

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act)	WC Docket No. 23-62
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	

APPLICATION FOR REVIEW OF THE PUBLIC INTEREST PARTIES

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EXECUTIVE SUMMARY

Benton Institute for Broadband & Society, the Criminal Justice Reform Clinic of Lewis & Clark Law School, National Consumer Law Center, Pennsylvania Prison Society, Prison Policy Initiative, Public Knowledge, Stephen A. Rahter, United Church of Christ Media Justice Ministry, and Worth Rises seek the Commission’s review of the Wireline Competition Bureau’s *sua sponte* decision to suspend the *2024 IPCS Order* by delaying for nearly two years the reforms the Commission adopted on a unanimous, bipartisan basis to ensure—pursuant to a bipartisan mandate from Congress—that rates and charges for Incarcerated People’s Communications Services are just and reasonable. The Bureau’s action is inconsistent with and undermines the Martha Wright-Reed Act, the Administrative Procedure Act, and the Commission’s own rules.

The *Suspension Order*, which was issued without any request from any party, plainly circumvents the critical reforms of the Martha Wright-Reed Act and Congress’s directive to ensure rules are in place within a time certain; it violates the Administrative Procedure Act (“APA”) because it is arbitrary and capricious, directly contradicting previous findings by the Bureau and the Commission and wholly lacking notice or any record support; and it is *ultra vires* because the Chief of the Wireline Competition Bureau lacks the authority to issue such a decision. For these reasons, the Commission should promptly rescind the Bureau’s *Suspension Order* and allow the rules to go into effect as adopted by the Commission, thus implementing the Martha Wright-Reed Act as Congress intended.

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Benton Institute for Broadband & Society, the Criminal Justice Reform Clinic of Lewis & Clark Law School, National Consumer Law Center, Pennsylvania Prison Society, Prison Policy Initiative, Public Knowledge, Stephen A. Raher, United Church of Christ Media Justice Ministry, and Worth Rises (collectively, the “Public Interest Parties”) seek the Commission’s review of the Wireline Competition Bureau’s (“Bureau”) *sua sponte* decision¹ to suspend the *2024 IPCS Order* by delaying for nearly two years the reforms the Commission adopted on a unanimous, bipartisan basis² to ensure—pursuant to a bipartisan mandate from Congress³—that rates and charges for Incarcerated People’s Communications Services (“IPCS”) are just and reasonable. The Bureau’s action is inconsistent with and undermines the Martha Wright-Reed Act, the Administrative Procedure Act (“APA”), and the Commission’s own rules.

¹ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket Nos. 23- 62, 12-375, Order, DA 25-565 ¶ 1 (WCB rel. June 30, 2025) (“*Suspension Order*”).

² *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, 39 FCC Rcd 7647 (2024) (“*2024 IPCS Order*” or “*2024 IPCS Further Notice*”).

³ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2023) (“Martha Wright-Reed Act” or the “Act”).

QUESTIONS PRESENTED

The Public Interest Parties seek review⁴ of the *Suspension Order* to address three questions:

- Did the Bureau violate Congress’s statutory mandate for the Commission to promulgate rules by a date certain when it suspended, *inter alia*, rules addressing rates for intrastate calling and video communications that Congress directed to be in place no later than January 2025?
- Did the Bureau’s suspension of IPCS rules violate the APA because it failed to follow notice-and-comment rulemaking and is otherwise arbitrary and capricious, contradicting its own and the Commission’s findings and wholly lacking any factual or legal foundation?
- Was the Bureau’s action prohibited by 47 C.F.R. § 0.291(a)(2) because the Bureau took action on “novel questions of fact, law or policy” in conflict with existing Commission rules, precedents, and guidelines and because the action was an *ultra vires* rulemaking?

BACKGROUND

For over two decades, individuals and organizations, including Martha Wright-Reed herself, have sought relief from the exorbitant rates charged by IPCS providers for communication with incarcerated individuals.⁵ As the Commission has found, “[t]he record in this proceeding provides overwhelming evidence of the substantial burden excessive communications rates have on the ability of incarcerated people to stay connected and maintain the vital, human bonds that sustain families and friends when a loved one is incarcerated.”⁶ The Commission noted that the ability for incarcerated people to stay connected with friends and family has “wide-ranging and well-documented” benefits, including “lowering rates of recidivism and increasing likelihood of

⁴ The Public Interest Parties seek Commission review of whether the Bureau’s “action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy”; whether it “involves a question of law or policy which has not previously been resolved by the Commission”; whether the Bureau made “[a]n erroneous finding as to an important or material question of fact”; and whether the Bureau made a “prejudicial procedural error.” 47 C.F.R. § 1.115(b)(2)(i), (ii), (iv), (v).

⁵ *In re Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012); see Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking by Martha Wright et al., CC Docket No. 96-128 (Oct. 31, 2003); Petitioners’ Alternative Rulemaking Proposal by Martha Wright et al., CC Docket No. 96-128 (Feb. 28, 2007).

⁶ 2024 *IPCS Order*, 39 FCC Rcd at 7662 ¶ 26.

successful reentry into society after release.”⁷ The lack of the ability to communicate with the outside world can increase unlawful behavior and incidence of mental illness in carceral facilities as incarcerated people lose hope of reengaging with society and loved ones and have severe adverse pecuniary and social impact on the friends and families of incarcerated persons.⁸

This docket was opened to implement the bipartisan Martha Wright-Reed Act, which gave the Commission additional authority to prohibit egregious costs imposed on incarcerated people and their loved ones by ensuring “just and reasonable” rates in the provision of IPCS,⁹ and directed the Commission to adopt rules by January 2025. Congress recognized the IPCS market as a “broken system”¹⁰ and passed the Act to ensure the Commission would address the failures evident in the IPCS market and to override a 2017 court decision in *GTL v. FCC*¹¹ which had overturned prior reforms. Congress expanded the Commission’s authority to provide IPCS consumers with relief in two critical areas: it explicitly extended Commission authority to regulate rates for intrastate calls, and it explicitly made clear that any audio or video communications from a carceral facility fell under the Commission’s authority.¹²

Crucially, Congress expressly required the Commission to “promulgate any regulations necessary to implement” the new law “[n]ot earlier than 18 and not later than 24 months after the date of [its] enactment.”¹³ Pursuant to that mandate, the Commission commenced a rulemaking proceeding “to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services” and to “seek comment on how” the Commission “should interpret

⁷ 2024 IPCS Order, 39 FCC Rcd at 7664-65 ¶ 29.

⁸ See 2024 IPCS Order, 39 FCC Rcd at 7664-66 ¶ 29.

⁹ 2024 IPCS Order, 39 FCC Rcd at 7650-52 ¶¶ 5-8; see also Martha Wright-Reed Act § 2(a)(1).

¹⁰ See 2024 IPCS Order, 39 FCC Rcd at 7666-67 ¶ 31 (quoting 168 Cong. Rec. H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone)).

¹¹ See 2024 IPCS Order, 39 FCC Rcd at 7652 ¶ 8 (referencing *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017)).

¹² 2024 IPCS Order, 39 FCC Rcd at 7652-55 ¶¶ 9-14.

¹³ Martha Wright-Reed Act § 3(a).

the Act’s language to ensure that we implement the statute in a manner that fulfills Congress’s intent.”¹⁴ The Commission received a robust record from IPCS providers, carceral facilities, police departments, economists, prisoners’ rights advocacy groups, academics, and the public, and had the benefit of reviewing a comprehensive set of financial and operational data from all IPCS provider collected in response to the “2023 Mandatory Data Collection.”¹⁵

Relying on this extensive record, the Commission met Congress’s deadline. On July 18, 2024, just over 18 months from the enactment date, the Commission adopted the *2024 IPCS Order* and took its “most significant steps thus far” in the decades-long effort to remedy the “egregiously high telephone rates and charges that were impeding incarcerated people’s ability to stay connected with their families and friends.”¹⁶

The Order, adopted on a 5-0, bipartisan basis without dissent, responded to Congress’s directive by fundamentally reforming and finally eliminating abusive, unjust, and unreasonable practices. In particular, the Commission adopted rules that, after considering necessary safety and security costs, established rate caps for intrastate audio IPCS and reduced existing rate caps for interstate and international audio IPCS, established the first-ever interim rate caps for video IPCS, prohibited site commissions that providers paid to carceral facilities and that were almost always passed through to IPCS users, eliminated duplicative ancillary fees, and extended the Commission’s per-minute pricing rules to all audio and video IPCS calls, among other reforms.¹⁷

¹⁴ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Notice of Proposed Rulemaking and Order, 38 FCC Rcd 2669, 2670 ¶ 2 (2023) (“*2023 IPCS Order*” or “*2023 IPCS Notice*”).

¹⁵ See *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order, 38 FCC Rcd 6625 (WCB/OEA 2023). IPCS providers are also subject to an annual reporting requirement. 47 C.F.R. § 64.6060.

¹⁶ *2024 IPCS Order*, 39 FCC Rcd at 7649-51 ¶¶ 1, 5; *2024 IPCS Further Notice*, 39 FCC Rcd at 7958-65 ¶¶ 608-624.

¹⁷ *2024 IPCS Order*, 39 FCC Rcd at 7649, 7709-10 ¶¶ 2, 124.

The Order reflected the culmination of more than a decade of regulatory action and advocacy, and followed multiple efforts to provide relief to IPCS consumers.

To balance certain concerns in the record, the Commission adopted staggered compliance deadlines for providers,¹⁸ finding it “str[uck] a reasonable balance between competing interests.”¹⁹ The rules adopted in the *2024 IPCS Order* went into effect on November 19, 2024, including the staggered compliance deadlines.²⁰

Several parties challenged the new IPCS rules in cases now consolidated before the First Circuit.²¹ The Commission filed its merits brief on April 14, 2025, asking the appeals court to deny the challenges and vigorously defending the *2024 IPCS Order*, describing its decisions in formulating new IPCS rates and rules after the passage of the Martha Wright-Reed Act as a reasonable exercise of its authority.²²

Prior to the litigation, three IPCS providers had filed petitions for stay with the Commission, seeking to halt implementation of the rules.²³ The Bureau denied each of these

¹⁸ *2024 IPCS Order*, 39 FCC Rcd at 7950-51 ¶ 587.

¹⁹ *2024 IPCS Order*, 39 FCC Rcd at 7951 ¶ 589 (internal quotation marks omitted). The Order was grounded in cost data submitted by the providers themselves, which the Commission found were likely overstated. *See, e.g., 2024 IPCS Order*, 39 FCC Rcd at 7738-39, 7741, 7748-49 ¶¶ 167 & n.597, 172, 184.

²⁰ *Wireline Competition Bureau Announces Effective Dates of 2024 Incarcerated People’s Communications Services Order and Comment Dates for 2024 Incarcerated People’s Communications Services Further Notice of Proposed Rulemaking*, Public Notice, 39 FCC Rcd 10681 (WCB 2024). This excludes the rules related to the Paperwork Reduction Act, which are subject to review by the Office of Budget and Management.

²¹ Consolidated in *In re: MCP 191*, No. 24-8028 (1st Cir. 2024) (“*MCP 191*”).

²² *MCP 191*, Resp’t Br. 32-36 (1st Cir. June 13, 2025), ECF No. 00118300075 (“*FCC Litigation Brief*”). In particular, the Commission emphasized that the *2024 IPCS Order* reflected a reasonable exercise of statutory authority in dealing with safety and security costs in jails and prisons. *Id.* at 52-65.

²³ Securus Technologies, LLC Petition for Stay, WC Docket Nos. 23-62, 12-375 (Sept. 26, 2024); Pay Tel Communications, Inc. Petition for Stay, WC Docket Nos. 23-62, 12-375 (Oct. 7, 2024); HomeWAV Petition for Stay, WC Docket Nos. 23-62, 12-375 (Oct. 21, 2024). The National Sheriffs’ Association also filed a petition for stay, which the Bureau also denied. National Sheriffs’ Association Petition for Stay, WC Docket Nos. 23-62, 12-375 (Oct. 17, 2024); *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order Denying Stay Petition, 39 FCC Rcd 11607 (WCB 2024) (National Sheriffs’ Association).

petitions, noting that the providers were unlikely to succeed on the merits of their arguments.²⁴ Three IPCS providers then sought limited waiver relief.²⁵ In October 2024, the Bureau conditionally granted two of these requests on a limited, narrow basis as to the specific requesting companies and waiving on a similarly narrow and short-term basis only certain specific compliance deadlines relating to the per-minute pricing rules for video IPCS.²⁶ The Bureau declined to waive the effective date of the voice IPCS rules or other requirements. Providers fared no better seeking stay of the *2024 IPCS Order* pending judicial review, with the First Circuit denying separate requests by Pay Tel Communications, Inc. (“Pay Tel”) and Securus Technologies, LLC (“Securus”).²⁷ Notably, neither party renewed its pending motion for stay or made representations about the alleged impending loss of IPCS in certain facilities.

Since Congress enacted the Act (over two-and-a-half years ago), the Commission adopted the rules (twelve months ago) and granted limited waivers of the video IPCS rules (nine months ago), providers have begun implementing the Commission’s revised regulatory framework. Requests for relief have been far and few in between. Notably, Global Tel*Link Corporation d/b/a

²⁴ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order Denying Stay Petition, 39 FCC Rcd 10944, (WCB 2024) (Securus) (“*Securus Stay Denial Order*”); *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order Denying Stay Petition, 39 FCC Rcd 11373 (WCB 2024) (Pay Tel); *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order Denying Stay Petition, 39 FCC Rcd 11684 (WCB 2024) (HomeWAV). See also *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order Denying Stay Petition, 39 FCC Rcd 11607 (WCB 2024) (National Sheriffs’ Association).

²⁵ Petition of TKC Telecom, LLC for a Temporary Waiver to Extend the Compliance Date for 47 C.F.R. §§ 64.6010 and 64.6080 as Applied to Video IPCS, WC Docket No. 23-62 (May 21, 2025); Petition of Talton Communications, Inc. for Waiver of Certain IPCS Regulatory Requirements, WC Docket Nos. 23-62, 12-375 (Apr. 21, 2025); Petition of Securus Technologies, LLC for Waiver to Extend the Compliance Date for 47 C.F.R. § 64.6080 as Applied to Video Calling Services, WC Docket No. 23-62 (May 21, 2025).

²⁶ *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order, 39 FCC Rcd 13726 (WCB 2024) (Securus to Sept. 1, 2025); *In re Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act*, Order, WC Docket Nos. 23-62, 12-375, DA 25-515 (WCB rel. June 13, 2025) (TKC Telecom, LLC to Apr. 1, 2026).

²⁷ Order Denying Stay, *In re: MCP 191* (1st Cir. Nov. 18, 2024), ECF Doc. No. 108215790 (Pay Tel); Order Denying Stay, *In re: MCP 191* (1st Cir. Nov. 13, 2024), ECF Doc. No. 108215793 (Securus).

ViaPath Technologies (“GTL”), the lead petitioner in the 2017 recission of the Commission’s prior IPCS reforms and one of the two largest IPCS providers (along with Securus), did not seek *any* relief from the *2024 IPCS Order* itself. And Securus indicated that it planned to seek only an extension of its existing video IPCS waiver—and only until April 1, 2026.²⁸ Then on June 30, 2025, the Bureau released without notice its *Suspension Order*, inexplicably extending the compliance deadlines for *all* IPCS providers until April 1, 2027, or until “any alternative date the Commission sets as part of further action,” effectively revoking the Commission’s rules and the implementation of these critical industry reforms.²⁹

ARGUMENT

I. The *Suspension Order* Contradicts Congress’s Directives.

Congress directed the Commission to promulgate regulations implementing the Martha Wright-Reed Act “not later than 24 months” after the Act’s enactment and authorized the Commission to address intrastate rates and video communication.³⁰ By reverting to the rules in place before the Commission implemented the Act, the Bureau directly contradicted Congress’s deadline and mandates for the FCC to adopt rules for intrastate rates and for video communication.

The Martha Wright-Reed Act extended Commission authority over intrastate rates, responding to the *GTL v. FCC* decision and expressly amending Section 276 of the Communications Act to do so.³¹ Similarly, the Martha Wright-Reed Act expanded the FCC’s authority to cover “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held,

²⁸ See Letter from Michael H. Pryor, Counsel for Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375, at 1 (June 23, 2025).

²⁹ *Suspension Order* ¶ 1.

³⁰ Martha Wright-Reed Act §§ 2(a)(1)(B), 3(a).

³¹ See *2024 IPCS Order*, 39 FCC Rcd at 7650-51 ¶ 5.

regardless of technology used.”³² Congress thus intended the Commission to promulgate just and reasonable rates not just for international and interstate IPCS calls, but for intrastate IPCS calls and video calls as well. The *2024 IPCS Order* did exactly what Congress directed, adopting rate caps applicable to all IPCS calls, regardless of where the call originated or terminated, and promulgating these rules within the statutory deadline Congress prescribed.³³

The *Suspension Order* contravenes Congress’s directives by suspending for almost two years the reforms required under the law, and thus revives the 2021 interim caps as if Congress had not acted, imposing the rules “previously applicable to interstate and international audio IPCS,” and making clear that neither intrastate nor video calls are subject to those rules.³⁴ Not only does this decision revive four-year-old rate caps and override the express mandate of Congress, it also has the effect of temporarily eliminating intrastate rate caps and video calling caps—a crucial piece of the mandate Congress gave to the Commission to implement “any regulations necessary to implement this Act *and the amendments* made by this Act.”³⁵ Casting the decision as a “waiver” does not cure the issue.³⁶ The Bureau is effectively suspending reforms that Congress affirmatively required the Commission to promulgate within 24 months of enactment of the Martha Wright-Reed Act.

Because the *Suspension Order* is contrary to Congress’s directive in the bipartisan Martha-Wright Reed Act, the Commission should rescind the *Suspension Order*.

³² Martha Wright-Reed Act § 2(b)(3).

³³ See *2024 IPCS Order*, 39 FCC Rcd at 7649-50 ¶ 3.

³⁴ *Suspension Order* ¶ 19 & n.57; see *In re Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9520-21 ¶ 3 (2021) (“*2021 ICS Order*”).

³⁵ Martha Wright-Reed Act § 3(a) (emphasis added).

³⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (noting that waivers are “deviations” from a generally applicable rule). Here, the Bureau offers industry-wide relief from the compliance deadlines the Commission adopted. See *infra* §§ II.A., III.

II. The *Suspension Order* Violates the Administrative Procedure Act.

The *Suspension Order* violates the APA by (1) essentially amending the compliance deadlines set forth in 47 C.F.R. §§ 64.6010, 64.6015, and 64.6080 without notice and comment, (2) arbitrarily and capriciously ignoring important issues in the record, and (3) ignoring the Commission’s waiver rules and the Commission-set waiver process in 47 C.F.R. § 64.6120. No party had the opportunity to raise any arguments against the Bureau’s industry-wide waiver because no notice was given.

A. The Bureau’s *Suspension Order* Is Not the Product of Required Notice and Comment.

The broad effect of the *Suspension Order* could only permissibly be achieved via notice-and-comment rulemaking, which the Bureau failed to provide. With few exceptions, agency actions that do not provide the requisite notice-and-comment opportunity violate the APA as they cannot reflect a reasoned decision.³⁷

Notice and an opportunity for comment³⁸ allows all interested parties to participate, and supports reasoned decision-making based on the administrative record. Courts have found that notice-and-comment requirements “apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule. A basic principle of administrative law is that ‘an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked.’”³⁹ Courts have also held time and again that suspension of a published rule is effectively an

³⁷ Some rulemakings are exempted from notice-and-comment requirements, including interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or when the agency states good cause that notice-and-comment would be “impracticable, unnecessary, or contrary to the public interest.” See 5 U.S.C. § 553(b)(A)-(B). As explained later in this section, none of these exceptions apply here.

³⁸ 5 U.S.C. § 553(b)-(c).

³⁹ *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018) (quoting *Nat’l Fam. Plan. & Reprod. Health Ass’n v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992)). The Commission was just recently overturned for circumventing notice and comment. *League of Cal. Cities v. FCC*, 118 F.4th 995, 1030-31 (9th Cir. 2024).

amendment or repeal of the rules, and constitutes a rulemaking requiring notice-and-comment.⁴⁰ For example, the D.C. Circuit held that even a temporary, six-month suspension of agency rules constitutes a rulemaking under the APA.⁴¹ The APA “mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.”⁴²

Here, the Bureau, not the Commission, suspended the Commission’s IPCS rules for almost *two years*, while referring to vague “further action it deems necessary as it continues to reevaluate its IPCS rules.”⁴³ Although characterized as a “temporary waiver,” this action rewrote the compliance deadlines and suspended the related rules that the bipartisan Commission adopted in the *IPCS Order*. But the Commission is bound to follow its rules until the Commission revokes or replaces them. The Bureau may not simply suspend the IPCS rules in anticipation of possibly “reevaluat[ing]” them.⁴⁴ Because the *2024 IPCS Order* was adopted by notice-and-comment rulemaking, the Commission (rather than the Bureau) was required to give notice and an opportunity for interested parties to comment when suspending, amending, or repealing the rules

⁴⁰ *E.g.*, *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 194 (2d Cir. 2004) (“altering the effective date of a duly promulgated standard could be, in substance, tantamount to an amendment or rescission of the standards”); *Env’t Def. Fund, Inc. v. EPA*, 716 F.2d 915, 920 (D.C. Cir. 1983) (“The suspension or delayed implementation of a final regulation normally constitutes substantive rulemaking under APA § 553.”); *Env’t Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802, 818 (D.C. Cir. 1983) (holding that the EPA’s decision to indefinitely delay the effective date of a permit process constituted a rule, “[b]ecause of its substantive effect on the obligations of [regulated entities] and on the rights of the public”); *Off. of Comm’n of the United Church of Christ v. FCC*, 707 F.2d 1413, 1422 (D.C. Cir. 1983) (FCC’s “decision to eliminate or modify existing regulations” is an APA rulemaking reviewable under 5 U.S.C. § 706); *Nat. Res. Def. Council, Inc. v. EPA*, 683 F.2d 752, 762 (3d Cir. 1982) (holding that the EPA’s indefinite postponement of effective date of final amendments to certain regulations constituted a rulemaking subject to APA’s rulemaking requirements, noting the effective date of a rule “is an essential part of any rule.”).

⁴¹ *Council of the S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 580 n.28 (D.C. Cir. 1981) (holding that the agency’s order delaying by six months a mine safety regulation constituted a substantive rule, noting its “palpable effects’ upon the regulated industry and the public in general.” (citation omitted)).

⁴² *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (the APA “make[s] no distinction . . . between initial agency action and subsequent agency action undoing or revising that action”).

⁴³ *Suspension Order* ¶ 1.

⁴⁴ *Suspension Order* ¶ 1. *See Nat. Res. Def. Council*, 894 F.3d at 113 (quoting *Nat’l Fam. Plan. & Reprod. Health Ass’n*, 979 F.2d at 234).

adopted therein. The Commission did not do so. Even assuming the Bureau could act to suspend these Commission-adopted rules—which it lacked authority to do for the reasons discussed *infra* in Part III—it failed to follow notice-and-comment procedure. Instead, the Bureau arbitrarily acted to suspend the Commission’s IPCS rate cap, site commission, and per-minute pricing rules across the entire IPCS industry without any advance notice.⁴⁵ It gave no notice, sought no comment, and acted on no party’s request.⁴⁶

Notably, none of the exceptions to the notice-and-comment requirements of the APA apply here. Agencies may forego notice-and-comment for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice[,]” or when the agency for good cause finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest,” but the agency must state that finding and its rationale in its decision.⁴⁷ The Supreme Court has said that “[r]ules issued through the notice-and-comment process are often referred to as ‘legislative rules’ because they have the ‘force and effect of law.’”⁴⁸ On the other hand, the “critical feature of interpretative rules is that they are ‘issued by an agency to advise the public of the agency’s *construction of the statutes and rules* which it administers.’”⁴⁹

Here, the *Suspension Order* is a legislative rule, suspending the force and effect of the regulations in the *2024 IPCS Order*. It does not purport to interpret any statute or Commission rule. Similarly, the *Suspension Order* does not make a general policy statement or address agency

⁴⁵ Notably, the Commission vigorously defended the *2024 IPCS Order* in briefing before the First Circuit just 77 days before the release of the *Suspension Order*.

⁴⁶ Even some IPCS providers were taken by surprise, and “expressed concern about how the information flow on FCC actions to stay or renew rate orders can disrupt market competition if all providers are not provided the same information at the same time.” Letter from Tim McAteer, President, ICSolutions, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375 (July 8, 2025).

⁴⁷ 5 U.S.C. § 553(b)(A)-(B); *see also* *U.S. Steel Corp. v. U.S. EPA*, 595 F.2d 207, 213 (5th Cir. 1979); *Chamber of Com. of U.S. v. SEC*, 443 F.3d 890, 908 (D.C. Cir. 2006).

⁴⁸ *Perez*, 575 U.S. at 96 (quoting *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-03 (1979)).

⁴⁹ *Id.* (quoting *Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 99 (1995) (emphasis added)).

organization or rules of procedure. The Bureau did not explain why there was good cause to forgo notice-and-comment or why it was contrary to the public interest. Indeed, the Commission’s statements in the First Circuit litigation defending the *2024 IPCS Order* belie any assertion of immediate harm to the public interest by conducting proper notice-and-comment.⁵⁰

The effect of the Bureau’s action is akin to the “direct final rule” process the Commission recently proposed, whereby the Commission would have delegated authority to its bureaus and offices to eliminate “obsolete, unlawful, anticompetitive, or otherwise no longer in the public interest” rules without prior notice and comment.⁵¹ As several of the Public Interest Parties urged in that proceeding, the proposed process would have violated “the APA and principles of fundamental fairness.”⁵² In response, the Commission revised its proposal, noting that where a proposed deregulation—which is essentially the effect of the *Suspension Order*—“triggers the notice-and-comment rulemaking process required by the APA, the Commission will proceed in that manner.”⁵³ The Bureau’s action, which would not comply with the Commission’s new direct

⁵⁰ For example, where the *Suspension Order* raises the speculative specter of “abuse” by some IPCS users and suggests that carceral facilities may curtail access to IPCS if they cannot continue to pass all security costs through to consumers as before the *2024 IPCS Order*, the Commission stated just months earlier that “the rate caps include the cost of measures that the Commission determined from the record were needed to provide IPCS safely, and the Order explains that facilities remain free to purchase any other features they might wish to have ... [m]oreover, the Commission found it unlikely (based on the record before it) that correctional authorities would eliminate IPCS, given the well-recognized benefits that communications services provide to incarcerated people, facilities, and communities.” *Compare Suspension Order* ¶ 17 with *FCC Litigation Brief* at 57-58. The *Suspension Order* cites a *single* facility that announced it was “forced to terminate access to IPCS” as part of its “expanded record” justifying waiver relief. *Suspension Order* ¶ 12.

⁵¹ *In re Delete, Delete, Delete*, Direct Final Rule, GN Docket No. 25-133, FCC CIRC2507-04 ¶¶ 1, 2, 5, 10 (July 3, 2025), <https://docs.fcc.gov/public/attachments/DOC-412694A1.pdf> (item released on circulation and subsequently modified) (“Direct Final Rule Draft”). Notably, the Bureau did not provide an opportunity for *any* public comment to be considered. *Cf.* Direct Final Rule Draft ¶ 5 (proposing that rule changes be “accompanied by an opportunity for the public to file comments—and if [the Commission] conclude[s] that significant adverse comments have been filed, the relevant rule changes would not take effect until after a full notice and comment process”).

⁵² Letter from Public Knowledge *et al.*, to Hon. Brendan Carr, Chairman, FCC, GN Docket No. 25-133, at 1 (July 17, 2025); *see also* Comments of TechFreedom at 4-6, GN Docket No. 25-133 (July 17, 2025).

⁵³ *In re Delete, Delete, Delete*, Direct Final Rule, GN Docket No. 25-133, FCC 25-40, ¶ 2 & n.2 (rel. July 28, 2025) (“*Delete, Delete, Delete Order*”).

final rule process in any event, *preceded* the Commission’s action. For all of these reasons, the *Suspension Order* fits under none of the exceptions to notice-and-comment rulemaking.

B. The Bureau’s *Suspension Order* Is Arbitrary and Capricious.

Agency actions that are arbitrary and capricious are unlawful.⁵⁴ An agency “decision made without adequate notice and comment is arbitrary or an abuse of discretion as a matter of law.”⁵⁵ Here, the Bureau’s actions are arbitrary and capricious because, as explained above, the Bureau failed to provide notice, the decision lacks record support and flatly contradicts previous decisions by the Commission, and the Bureau entirely failed to consider the financial burdens on consumers. One need look no further than the over 2,700 consumer comments submitted in protest of the *Suspension Order*.⁵⁶

The Bureau’s action is not supported by the record nor is there evidence to justify the sweeping undifferentiated nationwide and industry-wide action taken. The *Suspension Order*’s abrupt change of course so soon after adoption of the *2024 IPCS Order* is, by itself, probative evidence of arbitrary action.⁵⁷ The Bureau attempts to justify its decision, stating “the Commission has been *made aware of* potential consequences of the new rules,”⁵⁸ completely side-stepping that no party sought the action in its *Suspension Order*. The Bureau claims that the rulemaking record

⁵⁴ See 5 U.S.C. § 706(2)(A).

⁵⁵ *Transp. Div. of the Int’l Ass’n of Sheet Metal, Air & Transp. Workers v. FRA*, 988 F.3d 1170, 1180 (9th Cir. 2021) (quoting *Nat. Res. Def. Council v. EPA*, 279 F.3d 1180, 1186 (9th Cir. 2002) (internal quotation marks omitted)).

⁵⁶ As of July 30, 2025. See, e.g., Comment of Sophia Keller, WC Docket Nos. 23-62, 12-375 (July 4, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10725115682148> (“The FCC’s sudden reversal of its position on regulations passed unanimously in 2024 is [sic] plainly shameful. It delays more than four decades of necessary relief for those who need it most, families with incarcerated loved ones... Any decision to delay these well-reasoned regulations is a move to protect special interests. There are no harmful ‘unintended consequences,’ only malicious manipulations by the industry and their agency partners to protect the status quo.”).

⁵⁷ See *Off. of Comm’n of the United Church of Christ*, 707 F.2d at 1425 (“[A]brupt shifts in policy . . . constitute ‘danger signals’ that the Commission may be acting inconsistently with its statutory mandate.”).

⁵⁸ *Suspension Order* ¶ 4 (emphasis added).

now shows that the rules “impose[] implementation challenges and safety and security risks greatly exceeding those the Commission envisioned in the *2024 IPCS Order*.”⁵⁹ But that statement flatly contradicts the facts. The Bureau states that it should push pause on the entire order because IPCS providers must implement new per-minute billing for video calling, even though Securus has a waiver for per-minute video billing and indicated in the record that it would seek only an additional year of that waiver until April 2026,⁶⁰ and TKC Telecom, LLC received a waiver to meet its needs under the FCC’s rules.⁶¹ Talton Communications, Inc. also sought waiver of the rate caps,⁶² but the Bureau has not acted on its petition. No other party has sought a waiver.

The Bureau states that providers and facilities face “unanticipated” problems implementing the rules, but cites only generalized comments from providers using inflammatory words like “chaos” with *no documentation of any chaos*.⁶³ There are no cites to facilities and their experiences during implementation, only comments from July 2024 when facilities would have had no such experience.⁶⁴ Instead, the Bureau gave no notice and sought no comment from parties that could have collected data regarding smooth and uneventful compliance with the rules and deadlines, and deliberately blinded itself to the possibility that the record could demonstrate massive compliance with minimal disruption, in contrast to speculative claims about four or five facilities.⁶⁵

⁵⁹ *Id.* ¶ 5.

⁶⁰ *In re Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Order, 39 FCC Rcd 13726 (WCB 2024).

⁶¹ *In re Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order, DA 25-515 (WCB rel. June 13, 2025).

⁶² Petition of Talton Communications, Inc. for Waiver of Certain IPCS Regulatory Requirements, WC Docket Nos. 23-62, 12-375 (Apr. 21, 2025). Redactions to Talton’s petition make it difficult to determine the precise nature of the relief it sought.

⁶³ *Suspension Order* ¶¶ 7, 9 & n.27.

⁶⁴ *Suspension Order* ¶ 9, n.27 (citing Letter from Salvatore Taillefer, Jr., Counsel to the National Sheriffs’ Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375, at 2 (filed July 11, 2024)).

⁶⁵ See, e.g., Keaton Ross, *As Prison Phone Call Caps Take Effect, Focus Shifts to Tablets*, Oklahoma Watch (Apr. 10, 2025), <https://oklahomawatch.org/2025/04/10/as-prison-phone-call-caps-take-effect-focus-shifts-to->

The Bureau further speculates that “the staggered deadlines for complying with the rate cap and site commission rules adopted therein may have the unintended consequence of reducing or eliminating the availability of IPCS at certain correctional facilities,” citing two IPCS providers’ (Pay Tel and Securus) hypothesis of this “possibility” and the public statement of a single carceral facility that announced it would end access to IPCS based on the *2024 IPCS Order*.⁶⁶ The Bureau cites the *speculative possibility* that another four facilities might lose service, but no evidence of any other loss out of thousands of facilities nationwide.⁶⁷ These same issues had been raised, and the Commission had considered and rejected them, during the rulemaking.⁶⁸ And the Bureau rejected them again in its *Stay Denial Order*, explaining, for example, that Securus “fail[ed] to cite any source detailing its alleged challenges in implementing the changes to the ancillary service rules.”⁶⁹ The same facts and arguments producing diametrically opposite outcomes in government decision-making is the paradigmatic example of arbitrary and capricious behavior.⁷⁰

tablets/ (“Long-anticipated relief arrived in . . . February” when rates lowered from 14 cents per minute to 6 cents per minute to comply with FCC rules); Graham Kilmer, *Jail Lowering Cost of Phone Calls, Ending ‘Kickbacks’*, Urban Milwaukee (Mar. 5, 2025), <https://urbanmilwaukee.com/2025/03/05/mke-county-jail-lowering-cost-of-phone-calls-ending-kickbacks/>.

⁶⁶ *Suspension Order* ¶ 16. Further, if the Commission had sought comment on its proposed action, it would have learned that the jail in Baxter County, AR has been cited multiple times over an extended period for violating the constitutional rights of the people incarcerated there. *Hum. Rts. Def. Ctr. v. Baxter Cnty.*, 129 F.4th 498, 508 (8th Cir. 2025) (affirming district court finding of First Amendment violations and awarding HRDC \$259,350 in attorney fees). See also *Hum. Rts. Def. Ctr. v. Baxter Cnty. Arkansas*, 999 F.3d 1160, 1166 n.4 (8th Cir. 2021) (“The un rebutted testimony at trial was that no publisher can send books into the Jail; that no magazines of any type are allowed in the Jail; and that the Jail does not accept books.” (citations omitted)). In-person visitation is permitted on one day per week only. Baxter County Sheriff, *Visitation days/times for Jail Inmates Changing on April 1st* (Mar. 13, 2025), https://www.baxtercountysheriff.com/press_view.php?id=2410 (visits may occur only on designated days depending on the first letter of the last name for incarcerated men and only on Fridays for incarcerated women).

⁶⁷ See *Suspension Order* ¶ 14.

⁶⁸ See also discussion *infra* § II.C at 20 (“The *Suspension Order* does not meet the Commission’s own waiver standard...”).

⁶⁹ *Securus Stay Denial Order*, 39 FCC Rcd at 10957 ¶ 29.

⁷⁰ See *MCI Worldcom, Inc. v. Gen. Servs. Admin.*, 163 F. Supp. 2d 28, 37 (D.D.C. 2001) (“It is well-established that where an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious.”). More troubling still, these decisions come only months apart and without intervening change in law or facts.

Moreover, an agency action is arbitrary and capricious if the agency “has . . . entirely failed to consider an important aspect of the problem.”⁷¹ So it is here. The Martha Wright-Reed Act requires that the Commission “establish a compensation plan to ensure that all [IPCS] providers are fairly compensated, and all rates and charges are just and reasonable.”⁷² The *2023 IPCS Notice* sought comment on how the Commission should balance the competing interests of consumers and IPCS providers in order to give effect to both clauses,⁷³ and the *2024 IPCS Order* confirmed that “just and reasonable” IPCS rates must balance the burdens on consumers with fair compensation to providers.⁷⁴

The Bureau, however, failed to consider that it was upsetting this balance. As its rationale for an industry-wide suspension of IPCS rules, the Bureau cites only ongoing implementation challenges⁷⁵ and financial burdens⁷⁶ that IPCS providers assert they are facing. There is no balancing of the harms that consumers will face with the Bureau’s *Suspension Order* against the fair compensation of IPCS providers—indeed, there is no analysis of how the delayed implementation of the *2024 IPCS Order* financially burdens consumers at all. When using the rulemaking process to achieve a deregulatory goal, the Commission must still act consistently with its delegated authority under the Communications Act.⁷⁷ The Bureau’s consideration of only one side of the argument renders the *Suspension Order* arbitrary and capricious.⁷⁸

⁷¹ *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1110 (D.C. Cir. 2019) (quoting *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)).

⁷² 47 U.S.C. § 276(b)(1)(A).

⁷³ *2023 IPCS Notice*, 38 FCC Rcd at 2675-76 ¶ 14.

⁷⁴ *2023 IPCS Order*, 38 FCC Rcd 2693 ¶ 60.

⁷⁵ *Suspension Order* ¶¶ 7-11.

⁷⁶ *Suspension Order* ¶¶ 12-15.

⁷⁷ *Off. of Comm’n of the United Church of Christ*, 707 F.2d at 1422.

⁷⁸ See *Lake Pilots Ass’n v. U.S. Coast Guard*, 257 F.Supp. 2d 148, 168 n.21 (D.D.C. 2003) (“[T]o pass muster under the arbitrary and capricious standard, the agency must provide a rational connection between the facts found . . . and the choice made” (quoting *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 52, 56 (internal quotation marks omitted))).

C. The Bureau Violated the Commission’s Own Waiver Rules, Providing Further Evidence that the *Suspension Order* Is Arbitrary and Capricious.

The Bureau’s *Suspension Order* fails to establish “good cause” under the Commission’s waiver rules, further indicating its arbitrary nature. Courts have found Commission waivers to be arbitrary and capricious when they are not based on any rational waiver policy.⁷⁹ Critically, *no party sought this broad a waiver*. As the *Suspension Order* recognizes, the Commission “may exercise its discretion to waive a rule” only where “*particular facts* would make strict compliance inconsistent with the public interest.”⁸⁰ Such waivers are “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁸¹ The “reason for this two-part test flows from the principle that an agency must adhere to its own rules and regulations, and *ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned.”⁸² Thus, the Commission “must explain why deviation better serves the public interest, and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.”⁸³ The *Suspension Order* deviates from these well-established principles in several respects.

First, the *Suspension Order*, on its face, is not a valid invocation of the waiver authority in 47 C.F.R. § 1.3. The ordinary meaning of the term “waiver” is an exception from, or—in the D.C. Circuit’s words—a “deviation” from, an otherwise applicable rule.⁸⁴ Thus, the “process viewed as a whole leads to a general rule, and *limited waivers or exceptions* granted pursuant to an appropriate general standard.”⁸⁵ And such waivers are appropriate, as *Northeast Cellular* notes,

⁷⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1165 (D.C. Cir. 1990).

⁸⁰ *Id.* at 1166.

⁸¹ *Id.*

⁸² *NetworkIP*, 548 F.3d at 127 (internal quotation marks omitted).

⁸³ *Id.* (emphasis and internal quotation marks omitted).

⁸⁴ *Id.*

⁸⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (emphasis added); *see also id.* (describing this “combination of a general rule and limitations” as “the very stuff of the rule of law”).

only where “particular[] ... facts” and “special circumstances” can justify it.⁸⁶ In other words, a waiver is for individual applicants who can show that their particular conduct “will not undermine the policy, served by the rule, that has been adjudged in the public interest.”⁸⁷

Here, the *Suspension Order*’s blanket waiver exceeds the agency’s waiver authority. The waiver takes the form not of excepting an individual provider from an otherwise binding deadline (for example) but rather of changing the operative deadlines for everyone. A “waiver” that in fact sets different deadlines for all regulated parties than the deadlines promulgated by notice and comment is not a proper “waiver” at all. Rather, the waiver effectuated by the *Suspension Order* implicitly and unlawfully has the effect of reversing the deadlines promulgated by the *2024 IPCS Order* following a robust rulemaking process. And the *Suspension Order* cites no comparable case where any such expansive “waiver” has ever been adopted—much less one that was adopted *sua sponte* at the request of no party. The Bureau has therefore effectively “eviscerate[ed]” the Commission’s rules via waiver, rather than making use of the “limited safety valve” the D.C. Circuit has previously understood the Commission’s waiver authority to permit.⁸⁸

Moreover, the *Suspension Order* does not meet the Commission’s own waiver standard, which requires a party seeking relief to demonstrate that its “arguments are substantially different from those which have been carefully considered at the rulemaking proceeding.”⁸⁹ The Bureau acknowledges the speculative nature of its basis for proceeding, noting that “the Commission has been made aware of *potential* consequences of the new rules.”⁹⁰ The Bureau then theorizes that “the staggered deadlines for complying with the rate cap and site commission rules adopted therein

⁸⁶ *Id.* at 1157.

⁸⁷ *Id.*

⁸⁸ *Id.* at 1159.

⁸⁹ *Indus. Broad. Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

⁹⁰ *Suspension Order* ¶ 4 (emphasis added).

may have the unintended consequence of reducing or eliminating the availability of IPCS at certain correctional facilities,” citing only the assertions of two IPCS providers (Pay Tel and Securus) and pointing to the public statement of a single carceral facility that announced it would end access to IPCS based on the *2024 IPCS Order*.⁹¹

The Commission explicitly noted in the *2024 IPCS Order* that the staggered deadlines it adopted were designed to “strike a reasonable balance between competing interests,” including the need to offer relief to IPCS consumers paying exorbitant rates and fees and the time required for IPCS and correctional officials to amend contracts and implement the new rates.⁹² The Bureau, in contrast, neither articulates what about its reasoning is based on “substantially different” arguments nor balances the interest of consumers whatsoever in its *Suspension Order*, offering the IPCS providers and correctional facilities more time for compliance while delaying relief for IPCS consumers.

The *Suspension Order* justifies its effective suspension of the rules by pointing to assertions of financial burdens⁹³ from regulated parties that those same parties had already raised, and the Commission carefully considered, in the *2024 IPCS Order*, concluding that the benefits to consumers would far outweigh such costs.⁹⁴ Regarding the prohibition of site commissions, the *Suspension Order* finds that correctional facilities “have been or will be unable to overcome” the financial challenges of renegotiating their contracts before the deadlines in the *2024 IPCS Order*, despite that Order’s finding that no further delay of site commission reform was warranted.⁹⁵ The *2024 IPCS Order* rightfully observed that IPCS providers and correctional authorities had been on

⁹¹ *Suspension Order* ¶ 16.

⁹² *2024 IPCS Order*, 39 FCC Rcd at 7951 ¶ 589 (quotation marks and alterations omitted).

⁹³ *Suspension Order* ¶¶ 12-15.

⁹⁴ *2024 IPCS Order*, 39 FCC Rcd at 7947-51 ¶¶ 579-588.

⁹⁵ *2024 IPCS Order*, 39 FCC Rcd at 7953-54 ¶ 594 (quoting *Suspension Order* ¶ 5).

notice since at least 2014—or *ten years*—that the Commission might act to prohibit site commissions, and that their continued reliance on site commissions was at their own risk.⁹⁶

The Bureau also suggests that the *Suspension Order* will “help mitigate *possible* safety and security risks in connection with IPCS,” again citing as support only the speculative statements of Securus.⁹⁷ The *2024 IPCS Order* addressed safety and security costs in depth,⁹⁸ and, consistent with the Martha Wright-Reed Act,⁹⁹ did not prohibit the use of any safety and security measures—it only prevented IPCS providers from passing the costs of *some* such measures through to consumers when those measures were not used and useful.¹⁰⁰ In any event, all three concerns raised in the *Suspension Order*—the implementation deadlines, the financial burdens of compliance, and safety and security issues—were all considered during the rulemaking that resulted in the *2024 IPCS Order*.

Second, even assuming the Commission could rely on its waiver authority here, the Bureau has not adequately “explain[ed]” how the applicable two-part test is satisfied. The agency “may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function.”¹⁰¹ Yet that is precisely what has occurred here.

To begin, the Bureau has not adequately shown that “special circumstances warrant a deviation from the general rule.”¹⁰² The Bureau has simply cast aside the careful balancing undertaken in the *2024 IPCS Order* based on a handful of self-interested anecdotes submitted by providers and correctional facilities. There is a plain mismatch between such anecdotes and the

⁹⁶ *2024 IPCS Order*, 39 FCC Rcd at 7953-54 ¶ 594.

⁹⁷ *Suspension Order* ¶ 17 & n.54 (emphasis added).

⁹⁸ *2024 IPCS Order*, 39 FCC Rcd at 7825-66 ¶¶ 339-407.

⁹⁹ See Martha Wright-Reed Act § 4.

¹⁰⁰ *2024 IPCS Order*, 39 FCC Rcd at 7854 ¶¶ 388-389.

¹⁰¹ *WAIT Radio*, 418 F.2d at 1159.

¹⁰² *Northeast Cellular*, 897 F.2d at 1166.

broad conclusion that special circumstances exist warranting an across-the-board deviation from the staggered compliance deadlines set forth by regulation. Indeed, by its own terms, the *Suspension Order* refers only to the experience of “several IPCS providers” and “several parties.”¹⁰³ Such record evidence could at most justify a waiver with respect to those specific parties, but nowhere does the Bureau explain how such anecdotes can rationalize an across-the-board waiver. Indeed, the *Suspension Order* otherwise rests on broad generalizations from a handful of essentially speculative provider submissions. But “[m]ere conclusory statements ... are not sufficient to satisfy” the D.C. Circuit’s standard for assessing whether invocation of the waiver authority was proper.¹⁰⁴ Thus, the Bureau failed to comply with the Commission’s own rules, which is yet another way in which its action was arbitrary and capricious.¹⁰⁵

A comparison to the *2024 IPCS Order* is instructive. There, the Commission made clear that if IPCS providers were facing compliance difficulties, they could seek waiver of the Commission’s rules for particular facilities or on a contract-wide basis.¹⁰⁶ To date, three providers have sought limited waivers of the rules adopted in the *2024 IPCS Order*, and none has requested a waiver as broad in scope or duration as that adopted by the *Suspension Order*.¹⁰⁷ The fact that no other parties have publicly communicated any implementation challenges should indicate that they are not facing any, undermining the Bureau’s rationale for its unprecedented suspension.

¹⁰³ *Suspension Order* ¶ 9.

¹⁰⁴ 897 F.2d at 1167.

¹⁰⁵ *Lake Pilots Ass’n v. U.S. Coast Guard*, 257 F.Supp. 2d 148, 174 (D.D.C. 2003) (an agency action is arbitrary and capricious when the agency fails to adhere to its own regulations).

¹⁰⁶ *2024 IPCS Order*, 39 FCC Rcd at 7898 ¶ 479; *see also* 47 C.F.R. § 64.6120(a).

¹⁰⁷ *See* Petition for Partial Waiver of Securus Technologies, LLC, WC Docket Nos. 23-62, 12-375 (filed Oct. 19, 2023); Petition for Partial Waiver of NCIC Inmate Communications, WC Docket Nos. 23-62, 12-375 (filed Nov. 21, 2023); Petition for Waiver of Talton Communications, Inc., WC Docket Nos. 23-62, 12-375 (filed Apr. 21, 2025).

Third, the Bureau has not shown that a waiver will serve the public interest. As noted above, rules adopted by full agency process are considered to be in the public interest.¹⁰⁸ Suspending the implementation of these rules must frustrate the underlying policy. The Commission gives no rationale for why the public interest is best served by suspending reforms that benefit consumers to prop up a handful of complaining regulated parties.

Finally, the Bureau acted arbitrarily when it failed to consider—let alone follow—the IPCS waiver procedure adopted by the Commission. Section 64.6120 lays out the specific required showings for granting a rate cap waiver, including information about costs, demand, revenue, and an explanation of how and why circumstances at the location for which a waiver is sought differ from circumstances elsewhere.¹⁰⁹ This Bureau neither sought nor received this detailed showing on an industry-wide basis. The Commission’s painstaking outline of the limited context in which it determined waivers would be permitted and careful delineation of the showing required for such waiver, contrasted with the Bureau’s unsupported action, demonstrates the Bureau’s failure to comply with existing rules and policy, further underlying the arbitrariness of the *Suspension Order*.

III. The *Suspension Order* Exceeds the Bureau’s Authority.

The *Suspension Order* also constitutes an *ultra vires* action because it exceeds the scope of the Bureau’s delegated authority, and should be declared null and void on that ground alone. The Bureau has only the authority delegated to it by the Commission.¹¹⁰ That authority does not extend to effectively suspending or attempting to repeal a rule adopted by the full Commission.

¹⁰⁸ *WAIT Radio*, 418 F.2d at 1157 (Noting that waivers “will not undermine the policy, served by the rule, that has been adjudged in the public interest.”).

¹⁰⁹ 47 C.F.R. § 64.6120(b). A rate cap waiver can be obtained only through a series of eight showings, including in summary: a providers’ total costs; method of calculating costs; demand at a particular facility; revenue from IPCS; an unredacted copy of a facility contract; copies of any requests for proposals; a written explanation of how and why circumstances at the particular facility differ from other facilities; and an attestation from a company officer with knowledge of the underlying fact. *Id.*

¹¹⁰ *See* 47 U.S.C. § 155(c).

The Commission has explicitly reserved to itself the authority to decide matters of first impression—prescribing in clear terms that the Bureau “shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.”¹¹¹ Indeed, it is a “longstanding Commission rule” that the Bureau shall not decide any “new or novel” issues, but instead refer such issues to the full Commission.¹¹²

The Bureau has failed to observe these clear limits on its authority. Far from “a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public,” where the Bureau would have had authority to act,¹¹³ the Bureau effectively eliminated for almost two years a substantive legislative rule. By issuing a so-called “waiver” that suspends the Commission’s implementation of a statutory mandate—all without a single request in the record from any party for such sweeping relief¹¹⁴—the Bureau has taken upon itself to decide new issues of facts, law, and policy regarding the implementation of the Martha Wright-Reed Act.

Characterizing this *ultra vires* action as a “waiver” does not excuse the Bureau’s trespass. The Bureau’s delegated authority to issue waivers cannot be construed to permit the Bureau to

¹¹¹ 47 C.F.R. § 0.291(a)(2); *Delete, Delete, Delete Order* ¶ 10 & n.22 (noting “longstanding Commission rules” that “the Bureaus and Offices [do] not have delegated authority to act on any ‘new or novel’ issues”).

¹¹² *Delete, Delete, Delete Order* ¶ 10 & n.22. *See also id.* ¶¶ 2 & n.2, 10 (affirming that Commission’s bureaus and offices do not have the authority to take actions that are subject to the APA notice-and-comment requirements without following those requirements); 47 C.F.R. § 0.291(e) (providing that, with the exception of Section 43.61(a)(3) manuals, the Bureau “shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing”).

¹¹³ *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (internal quotation marks omitted).

¹¹⁴ As discussed above, the provider waiver requests cited by the Bureau to support the *Suspension Order* all requested much more limited relief. For example, Securus stated it would only be seeking an extension of its existing waiver—and only until April 1, 2026. *See* Letter from Michael H. Pryor, Counsel for Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375, at 1 (June 23, 2025). Talton sought only a waiver of the rate caps. Petition for Waiver of Talton Communications, Inc., WC Docket Nos. 23-62, 12-375 (filed Apr. 21, 2025). NCIC requested a partial waiver of the requirements under 47 C.F.R. § 64.6040(b)(2) (the Rule) to deploy certain forms of advanced Telecommunications Relay Services (“TRS”) by January 1, 2024 to certain facilities. Petition for Partial Waiver of NCIC Inmate Communications, WC Docket Nos. 23-62, 12-375 (filed Nov. 21, 2023).

decide new or novel issues—a power that the Commission has explicitly reserved to itself. Indeed, consistent with this longstanding reservation of authority, the Commission included in the *2024 ICPS Order* a circumscribed delegation of authority to the Bureau to “review and rule on petitions for waivers” of the new rate caps under procedures and criteria prescribed by the Commission.¹¹⁵ The Bureau does not explain why this process was insufficient for addressing the providers’ requests and concerns cited in the *Suspension Order*.

Instead, the Bureau *sua sponte* suspended for nearly two years the comprehensive relief that the full Commission unanimously adopted under the Martha Wright-Reed Act through a year-long rulemaking process, based on a robust record and data collection built on over a decade of rulemaking and advocacy efforts by incarcerated people and their families, advocates, providers, facilities, and the Commission alike. Such a decision implicates novel questions of statutory implementation weighing, among other things, the providers’ purported newly raised “implementation challenges and the resulting risks to safety and security” against consumers’ need for long-awaited relief.¹¹⁶ These types of novel questions of fact, law, and policy are plainly reserved for the full Commission.

CONCLUSION

For the foregoing reasons, the Commission should grant the Public Interest Parties’ Application for Review and immediately rescind the unlawful *Suspension Order*.

Signatures on next page.

¹¹⁵ *2024 ICPS Order*, 39 FCC Rcd at 7899 ¶ 481; 47 C.F.R. § 64.6120(a). This narrow delegation of waiver authority to the Bureau is consistent with Commission practices in past IPCS Orders. *See 2021 ICS Order*, 36 FCC Rcd at 9596 ¶ 175; *In re Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12867-68 ¶ 212 (2015); *In re Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14154 ¶ 84 (2013).

¹¹⁶ *See Suspension Order* ¶ 1.

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