued incentives to innovate and invest.

The Commission should instead take this opportunity to learn more about ICS and advanced services. The Commission adopted its detailed ICS regulatory regime only after multiple rounds of comment, voluntary and mandatory data collections, and an FCC-sponsored workshop. Understanding advanced services presents an even greater challenge, as both the economics and the technology underlying these services are complex. Providers like Telmate must invest years of time and considerable capital to develop advanced services. Premature or poorly tailored regulation could cut off the investment necessary to support continued innovation. This, in turn, would deprive inmates, their families, and the corrections industry of

⁶ Indeed, the Commission treats “advanced services” as though they are a singular, cohesive category as opposed to an unrelated assortment of various technologies providers offer. But of course, there is no monolithic category of “advanced services,” and the Commission’s regulatory authority must be determined on a service-by-service basis.

communications and security improvements, ultimately harming the public's interest in rehabilitating prisoners while maintaining safe and secure corrections facilities.

For all of these reasons, Telmate encourages the Commission pause before extending yet more rate regulation to ICS providers and instead direct its efforts towards market-based and legally sustainable ICS reforms.

II. Background

Telmate is a relatively new entrant in the ICS market, and one that in recent years has emerged as a competitive alternative to more established market participants. Telmate competes, and is gaining market share, in part by deploying superior technology, such as IP and other innovative services, to deliver feature-rich, reliable and secure ICS that meets the needs of corrections facilities, incarcerated individuals and their friends and families. It also is investing in, developing and deploying new technologies to meet the needs of its facility customers, inmates, and their friends and family. So, Telmate benefits from competitive markets, which create more opportunity for innovative offerings and, ultimately, more benefits for facilities and inmates. Telmate thus strongly supports reforms that will rely on competition, not price regulation, to discipline the ICS market.

In addition to its inmate calling service, Telmate offers advanced services to correctional facilities. Today, Telmate's advanced service offerings include media stations and shared tablet computers that operate over broadband and wireless networks. These services provide incarcerated individuals with additional access to friends and family, educational tools, job-training materials, and other resources. The services also increase public safety by allowing prisons and jails to reduce the risks (such as the transfer of contraband, illicit communications, and violence between inmates and/or visitors in visitation areas) sometimes associated with in-person visitation. These benefits, however, come only after considerable investment, as

developing and deploying secure advanced services is far more capital-intensive than telephony service and, of course, far more capital-intensive than deploying any analogous services outside of the corrections environment.

Telmate's video visitation services include both onsite video visits and internet video visits. With onsite video visitation, visitors to the prison can use a video console in the lobby to connect to inmates, either in addition to or as an alternative to the permitted in-person visits. This increases security and enables contacts at lower cost to the facilities. Online video visitation allows family members or loved ones to connect with incarcerated individuals from their own device at home through a web browser. In both situations, Telmate must establish a secure internet connection, record and store the video visit, and enable monitoring of those communications. Telmate also offers tablet-based services, which allow inmates to use a Telmate-supplied tablet to reach a secure intranet system. Using these tablets, inmates can gain access to lower-cost communication services, such as secure messaging, that have proven complements to typically higher-priced ICS services. Inmates may also access resources including educational content, religious services, and job skill training. By increasing access to visits, reducing the risks (and costs) associated with in-person visits, and providing access to educational and other materials, these services advance the public interest by improving security and providing inmates with superior access to services and family support—not to mention the many benefits of traditional ICS the Commission identified in the *2013 Order*.⁷

III. Sections 201 and 276 Do Not Authorize Regulation of Advanced Services.

Advanced services such as video visitation, email, tablet-based services, and the like do not fall within the Commission's Section 201 or 276 authority. The Commission has recognized

⁷ *2013 Order*, ¶ 2.

these statutory limits on its authority throughout the ICS rulemaking. It first did so by explaining that it relies on Section 276, not Section 201, for its authority to regulate ICS provided by using VoIP and other technologies.⁸ Most recently, in the *Third FNPRM*, the Commission acknowledged that video visitation may not fall within the statutory definition of inmate calling services.⁹

Although the Commission now suggests that Section 276 might authorize its regulation of these services, the language of Section 276 makes clear that video visitation is not ICS. Section 276 concerns itself only with payphone services, which are defined (for the purposes of that section) to include “inmate telephone service.”¹⁰ Video services are not “telephone” services – they do not, for example, use the public switched *telephone* network and do not use *telephone* numbers.

Section 276’s inclusion of ancillary services within the definition of payphone services likewise does not reach video visitation or other advanced services. These services stand on their own, and are therefore not “ancillary” to ICS.¹¹ Indeed, Telmate sometimes provides these

⁸ *2015 Order and Third FNPRM*, ¶ 250; *2013 Order*, ¶ 14 (“Section 276 makes no mention of the technology used to provide payphone service and makes no reference to ‘common carrier’ or ‘telecommunications service’ definitions. Thus, the use of VoIP or any other technology for any or all of an ICS providers’ service does not affect our authority under section 276.”).

⁹ *2015 Order and Third FNPRM*, ¶ 296 (addressing “video calling and video visitation services that do not meet the definition of ICS”).

¹⁰ 47 U.S.C. § 276(d).

¹¹ In the context of mobile telecommunications providers, the Commission has identified ancillary services as “caller ID, voice mail, call forwarding, long distance, push-to-talk.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Notice of Inquiry, FCC 04-38, 19 FCC Rcd 5608, 5623 ¶ 42 (2004). Unlike stand-alone services like video visitation and email, these services are used in conjunction with and are closely related to the underlying cellular service.

services in facilities where it does not provide ICS. For example, Telmate currently provides only tablet computing to several facilities where other providers supply the ICS.

Even if these services could be fairly characterized as “ancillary” to ICS services, the Commission would not have authority to regulate *rates* for these services. Section 276 directs the Commission to establish a compensation plan “to ensure that all payphone service providers are fairly compensated for each and every . . . *call using their payphone.*”¹² This language does not include authority to set compensation for activities other than *payphone calling*. Because sending emails, engaging in a video visit, and other advanced services involve neither a telephone nor a call, the Commission lacks the authority to set rates for these activities under Section 276.¹³

IV. Premature Regulation of Advanced Services Would Not Serve the Public Interest.

Providing advanced services in correctional institutions is costly and complex, but doing so delivers public benefits including increased security and improved access to friends and family. Premature regulation could easily disrupt the fragile market for advanced and emerging services, and the Commission should, at minimum, delay regulation until there is a demonstrated need for regulation and the Commission develops a fuller understanding of both the technology and the market.

¹² 47 U.S.C. § 276(b)(1)(A) (emphasis added).

¹³ Congress had good reason to include ancillary services in the definition of payphone services, as doing so allows the Commission to reach ancillary services under other subsections of Section 276 such as 276(a), which, among other things, prevents Bell operating companies from discriminating in favor of their “payphone services.” If Congress had intended to extend the Commission’s compensation authority under Section 276(b)(1)(A) to payphone services, including ancillary services, rather than just to payphone calls, it could easily have done so.

A. Advanced services serve public safety and the public interest.

Video visitation and other advanced services benefit inmates, their friends and family, and correctional institutions. Because video visitation offers an alternative to in-person visitation, video visitation reduces the security risks inherent in in-person visitation. In-person visitation can enable visitors to pass contraband to inmates or to communicate using shielded or hidden messages that are not spotted by corrections officers or wall-mounted cameras. Transporting prisoners to and from visitation requires staff oversight, as does visitation itself, and visitation also requires careful coordination to avoid dangers such as interaction between members of rival gangs during transport and visitation. Correctional facilities benefit from features like Telmate's scheduling capabilities, which simplify coordinating and maintaining visitation schedules. Because the reduced risk and cost make video visitation less burdensome for correctional facilities, facilities that adopt video visitation may simplify the on-site visitation process for families.

Remote video visitation also benefits families and loved ones by reducing the cost and time needed for a visit. Unlike in-person visits, virtual visitation does not require families to spend time and money to travel to a correctional facility. For individuals incarcerated far from their families, video visitation may be the only practical way to see their loved ones. Even where in-person visits are still feasible, video visitation may reduce the burden of visits and increase the amount of contact between incarcerated individuals and their loved ones. Video visitation also allows children to visit without in-person exposure to the jail setting. Finally, by making it easier to visit inmates, video visitation makes it easier for inmates to maintain contact with a broader group of friends and family.

Telmate’s tablet services likewise deliver important social benefits, as they currently allow facilities to provide access to educational materials, job training, and religious materials.¹⁴ Telmate equipment can also provide access to email and photo sharing—additional tools for inmates seeking to maintain their contacts in the outside world. Perhaps as importantly, the future power of these tools is still largely untapped. Mainstream tablet computing is a relatively new technology that is just now being integrated in the correctional setting. Entrepreneurs, whether ICS providers or otherwise, will continue to develop this technology if allowed to do so freely.

These advanced services illustrate the power of technology to improve public safety, increase access to friends and family, and reduce costs—all to the benefit of prisoners, their families, and the larger public. Before regulating in this area, the Commission should ensure that its efforts will not impede deployment of existing services or development of new, beneficial technology.

B. The costs of advanced services are not comparable to the costs of ICS.

The costs of advanced services are not comparable to the costs of ICS, or to analogue mass-market technologies. To take a simple example, video visitation terminals cost *ten times* the amount of ICS phones.¹⁵ In order to provide video visitation services, Telmate must provide a secure internet connection; a call center to provide scheduling, session set-up, and identity

¹⁴ Mere access to advanced technology brings benefits, as incorporating digital technology into correctional education gives offenders the opportunity to “be more prepared for the outside world, and ultimately have a better chance of staying out of prison.” Hillary Schaub and Darrel M. West, *Digital Literacy Will Reduce Recidivism in the Long Term*, BROOKINGS: TECHTANK (Oct. 6, 2015), <http://www.brookings.edu/blogs/techtank/posts/2015/10/06-digital-literacy-reducing-recidivism>.

¹⁵ See *2015 Order and Third FNPRM*, ¶ 299 (seeking comment on how these services differ from traditional ICS).

verification; record, store and review visitation sessions; and provide extensive remote and on-premises support. Telmate must also continuously improve its technology to address inmate efforts to circumvent security protections. The recurring costs for these services likewise dwarf the recurring costs of ICS. Currently, Telmate must service facilities with video terminals about twice as frequently as it services facilities without them, dramatically increasing its service costs.

Moreover, it typically takes years of research, development and investment to launch technologies like video visitation or tablet services. This work yields wide-ranging benefits. Historically, providers like Telmate competed to develop critical services like voice biometrics and cellphone detection, which have become commonplace. Now, Telmate and others are working on new applications that will make it easier for families to communicate with loved ones using smartphones and other personal devices, which if allowed to, are likely to improve the quality and quantity of safe inmate interactions with friends and family. Hopefully, those too will become commonplace. While Telmate has great hopes for these emerging services, it recognizes that it typically takes years of success in the market to recoup its research and development expenses. Premature regulation will disrupt this cycle of investment by introducing uncertainty and depressing incentives to invest.

C. Regulation of advanced services would be premature.

There is no evidence that regulation is necessary to address market failures. In Telmate's experience, usage of paid video visitation services is low, even at low rates such as \$0.25 per minute. Thus, the high-cost technology does not present an opportunity, as the Commission posits, to "recover decreased rates" resulting from the Commission's reform of ICS.¹⁶ To the contrary, Telmate is already considering discontinuing or reducing the availability of video

¹⁶ 2015 Order and Third FNPRM, ¶ 296.

visitation because of high costs and low returns. In Telmate’s experience, the provision of video visitation services is not driven by providers’ economic interests, but rather by demand from correction facilities that value the increased security and reduced costs that come with video visitation.

The Commission should take the time necessary to understand this complicated marketplace. Although Telmate challenges the Commission’s regulation of ICS, the most recent of these orders at least had the benefit of a substantial record—one that might have allowed the Commission to implement a market-based approach to reform. The same cannot be said for the current record concerning advanced services (a shortcoming that will be amplified by the short comment and reply comment windows). The Commission adopted permanent ICS rules only after years of information gathering, including an ICS workshop, and multiple rounds of comments. Advanced services is a much broader category than ICS, encompassing technologies as disparate as email, video, texting, photo sharing, secure intranet access, and the like, overlaid with the complexity of providing each service in a way that prevents inmate misuse. The Commission should, at minimum, ensure that it fully understands both the technology and the economics of providing advanced services before considering any regulation.

Perhaps most importantly, premature regulation would be inconsistent with Section 276’s mandate that the Commission promote “widespread deployment” of payphone services. This is especially salient where, as here, serious questions remain about the Commission’s authority to regulate even ICS as ordered. As Telmate has explained, Section 276 does not apply to advanced services.¹⁷ If the Commission nonetheless takes the position that it does, it should

¹⁷ See *supra* Section III at 9.

recognize that regulating these emerging services will contravene Section 276's goal of increasing the availability of communications services for inmates.¹⁸

V. Recurring Data Collection and Contract Filing Requirements are Unnecessary and Would Be Ineffective.

The Commission should move away from heavy-handed price regulation and towards reforms, like the elimination of site commissions, that would rationalize the ICS market. This would improve the Commission's likelihood of effecting lasting, positive change and spare the costs associated with unnecessary data collection, review, and analysis. This is particularly true of the proposed contract filing requirement, as the information garnered through these filings would largely duplicate rate and fee information that the Commission has already required providers to make public.

Further, while Telmate believes the Commission would benefit from a fuller understanding of both the ICS and advanced services markets, cost data alone is not sufficient to form this understanding. Telmate encourages the Commission to supplement this data with visits to correctional facilities so it can see ICS and advanced services in action and learn more about the challenges faced by corrections facilities seeking to ensure availability of ICS while maintaining security. The Commission should also consider the extensive record already assembled, including proposals for comprehensive and sustainable reform, rather than continuing its current regulatory approach.

¹⁸ *2015 Order and Third FNPRM*, ¶ 296 (“Our core goals for inmates and their families, friends, clergy and lawyers remain the same regardless of the technologies used—ensuring competition and continued widespread deployment of ICS and the societal benefits that they bring.”).

Conclusion

Telmate supports the Commission's efforts to reform the ICS market, and encourages the Commission do so by addressing market failures such as site commissions. The Commission should not expand its existing regulatory approach to new services like video visitation or tablet-based advanced services, as doing so would both exceed the Commission's jurisdiction and depress the availability of these services and the public benefits they can and will deliver.

Finally, Telmate invites the Commission to visit a Telmate-served facility to see its services in action.

Respectfully submitted,



Brita D. Strandberg
Susannah J. Larson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W.
Eighth Floor
Washington, D.C. 20036

Counsel for Telmate, LLC

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