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

REPLY TO OPPOSITIONS OF THE PUBLIC INTEREST PARTIES

Undersigned Public Interest Parties reply to the oppositions to the Application for Review[1] of the Wireline Competition Bureau's ("Bureau") *sua sponte* decision to suspend the *2024 IPCS Order*.[2] Contrary to opponents' arguments, the Bureau was required to provide notice and comment before issuing the *Suspension Order*, the Bureau failed to adequately weigh the public interest harms of the *Suspension Order*, and the Bureau overrode congressional intent. Moreover, opponents' procedural arguments—that the AFR itself was procedurally defective or that the Public Interest Parties' did not have standing to file the AFR—both defy reason and lack merit. The Commission should grant the AFR.

I. THE BUREAU FAILED TO PROVIDE NOTICE AND COMMENT.

Securus and Pay Tel incorrectly argue that the *Suspension Order* is an adjudication exempt from notice and comment.[3] But the *Suspension Order* displays several "hallmarks of

[1] Application for Review of Public Interest Parties, WC Docket Nos. 23-62, 12-375 (filed July 30, 2025) ("AFR").
[2] *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket Nos. 23- 62, 12-375, Order, DA 25-565 (WCB rel. June 30, 2025) ("*Suspension Order*"); *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*").
[3] Securus' Opposition to Application for Review at 5-7 (filed Aug. 29, 2025) ("Securus Opposition"); Opposition of Pay Tel Communications, Inc. to Application for Review of the Public Interest Parties at 9-12 (filed Aug. 29, 2025) ("Pay Tel Opposition").

legislative rulemaking,"[4] because it (1) grants a lengthy waiver to the entire industry;[5] and (2) "effectively amend[s] a prior legislative rule" by suspending compliance deadlines established in the *2024 IPCS Order*.[6] The *Suspension Order* undermines the primary purposes of notice and comment procedures to ensure fairness to affected parties,[7] by adopting industry-wide compliance delays no party requested without either notice or comment.

Securus's and Pay Tel's primary argument is that the Bureau's decision is styled as a "temporary waiver" and does not "*purport to* '[a]mend'" a legislative rule.[8] But "an agency may not escape . . . notice and comment requirements . . . by labeling a major substantive legal addition to a rule a mere interpretation."[9] Securus also argues that applying a waiver to the broader industry does not "*necessarily* transform an informal adjudication into a rulemaking,"[10] but that statement only confirms that such breadth ordinarily *does* require a rulemaking proceeding especially where, as here, the industry-wide suspension is paired with a lengthy delay far exceeding what any individual party requested. Similarly, it is non-responsive to state that agencies *generally* have discretion to proceed by rulemaking or adjudication when here the agency has already chosen to set the existing compliance deadlines by rulemaking.[11] Otherwise, Securus and Pay Tel cite to distinguishable cases treating limited waivers as adjudications in the context of requests from one or a handful of petitioners seeking a limited exception.[12]

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[4] *Conf. Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013).
[5] *See Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017) ("[r]ulemaking scenarios generally involve broad applications of more general principles rather than case-specific individual determinations"); *United Tech. Corp. v. EPA*, 821 F.2d 714, 719-20 (D.C. Cir. 1987) (a general industry mandate "is likely a legislative one").
[6] *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993); *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003) (amending a legislative rule "must itself be legislative" (quotation marks omitted)).
[7] *See Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987).
[8] Pay Tel Opposition at 9-10 (quoting *Goodman v. FCC*, 182 F.3d 987, 993-94 (D.C. Cir. 1999)); Securus Opposition at 6 (quoting *Conf. Grp.*, 720 F.3d at 965).
[9] *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1024 (D.C. Cir. 2000); *see also League of Cal. Cities v. FCC*, 118 F.4th 995, 1030-31 (9th Cir. 2024) (FCC cannot circumvent APA process via adjudicative declaratory ruling).
[10] Securus Opposition at 6 (quoting *Neustar*, 857 F.3d at 895).
[11] *Cf.* Securus Opposition at 5-6; Pay Tel Opposition at 10 (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 292 (1974)).
[12] *See Blanca Tel. Co. v. FCC*, 743 F.3d 860, 866-67 (D.C. Cir. 2014); *Mountain Sols., Ltd., Inc. v. FCC*, 197 F.3d 512, 519 n.12 (D.C. Cir. 1999). The numerous cases the Public Interest Parties cited requiring notice-and-comment

NSA incorrectly cites *Clear Channel Broadcasting* as an example of the Commission rejecting the argument that notice and comment is required for a *sua sponte* waiver.[13] But that determination involved the waiver of "relatively minor filing deadline violations" where the applicant had to comply with the underlying substantive rule,[14] hardly analogous to a blanket suspension for nearly two years for all parties of the major substantive rules adopted in the *2024 IPCS Order*.[15] Here, the agency's failure to undertake notice and comment violates the APA.

II. THE *SUSPENSION ORDER* IS ARBITRARY AND CAPRICIOUS.

While opponents try to salvage the *Suspension Order*'s insufficient effort to identify record evidence that might justify the Bureau's unlawful action, there is still nothing that could support such an abrupt, sweeping, nationwide and industry-wide reversal of the *2024 IPCS Order*. It remains true that the Bureau only referenced anecdotal implementation problems without sufficient record evidence and ignored the need to balance the harms to consumers with the interests of IPCS providers.[16] Opponents' dubious, self-serving statements about the supposed harms of the *2024 IPCS Order*,[17] including the potential for loss of service in facilities,[18] are not credible. The absence of those unsupported harms, supposedly avoided by the *Suspension Order*, does not constitute a public interest benefit *for* ICPS consumers.

The *Suspension Order* gave no serious consideration to the consumer harms arising from delay of the rules. Such evidence is manifest in the record: the thousands of individual

for the suspension of a published rule are far more analogous to the present situation than what Securus has put forth. *See* AFR at 9-10.

[13] *See* Opposition of the National Sheriffs' Association at 4-5 (filed Aug. 29, 2025) ("NSA Opposition").

[14] *In re Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7156 (2011).

[15] *Clear Channel* further explained that such waivers were appropriate only in contexts—again unlike here—"where there is little, if any, threat that the staff's flexible enforcement of a rule will frustrate its purposes or cause prejudice to third parties." *Id.*

[16] *2024 IPCS Order* ¶ 60 ("We conclude that our compensation plan for IPCS must give full effect to both the "just and reasonable" and the "fairly compensated" clauses in section 276(b)(1)(A).").

[17] *See* Securus Opposition at 7-9; *see also* Pay Tel Opposition at 5-8; NSA Opposition at 6-7.

[18] *See Suspension Order* ¶ 12; *Securus Opposition* at 4-5. *See also*, *e.g.*, Comment of Frank Thacker, WC Docket Nos. 12-375, 23-62 (filed Sept. 11, 2025) ("Baxter County [Jail] has not reinstated call service since the delay was announced," indicating that the termination of service was not related to status of the IPCS rules).

comments supporting the rules, as well as evidence that rates decreased earlier this year in certain facilities, only to jump up in the immediate aftermath of the *Suspension Order*.[19] By ignoring the contrary record evidence, and failing to consider further information or seek evidence that might contradict claims of the alleged implementation issues, the Bureau's action was arbitrary and capricious,[20] especially given the MWRA's mandate to ensure just and reasonable rates and charges.

III. THE *SUSPENSION ORDER* CONTRADICTS THE MWRA.

Opponents defend the *Suspension Order*'s delay of the rules far beyond what Congress contemplated because the MWRA "says nothing about the effective date of those promulgated rules," and argue that certain parties did not object to the implementation schedule of the *2024 IPCS Order*.[21] Under this reasoning, the Bureau could suspend the rules indefinitely notwithstanding Congress's directive, defying the purpose of the statute and logic itself. Whatever the temporal line in the sand, the Bureau exceeded it here, as members of Congress who helped unanimously pass the MWRA have explained that imposing another nearly two-year delay is *not* what Congress intended.[22]

IV. THE AFR IS PROCEDURALLY SOUND AND THE PUBLIC INTEREST PARTIES HAD STANDING TO SEEK REVIEW.

Some opponents also attack the AFR on procedural grounds. Securus tries to muddy the waters by saying that any *argument* on which the Bureau has not had an opportunity to pass should be dismissed,[23] but the rule itself only precludes applications for review that raise "questions of fact or law" upon which the Bureau did not have an opportunity to pass.[24] It is

[19] *See* Comments of Maureen McCollum, WC Docket Nos. 12-375, 23-62 (filed Sept. 1, 2025).
[20] AFR at 13-16; *see Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1110 (D.C. Cir. 2019).
[21] Securus Opposition at 4-5; *see also* Pay Tel Opposition at 3-4; NSA Opposition at 2-4.
[22] *See* Rep. Nanette Barragan and 22 Other Members of Congress Letter, WC Docket Nos. 12-375, 23-62 (filed Aug. 12, 2025).
[23] Securus Opposition at 2.
[24] *See* 47 C.F.R. § 1.115(c).

clear that the Bureau had an opportunity to pass—and did pass—on the "questions of law" raised in its own *Suspension Order* challenged by the AFR.[25] The rule at issue presupposes that a party had an opportunity to present facts and raise arguments and failed to do so. Because there was no such opportunity here, it would be absurd to require a reconsideration petition to vindicate that right, especially when members of the public are denied the benefit of Congress's mandate and deadline. In any case, to the extent that the Commission believes that a reconsideration petition is necessary, the Commission should treat the Public Interest Parties' AFR as such a petition—something plainly within the Commission's authority.[26] To use Securus's procedural argument as a pretext to further deprive commenters of their rights would add insult to injury.

Finally, the Public Interest Parties had standing to challenge the *Suspension Order*.[27] Section 1.115(a) provides that "[a]ny person aggrieved" may file an application for review.[28] Beyond being both active in this proceeding for years and aggrieved by the *Suspension Order* because many of the Public Interest Parties and their members make and receive phone calls to incarcerated people, they are also petitioners in the First Circuit litigation,[29] demonstrating Article III standing which exceeds the test to participate in this forum.[30]

V. CONCLUSION

The Commission should reject these oppositions and grant the Public Interest Parties' Application for Review to address the harms of the unlawful *Suspension Order*.

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[25] The questions raised in the AFR concern whether the *Suspension Order* was arbitrary and capricious, contrary to the MWRA, and in excess of the Bureau's delegated authority. AFR at 2. These challenge the questions of law and fact on which the Bureau passed: the Bureau's basis for its factual findings and its determinations of its own legal authority. *See Suspension Order* ¶ 15 (concluding that "special circumstances warranting a temporary waiver of the compliance deadlines for the Commission's rate cap and site commission reforms" existed, implicitly justifying the lack of notice and an opportunity for comment); *id.* ¶¶ 23-24 (citing its delegated authority under section 0.291 and the MWRA itself in the ordering clauses).

[26] *See generally* 47 U.S.C. § 154(i); 47 C.F.R. §§ 1.3, 1.41.

[27] *Contra* Opposition of NCIC Correctional Services to Application for Review at 2-3 (Aug. 29, 2025).

[28] 47 C.F.R. § 1.115(a).

[29] *In re: MCP 191*, No. 24-8028 (1st Cir. filed Sept. 18, 2024).

[30] *See In re K Licensee, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 841, 842 ¶ 3 & n.8 (2016) (explaining the Commission's standard for when a party is "aggrieved" by citing to constitutional standards for standing under *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59 (1978)).

Respectfully submitted,

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