

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GLOBAL TEL*LINK, et al.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 15-1461 and
)	consolidated cases
FEDERAL COMMUNICATIONS)	
COMMISSION and UNITED STATES)	
OF AMERICA,)	
)	
<i>Respondents.</i>)	
)	

**OPPOSITION OF RESPONDENT THE FEDERAL COMMUNICATIONS
COMMISSION TO MOTION FOR LEAVE TO FILE MOTION FOR A
STAY AND LODGED MOTION FOR A STAY**

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Respondent the Federal Communications Commission (FCC or Commission) opposes the motion of the State of Oklahoma *ex rel.* Joe M. Allbaugh, and John Whetsel, Sheriff of Oklahoma County, Oklahoma (collectively, Oklahoma) for leave to file a motion for a stay pending judicial review of the Commission's November 2015 order governing inmate calling services. *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (*Order*).

Oklahoma has waited until more than two months after the *Order* was published in the *Federal Register*, and more than two weeks after this Court's February 5 deadline, to lodge its motion for a stay. Oklahoma has also failed to seek injunctive relief from the agency in the first instance, as the Federal Rules of Appellate Procedure generally require. *See* Fed. R. App. P. 18(a)(1). There is no cause to excuse Oklahoma's refusal to comply with the obligations set forth by this Court and the Federal Rules. The motion for leave should be denied.

In any event, Oklahoma's substantive arguments for a stay are unavailing. Oklahoma's principal contention is that the *Order's* rate reforms improperly infringe upon state and local authority over the administration of correctional institutions. Far from intruding into state or local powers, however, the *Order* is a firmly grounded exercise of the FCC's statutory authority to ensure that charges for inmate calling services—including for intrastate calls—are “fair,” not excessive. 47 U.S.C. § 276(b)(1)(A). Moreover, as Oklahoma's submissions make clear, the

FCC's rate caps are sufficiently generous to allow correctional authorities to continue collecting substantial payments from inmate calling providers without diminishing the availability or quality of inmate calling services.

The injunctive relief that Oklahoma seeks would preserve a discredited system that for far too long has constrained inmates and their families to pay excessive inmate calling charges (in Oklahoma, as much as \$3.00 for a one-minute telephone call). If this Court grants Oklahoma leave to file its motion for a stay pending appeal, Oklahoma's request for a stay should be denied.

BACKGROUND

Section 276 of the Communications Act provides the FCC with an express grant of authority to regulate “the provision of inmate telephone service in correctional institutions.” 47 U.S.C. § 276(d). The Commission is empowered “to ensure that all payphone service providers,” including providers of inmate calling services, “are fairly compensated for” both “interstate” and “intrastate” calls completed “using their payphone[s].” *Id.* § 276(b)(1)(A). Moreover, “[t]o the extent that any State requirements are inconsistent with the Commission's regulations” implementing Section 276, “the Commission's regulations on such matters shall preempt such State requirements.” *Id.* § 276(c).

In the *Order* on review, the Commission adopted “critical” and “long-overdue reform[s]” to curb unfair compensation to inmate calling providers. *Order* ¶¶9,

251. As explained in the FCC’s opposition to four earlier filed stay motions from the inmate calling provider petitioners in these consolidated cases, *see* 2/12 Opp. 7–8, the crux of the *Order*’s reforms is a four-tiered framework of rate caps for prisons and differing sizes of jails, *see Order* ¶9. To construct those rate caps, the FCC “divid[ed] . . . the entirety of all costs reported by [inmate calling] providers for any category [of facility] by aggregate minutes of use in that category.” *Id.* ¶52. The FCC also banned “flat-rate” calling arrangements—in which providers charge a uniform fee for calls of any duration up to a specified limit—recognizing that such arrangements unfairly inflate inmate calling revenues, *see id.* ¶104, while “penaliz[ing]” end users “who make shorter calls,” *id.* ¶105.

The FCC rejected proposals to prohibit inmate calling providers from sharing their inmate calling revenue with correctional authorities. *Order* ¶118; *see* 2/12 Opp. 9–10. The Commission reaffirmed, however, its settled view that such payments to correctional authorities—known as “site commissions”—“are not [costs] reasonably related to the provision of [inmate calling services].” *Order* ¶123. The Commission therefore excluded site commissions from the cost data on which it based the rate caps. *See id.*

In calculating the rate caps, the FCC otherwise took inmate calling providers’ reported cost data “at face value.” *Order* ¶53. It did so despite “significant evidence . . . suggesting that the reported costs [were] overstated.” *Id.*; *see id.* ¶¶71–

75. Moreover, the Commission did not seek to reduce its per-minute cost calculations to account for the higher call volume that the record suggests will follow from the *Order*'s reforms. *E.g., id.* ¶¶52 n.170, 69–70.

The FCC's conservative cost assumptions supported its finding that the *Order*'s rate caps “will allow economically efficient—possibly all—providers to recover their costs that are reasonably and directly attributable to [inmate calling services].” *Order* ¶116. In many instances, the Commission concluded, providers will be able to continue paying substantial site commissions while still complying with the rate caps. *E.g., id.* ¶128. Similarly, the Commission explained, the rate caps are high enough to ensure that inmate calling providers can reimburse correctional authorities for any costs that facilities may hypothetically incur in providing access to inmate calling services. *Id.* ¶139. If such costs exist at all, the FCC found, they amount to “no more than one or two cents per billable minute.” *Id.*; *see id.* ¶137.

Two inmate calling providers filed petitions for review of the *Order* within 10 days of its publication in the *Federal Register*. Those were the only petitions for review filed within that time, and both were filed in this Court. Oklahoma filed its petition for review in the Tenth Circuit more than a month later. On February 10, 2016, as required by 28 U.S.C. § 2112(a), the Tenth Circuit granted the FCC's unopposed motion to transfer Oklahoma's case to this Court. *See Order, Oklahoma ex rel. Allbaugh v. FCC*, No. 16-9503 (10th Cir. Feb. 10, 2016) (*Transfer Order*).

This Court subsequently consolidated Oklahoma's case with all other pending challenges to the *Order*. See Order, *Global Tel*Link v. FCC*, No. 15-1461 et al., Dkt.#1598997.

Meanwhile, in late January of this year, three inmate calling providers moved the Court for a stay of specified rules adopted in the *Order*. Anticipating that additional litigants might follow suit, the Court on February 3, 2016, ordered that “any additional motion for stay be filed by Friday, February 5, 2016.” Order, *Global Tel*Link*, Dkt.#1596897 (*February 3 Order*). The Court required the FCC to file a consolidated response to all stay motions filed by the February 5 deadline on or before February 12, 2016. See *id.* The prescribed due date for any replies was February 19, 2016. See *id.*

On February 22, 2016—without ever having requested an administrative stay from the FCC—Oklahoma sought this Court's leave to file a motion for a judicial stay. Although the motion for a stay that Oklahoma has lodged refers only in generic terms to staying an FCC “Rule,” Mot. 21, it appears that Oklahoma seeks a stay of the rule implementing the *Order*'s rate caps (47 C.F.R. § 64.6010).

ARGUMENT

I. The Court Should Deny the Belated Motion for Leave to File.

Oklahoma's attempt to seek leave to file a stay pending appeal of the *Order* in this Court is inexcusably tardy. Oklahoma's motion comes more than two

months after the *Order*'s publication in the *Federal Register*, 80 Fed. Reg. 79,136; more than two months after other litigants sought administrative stays from the FCC, *see* Motion & Exhibit B, *Global Tel*Link*, Dkt.#1595450; almost a full month after other litigants filed motions in this Court for judicial stays, *e.g.*, Motion, *Global Tel*Link*, Dkt.#1595628; well over two weeks after this Court established February 5 as the deadline for "any additional motion for stay," *February 3 Order*; nearly two weeks after the Tenth Circuit transferred the Oklahoma case to this Court, *see Transfer Order*; ten days after the FCC comprehensively responded to four previously filed motions for stay, *see* 2/12 Opp.; and three days after the close of briefing on those motions, *see February 3 Order*. The Court should not countenance Oklahoma's delay, which is entirely unfair to the FCC and the other parties to this litigation, which have briefed timely filed stay requests with due diligence. Nor should this Court bless Oklahoma's disregard for the obligation to seek a stay from the FCC in the first instance. *See* Fed. R. App. P. 18(a)(1).¹

A. The Court Should Enforce the February 3 Order.

Oklahoma appears to recognize that its eleventh-hour request is inconsistent with this Court's *February 3 Order*. *See* Mot. for Leave 2. Oklahoma contends,

¹ We note as well that there is no cause to grant Oklahoma leave to exceed the page limitations prescribed by the Federal Rules of Appellate Procedure or to employ a nonconforming font size. *See* Fed. R. App. P. 27(d)(1)(E), (d)(2), 32(a)(5)(A).

however, that because the Tenth Circuit did not transfer the Oklahoma case to this Court until after the February 5 deadline established in the *February 3 Order*, the scope of that order should not extend to Oklahoma. *See id.* That argument ignores that, by the time Oklahoma filed suit in the Tenth Circuit, this Court was clearly and without dispute the proper venue for challenges to the *Order*, *see* 28 U.S.C. § 2112(a)(1), (5), and that nothing prevented Oklahoma from filing its petition for review of the *Order* in this Circuit, where the FCC is headquartered, to begin with. Oklahoma's decision to file suit elsewhere thus provides no basis to excuse its failure to meet the deadline for seeking a stay under the *February 3 Order*.

B. The Court Should Enforce Rule 18(a).

The Court should deny Oklahoma's motion for leave for a second, independent reason: Unlike its provider counterparts, Oklahoma has failed to satisfy its obligation under Rule 18(a) of the Federal Rules of Appellate Procedure to "move first before the agency for a stay." Fed. R. App. P. 18(a)(1).

Requiring parties that seek a stay of an agency order to petition for administrative relief before moving for a judicial stay benefits both agencies and the courts. When a petitioner succeeds in persuading the agency to issue a stay, adherence to Rule 18(a) spares the reviewing court from intervening at all. And even when an agency denies an administrative stay, the agency's considered views on

the petitioner's arguments may assist the court in its deliberations regarding a judicial stay.

Here, Oklahoma seeks to skip the step of petitioning the agency, evidently hoping to catch up with the inmate calling providers' much earlier filed motions. *See* Mot. for Leave 2. That desire is no basis to absolve Oklahoma of its obligation to seek a stay from the FCC in the first instance—particularly when Oklahoma waited until after the close of briefing on those earlier motions to ask this Court for leave to file.

In a footnote to its lodged motion for a stay, Oklahoma contends that seeking administrative relief would have been “impracticable” because the FCC denied “similar[]” requests from providers of inmate calling services. Mot. 8 n.36. But Oklahoma also contends that, as an operator of correctional facilities, it has “unique irreparable harms and a unique perspective on the public interest.” Mot. for Leave 2. There is no sound basis to conclude that seeking a stay from the FCC would have been futile when, as Oklahoma concedes, the perspective of correctional authorities on the *Order* is necessarily different from that of inmate calling providers. *See id.* Until the FCC has had an opportunity to address Oklahoma's separate contentions in support of a stay—which include not only new arguments on irreparable harm and the public interest, but also new or modified merits arguments—it would be premature for this Court to intervene.

II. Oklahoma Has Not Satisfied the Stringent Requirements for Obtaining a Stay.

Should the Court entertain Oklahoma's request for a stay despite the unjustified tardiness and procedural failings of that request, the lodged motion for a stay should be denied. To obtain a stay pending appeal, Oklahoma must show that (1) it will likely prevail on the merits, (2) it will suffer irreparable harm unless a stay is granted, (3) other interested parties will not be harmed if a stay is granted, and (4) a stay will serve the public interest. *See WMATC v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Cir. R. 18(a)(1). A stay is an "intrusion into the ordinary processes of administration and judicial review" and thus "is not a matter of right." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation marks omitted). To merit such an "extraordinary remedy," Oklahoma must make "a clear showing" that it is "entitled to such relief." *Winter v. NRDC*, 555 U.S. 7, 22 (2008). It has not done so.

A. Oklahoma Has Not Demonstrated a Likelihood of Success on the Merits.

Oklahoma makes two primary arguments in support of its lodged motion for a stay: first, that the FCC exceeded its jurisdiction, and violated the Administrative Procedure Act, by intruding on the "prerogative[s]" of state and local authorities, Mot. 9–15; and second, that the FCC arbitrarily failed to account for costs that correctional facilities incur in providing access to inmate calling, *id.* at 15–18. Neither

of those contentions is persuasive.

1. *The Order is a firmly grounded exercise of the express authority that Congress has vested in the FCC to regulate inmate calling services.*

The *Order* is not an impermissible intrusion into state or local authority; it is an exercise of express authority under federal law. The *Order* straightforwardly implements Congress's decision, embodied in Section 276 of the Communications Act, in conjunction with Section 201(b), that compensation for interstate and intrastate inmate calling services must be fair. 47 U.S.C. §§ 201(b), 276(b)(1)(A).

Section 276 vests in the FCC the power to regulate “the provision of inmate telephone service in correctional institutions.” 47 U.S.C. § 276(d). That power includes the authority “to ensure that” inmate calling providers are “fairly compensated for each and every *intrastate and* interstate call using their payphone[s].” *Id.* § 276(b)(1)(A) (emphasis added); *see Ill. Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555, 561–62 (D.C. Cir. 1997) (*IPTA*). And the authority granted to the FCC under Section 276 is broad. *See Global Crossing Telecomms., Inc. v. FCC*, 259 F.3d 740, 746 (D.C. Cir. 2001) (recognizing that Congress has given the FCC “the authority to make the choice between . . . alternative[.]” ways of implementing Section 276(b)(1)(A), and that the Court will not second-guess the agency's reasonable exercise of that authority); *see also Metrophones Telecomms., Inc. v. Global Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072 (9th Cir. 2005) (discussing the Commission's “broad authority” under Section 276), *aff'd*, 550 U.S. 45 (2007). Section

201(b) likewise gives the Commission broad and express authority to ensure that the interstate rates and practices of telecommunications carriers, including inmate calling service providers, are just and reasonable. 47 U.S.C. § 201(b).

A federal agency does not impermissibly infringe upon state authority when it properly exercises its powers under federal law. And while state and local authorities are free under state law to administer their own correctional facilities, *see* Mot. 11, they are not entitled to profit from excessive charges for inmate calling services that violate federal law, *see, e.g.*, 47 U.S.C. § 276(c) (providing that “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations” implementing Section 276, those regulations “shall preempt such State requirements”).

Oklahoma contends that Section 276 “simply authorizes the FCC to ensure that payphone operators are not undercompensated for use of their equipment and services.” Mot. 10; *see id.* at 9, 11. That argument is unavailing for reasons we have already explained in response to the earlier motions of the inmate calling providers. *See* 2/12 Opp. 14–16.

Oklahoma also argues that, when consequences for “areas of traditional state responsibility” are at issue, the FCC cannot take action without a “clear statement” of congressional intent. Mot. 10 (quotation marks omitted). To the extent that requirement is applicable here, Congress has made its intent to grant the Commission

authority over inmate calling services unmistakably clear. *See* 47 U.S.C. §§ 201(b), 276(c), (d).

Contrary to Oklahoma’s contentions, moreover, the Commission has not acted to “federalize a specific area of criminal justice reform.” Mot. 13; *accord id.* at 10. The *Order* regulates a specific area of telecommunications—charges for inmate calling services—pursuant to an express congressional grant of authority. In exercising its congressionally conferred powers, the Commission has not “prohibit[ed] payments to” correctional authorities or limited their right to negotiate for such payments with providers of inmate calling services. *Id.* at 14. To the contrary, the Commission rejected proposals to ban site commissions, and it put in place rate caps that are sufficiently generous to allow inmate calling providers, in many instances, to continue sharing substantial portions of their inmate calling revenue with correctional authorities. *See Order* ¶128; *see also id.* ¶139 (declining to “dictate what an [inmate calling] provider can do with its profits,” and resolving “to leave it to . . . providers and facilities to negotiate the amount of any [site commission] payments”).

Oklahoma’s assertion (at Mot. 15) that the FCC’s “rates . . . make no provision for actually [paying site commissions]” rings hollow in view of the affidavits that accompany its lodged motion, which candidly disclose that there remains ample headroom under the *Order*’s rate caps for Oklahoma’s inmate calling providers

to continue sharing substantial portions of their inmate calling revenue. For example, the finance director for the Oklahoma County sheriff's office asserts that Telmate, LLC, which provides inmate calling services for the county's jails, currently retains only "approximately \$.098 per minute" for the average local phone call, meaning that under the FCC's applicable rate cap, Telmate can continue to pay the county over \$.04 per minute without any diminution of Telmate's own revenue. Skuta Aff. ¶¶26–27. Similarly, the chief of administrative services for the Oklahoma Department of Corrections asserts that the Global Tel*Link subsidiary serving Oklahoma's prisons could "retain[] the same [\$.05] per minute that it currently does" while still paying Oklahoma "about \$.06 per minute"—more than half of the applicable rate cap of \$.11 per minute. Hicks Aff. ¶20.

Finally, contrary to Oklahoma's suggestion (at Mot. 13–14), there is nothing improper about the FCC's acknowledgment of the severe and damaging effects that excessive inmate calling charges have on inmates, their families, and our society. Those considerations are an entirely appropriate measure of the public interest in ensuring that inmate calling compensation be just, reasonable, and fair. 47 U.S.C. §§ 276(b)(1)(A), 201(b). That correctional facilities may no longer be able to fund unrelated programs with revenue derived from excessive and exorbitant inmate calling rates is simply a consequence of Congress's determination that compensation for inmate calling services must be fair.

2. *The rate caps reasonably accommodate the possibility that correctional facilities incur costs in connection with inmate calling services.*

Oklahoma's second challenge to the merits of the *Order* is likewise unpersuasive. *See* Mot. 15–18. The FCC did not “ignore[] evidence that correctional facilities . . . bear costs directly related to inmate calling services.” *Id.* at 15. Rather, as explained in our earlier opposition, *see* 2/12 Opp. 19–20, the Commission carefully analyzed conflicting evidence in the record concerning whether facilities indeed incur such costs and ultimately determined that, if such costs exist at all, they “amount to no more than one or two cents per billable minute,” *Order* ¶139; *see id.* ¶¶133–140. Contrary to Oklahoma's contention, the FCC did not choose “to exclude facility-borne costs in its rate calculus.” Mot. 16. The FCC merely rejected proposals to accommodate the possibility of facility-borne costs by adopting an “additive” to the *Order*'s rate caps, explaining that any such “costs are already built into [the *Order*'s] rate cap calculations.” *Order* ¶139.

The lodged motion and its supporting affidavits do not assert, notably, that Oklahoma itself incurs costs in connection with the provision of inmate calling services. Instead, Oklahoma contends that a survey submitted to the FCC by the National Sheriffs' Association “showed that correctional facilities perform integral parts of inmate calling services provision” at a cost of “anywhere from less than \$0.01 per minute to upward of \$0.40 per minute.” Mot. 16. As Oklahoma con-

cedes, however, and as the *Order* explains, the record contained “extensive commentary” casting doubt on the reliability of that survey. *Id.* at 17; *see Order* ¶137. One commenter observed, for example, “that the [Association’s] survey was based on only three months of data from only approximately five percent of [its] members,” which may not have been “representative of [the Association’s] broader membership.” *Id.* Another commenter noted that the Association had “failed to remove outliers from its calculations” and had “included costs that are typically associated with on-going investigations” and thus are not related to the provision of inmate calling services. *Id.* (quotation marks omitted). The FCC reasonably relied on other evidence in the record to conclude that costs to facilities, if they exist at all, are far lower than Oklahoma now suggests. *See id.* (citing, for example, “analysis from [Global Tel*Link that] yields median cost recovery rates of \$0.005 per minute for prisons and \$0.016 per minute for jails”).

B. Oklahoma Has Not Shown Irreparable Injury.

Oklahoma asserts two grounds to support its claim of irreparable injury, both of which are unpersuasive. *See Mot.* 18–19.

Oklahoma complains, first, that the FCC has infringed the state’s “sovereign interests in the regulation of its prisons and jails.” *Mot.* 18. But as explained above, *see supra* pp. 12–13, the *Order* does not constrain how state or local authorities administer their correctional facilities, nor has the Commission sought to dictate

states' policy choices. The *Order* merely aims to ensure that inmate calling providers can no longer charge rates that grossly exceed the reasonable cost of providing inmate calling services. And as we have explained, *see supra* pp. 10–12, regulating inmate calling rates is “unambiguously” within the FCC’s purview, *IPTA*, 117 F.3d at 562.

Oklahoma contends (at Mot. 18) that the *Order* interferes with the state’s “sovereign status” and thus “inflicts *per se* irreparable injury on the State.” But a federal agency’s legitimate exercise of expressly granted authority under federal law inflicts no cognizable injury on a state in our constitutional system. U.S. Const., art. VI, cl. 2. Nor does the *Order* intrude on Oklahoma’s sovereign interests simply because it may affect the state’s ability to tap a potential source of state revenue that is subject to federal regulation.²

² Oklahoma’s reliance (at Mot. 18 & n.75) on *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001), is misplaced. The Tenth Circuit in that case recognized irreparable injury to Kansas’s “sovereign interests and public policies” because a federal agency declared lands within the state to be “Indian lands,” thus excluding “application of [state] laws to the tract absent Congressional consent,” *id.* at 1223, 1227. The *Kansas* court neither held nor implied that a state suffers irreparable injury whenever federal agency action may affect some aspect of state policy or state revenue streams. Also inapposite are the in-chambers decision of then-Justice Rehnquist, *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345 (1977) (Rehnquist, J., in chambers), and its progeny on which Oklahoma relies. *See* Mot. 18 n.75. Those decisions concern not the effect of agency action on state operations, but the vacatur or injunction of a state statute by a reviewing court. *See, e.g., New Motor Vehicle Board*, 434 U.S. at 1351 (“It also seems to me that any time a

Oklahoma also claims that it is irreparably harmed because it anticipates receiving less revenue from site commissions under the *Order*, and therefore fears it “will either have to . . . cut” the inmate welfare programs that site commissions currently fund, or “shift funds away from other priorities in order to make up for the lost revenues.” Mot. 19. That argument ignores the many possible sources of state revenue—including but not limited to the general tax base—through which Oklahoma may replace any diminution in revenue from site commissions without altering its current program offerings for inmates or shifting other funding priorities. Insofar as the *Order* may prevent Oklahoma from continuing to collect site commissions at the extraordinarily high levels it does today—over \$2.00 for each inmate call, *see* Hicks Aff. ¶9; Skuta Aff. ¶26—that possible diminution in revenue is not sufficiently certain or grave to show irreparable harm. *See, e.g., Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam) (explaining that irreparable harm “must be both certain and great”). That is particularly so when Oklahoma’s projections of diminished revenue from site commissions fail to account for the likelihood that call volumes will increase under the *Order*’s reforms. *See* Hicks Aff. ¶¶21–22; Skuta Aff. ¶¶28–29; *Order* ¶70.

State is enjoined by a court *from effectuating statutes enacted by representatives of its people*, it suffers a form of irreparable injury.” (emphasis added)).

C. A Stay Would Harm Third Parties and the Public Interest.

As the Commission emphasized in the *Order*, the inmate calling rate reforms that it adopted will make it easier for inmates to stay connected to their families, friends, and legal representatives; reduce recidivism (with attendant savings to taxpayers); foster a safer environment for both inmates and correctional officers; and lessen the negative impact on the millions of children with an incarcerated parent. *See Order* ¶¶1, 3–5. The *Order* thus advances inmate welfare, as well as the public interest. A stay of the *Order* (or any portion thereof) would undermine both.

Oklahoma contends that the FCC’s rate reforms will reduce competition among inmate calling providers and the availability of inmate calling services, “particularly in high-cost jurisdictions.” Mot. 20. But Oklahoma makes no credible showing to support that claim—not in Oklahoma, let alone elsewhere. *See, e.g., Hicks Aff.* ¶23 (acknowledging that the Global Tel*Link subsidiary providing service to the Oklahoma Department of Corrections plans to continue doing so, if perhaps with diminished site commission payments); *compare Skuta Aff.* ¶30 (speculating without basis that Telmate “*may . . . be unable to provide service at current levels if the Order goes into effect*”) *with id.* ¶¶26–27 (predicting that, under the FCC’s new rate caps, Telmate will be able to keep the same revenue per intrastate minute that it currently retains while also paying site commissions of approxi-

mately \$0.04 per minute). The Commission reasonably determined, upon an exacting examination of a comprehensive record, that the *Order*'s reforms will not jeopardize the availability of inmate calling services. *See Order* ¶¶70, 140. To the contrary, as the *Order* explains, the FCC's rate caps amply cover the cost of providing calling services, and will likely lead to an *increased*, not diminished, volume of inmate calls. *E.g., id.* ¶70.

Oklahoma argues that the *Order* will harm the public interest by "forcing Oklahoma's Department of Corrections to . . . terminate or renegotiate its contract with its provider of inmate calling services," which Oklahoma characterizes as an "action[] not easily undone." Mot. 20. The record before the FCC established, however, "that [inmate calling] contracts are amended on a regular basis." *Order* ¶213 (quotation marks omitted). There is no reason why Oklahoma's inmate calling provider contracts cannot be adjusted to conform to any decision of this Court.

Finally, Oklahoma ignores that "parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders." *Nken*, 556 U.S. at 427. Millions of inmates and their families, including some of the most economically disadvantaged members of our society, have waited over a decade for the FCC to curb exorbitant rates for inmate calling. The *Order*'s long-awaited reforms should not be stayed.

CONCLUSION

The Court should deny Oklahoma's motion for leave to file a motion for a stay or, in the alternative, deny the lodged motion for a stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sarah E. Citrin, hereby certify that on February 26, 2016, I electronically filed the foregoing Opposition of Respondent the Federal Communications Commission to Motions for Leave to File Motion For a Stay and Lodged Motion for a Stay with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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