

September 22, 2020

The Honorable Andrew Cuomo
Governor of the State of New York and Chair of the National Governor's Association

The Honorable Asa Hutchinson
Governor of the State of Arkansas and Vice Chair of the National Governor's Association

National Governors Association
444 N. Capitol Street NW, Suite 267
Washington, DC 20001

Dear Governors Cuomo and Hutchinson:

As the COVID-19 pandemic continues to impact the lives of all Americans, access to affordable communications services remains a pressing issue, especially for incarcerated individuals. While in-person visitation is resuming at some institutions, communications services—and inmate calling services in particular—may offer the only links these individuals have with the outside world. Exorbitantly high rates and charges can impede the ability of incarcerated individuals to maintain vital connections by making it prohibitively expensive to stay in touch with their families. Studies have long shown that contact with family and other loved ones during incarceration reduces recidivism and lessens disruptive and anxious behaviors in children with incarcerated parents. These and other benefits are jeopardized if the rates and charges are excessive.

The National Association of Regulatory Utility Commissioners (NARUC) and the Federal Communications Commission (FCC) have worked to address exorbitant rates and charges for inmate calling services. These efforts are complicated by a patchwork of authority over rates and charges. The FCC's legal authority is limited to regulation of interstate and international rates—as the Communications Act makes clear and the U.S. Court of Appeals for the D.C. Circuit has reiterated. In turn, some state regulators lack jurisdiction over intrastate rates (entirely or in part), with authority instead falling to Governors, state legislatures, or state corrections officials.

NARUC passed a resolution in 2012 urging the FCC to take action to ensure just and reasonable interstate rates and called for state and federal action to consider policies to lower rates. More recently, in response to a July 20, 2020 letter from FCC Chairman Pai, NARUC asked its members to review rates in their states. We understand that in most, if not all, cases where a state commission does have jurisdiction, rates have been set at just and reasonable levels.

For its part, the FCC continues to address unjust and unreasonable rates and charges for interstate and international inmate calling services. Most recently, on August 6, 2020, a unanimous FCC took a major step toward comprehensively reforming interstate and international rates. Specifically, the Commission proposed lowering current interstate rate caps to 14 cents per minute for debit, prepaid, and collect calls from prisons and 16 cents per minute for debit, prepaid, and collect calls from jails—a significant cut of up to 44% from existing interstate rate caps. In addition, the Commission proposed to cap rates for international inmate calling services for the first time. The Commission also ensured that ancillary service charges, which are separate fees that providers charge that are not included in the per-minute rates for calls, are limited to just and reasonable levels when made in connection with interstate inmate calling services.

However, more needs to be done to address egregiously high intrastate rates for these services and excessive additional fees that providers often charge in connection with purely intrastate calling. Most of these involve county or municipal detention facilities. For example, FCC analysis shows that

intrastate rates for debit or prepaid calls substantially exceed existing interstate rates in 45 states. The FCC has also identified instances in which a 15-minute intrastate debit or prepaid call costs nearly seven times more than an interstate call of the same duration. And 27 states allow excessive “first-minute” charges that are up to 26 times that of the first minute of an interstate call. This situation is unacceptable, especially as the overwhelming majority of calls from incarcerated individuals—roughly 80%—are billed as intrastate.

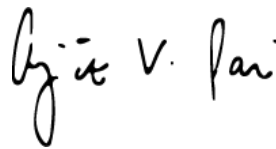
Unfortunately, the statutory limitations on the state and federal authority prevent us from squarely addressing unjust and unreasonable intrastate rates. Until there is Congressional or state legislative action, neither the FCC nor state commissions can cap the excessive intrastate rates that lie beyond our authority. As such, we urge each of you to examine the rates and related fees that are currently charged in your state and to take much-needed action. For your convenience, we have attached a list of all facilities that charged intrastate rates above the interstate caps last year. Prompt and meaningful action on intrastate rates is critical to ensuring that incarcerated individuals and their loved ones can maintain vital connections during the COVID-19 pandemic and beyond.

Thank you for your consideration of this important matter. We welcome the opportunity to discuss this matter with each of you.

Sincerely,



Brandon Presley
NARUC President



Ajit V. Pai
FCC Chairman

cc: Governors of the remaining U.S. States and Territories, the Mayor of the District of Columbia