

United States Court of Appeals For the First Circuit

No. 24-8028

IN RE: MCP 191

Nos. 24-1814, 24-1884

DIRECT ACTION FOR RIGHTS AND EQUALITY,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

SECURUS TECHNOLOGIES, LLC,

Intervenor.

Nos. 24-1859, 24-1922

CRIMINAL JUSTICE REFORM CLINIC,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

SECURUS TECHNOLOGIES, LLC,

Intervenor.

Nos. 24-1860, 24-1927

SECURUS TECHNOLOGIES, LLC,

Petitioner,

GLOBAL TEL*LINK, d/b/a ViaPath Technologies,

Intervenor,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

DIRECT ACTION FOR RIGHTS AND EQUALITY; PENNSYLVANIA PRISON
SOCIETY; CRIMINAL JUSTICE REFORM CLINIC; UNITED CHURCH OF CHRIST
MEDIA JUSTICE MINISTRY, INC.,

Intervenors.

Nos. 24-1861, 24-1886

PENNSYLVANIA PRISON SOCIETY,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

SECURUS TECHNOLOGIES, LLC,

Intervenor.

No. 24-1969

PAY TEL COMMUNICATIONS, INC.,

Petitioner,

GLOBAL TEL*LINK, d/b/a ViaPath Technologies,

Intervenor,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

DIRECT ACTION FOR RIGHTS AND EQUALITY; PENNSYLVANIA PRISON
SOCIETY; CRIMINAL JUSTICE REFORM CLINIC; UNITED CHURCH OF CHRIST
MEDIA JUSTICE MINISTRY, INC.,

Intervenors.

No. 24-2013

STATE OF INDIANA; STATE OF ARKANSAS; STATE OF ALABAMA; STATE OF
FLORIDA; STATE OF GEORGIA; STATE OF IDAHO; STATE OF IOWA; STATE
OF MISSOURI; STATE OF OHIO; STATE OF SOUTH CAROLINA; STATE OF
SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; COMMONWEALTH OF
VIRGINIA,

Petitioners,

GLOBAL TEL*LINK, d/b/a ViaPath Technologies,

Intervenor,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

DIRECT ACTION FOR RIGHTS AND EQUALITY; PENNSYLVANIA PRISON
SOCIETY; CRIMINAL JUSTICE REFORM CLINIC; UNITED CHURCH OF CHRIST
MEDIA JUSTICE MINISTRY, INC.,

Intervenors.

No. 24-2061

STATE OF LOUISIANA; STATE OF MISSISSIPPI; STATE OF TEXAS;
SHERIFF SID GAUTREAUX; SHERIFF BOBBY WEBRE; SHERIFF MARK WOOD;
SHERIFF KEVIN COBB; LOUISIANA SHERIFFS' ASSOCIATION,

Petitioners,

GLOBAL TEL*LINK, d/b/a ViaPath Technologies; NATIONAL SHERIFFS'
ASSOCIATION,

Intervenors,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES,

Respondents,

DIRECT ACTION FOR RIGHTS AND EQUALITY; PENNSYLVANIA PRISON
SOCIETY; CRIMINAL JUSTICE REFORM CLINIC; UNITED CHURCH OF CHRIST
MEDIA JUSTICE MINISTRY, INC.,

Intervenors.

ON PETITIONS FOR REVIEW OF AN ORDER OF THE FEDERAL
COMMUNICATIONS COMMISSION

Before

Barron, Chief Judge,
Howard and Montecalvo, Circuit Judges.

Scott H. Angstreich, with whom Justin B. Berg, Jordan R.G. González, Kellogg, Hansen, Todd, Figel & Frederick, PLLC, Marcus W. Trathen, Amanda S. Hawkins, Cristopher B. Dodd, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Michael H. Pryor, and Brownstein Hyatt Farber Schreck, LLP were on brief, for petitioners Securus Technologies, LLC and Pay Tel Communications, Inc.

Arjun R. Ramamurti, with whom Jessica Ring Amunson, Andrew C. DeGuglielmo, Ruby C. Giaquinto, Jenner & Block LLP, Andrew Jay Schwartzman, Amy E. Potter, Amanda A. Thibeault, Angeli & Calfo LLC, and Stephen A. Raher were on brief, for petitioners Direct Action for Rights and Equality, Criminal Justice Reform Clinic, and Pennsylvania Prison Society.

Kelsey L. Smith, Deputy Solicitor General of Louisiana, with whom Elizabeth B. Murrill, Attorney General of Louisiana, Theodore

E. Rokita, Attorney General of Indiana, Blake E. Lanning, Assistant Chief Deputy, Joshua J. David, Deputy Attorney General, Jade A. Poorman, Bradley S. Davis, Deputy Attorneys General, Tim Griffin, Attorney General of Arkansas, Dylan L. Jacobs, Deputy Solicitor General and Interim Solicitor General, Steve Marshall, Attorney General of Alabama, Edmund G. LaCour Jr., Solicitor General, James Uthmeier, Attorney General of Florida, John Guard, Chief Deputy Attorney General, Christopher M. Carr, Attorney General of Georgia, Stephen J. Petrany, Solicitor General, Raúl R. Labrador, Attorney General of Idaho, Alan Hurst, Solicitor General, Sean M. Corkery, Assistant Solicitor General, Brenna Bird, Attorney General of Iowa, Eric H. Wessan, Solicitor General, Lynn Fitch, Attorney General of Mississippi, Justin L. Matheny, Deputy Solicitor General, Andrew Bailey, Attorney General of Missouri, Joshua M. Divine, Solicitor General, Dominic X. Barceleau, Assistant Attorney General, Dave Yost, Attorney General of Ohio, T. Elliot Gaiser, Ohio Solicitor General, Mathura J. Sridharan, Deputy Solicitor General, Alan Wilson, Attorney General of South Carolina, Joseph D. Spate, Assistant Deputy Solicitor General, Marty J. Jackley, Attorney General of South Dakota, Ryan McFall, Assistant Attorney General, Jonathan Skrmetti, Attorney General of Tennessee, Whitney Hermandorfer, Director of Strategic Litigation, Ken Paxton, Attorney General of Texas, Brent Webster, First Assistant Attorney General, Aaron L. Neilson, Solicitor General, Jacob Beach, Assistant Solicitor General, Derek E. Brown, Attorney General of Utah, Stanford Purser, Solicitor General, Jason Miyares, Attorney General of Virginia, Kevin M. Gallagher, Principal Deputy Solicitor General, Shannon Dirmann, Mary Grace Erlingson, Erlingson Banks, Craig E. Frosch, and Rodrigue & Arcuri LLP were on brief, for petitioners States of Indiana, Arkansas, Louisiana, Alabama, Florida, Georgia, Idaho, Iowa, Mississippi, Missouri, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Utah; Commonwealth of Virginia; Louisiana Sheriffs Sid Gautreaux, Bobby Webre, Mark Wood, and Kevin Cobb; and the Louisiana Sheriffs' Association.

Landis C. Best, Angela F. Collins, and Cahill Gordon & Reindel LLP were on brief for Global Tel*Link Corporation d/b/a ViaPath Technologies as intervenor.

Salvatore Taillefer, Jr. and Blooston, Mordkofsky, Dickens & Prendergast, LLP were on brief for National Sheriffs' Association as intervenor.

Scott H. Angstreich, Justin B. Berg, Daren G. Zhang, Jordan R.G. González, Kellogg, Hansen, Todd, Figel & Frederick, PLLC, Michael H. Pryor, and Brownstein Hyatt Farber Schreck, LLP were on brief for Securus Technologies, LLC as intervenor.

Arjun R. Ramamurti, Jessica Ring Amunson, Andrew C. DeGuglielmo, Ruby C. Giaquinto, Jenner & Block LLP, Andrew Jay

Schwartzman, Amy E. Potter, Angeli & Calfo LLC, Erik Stallman, and Samuelson Law, Technology & Public Policy Clinic were on brief for Direct Action for Rights and Equality, Criminal Justice Reform Clinic, Pennsylvania Prison Society, and United Church of Christ Media Justice Ministry, Inc. as intervenors.

Bradley Craigmyle, Deputy General Counsel, with whom D. Adam Candeub, General Counsel, Sarah E. Citrin, Deputy Associate General Counsel, Matthew J. Dunne, Counsel, Federal Communications Commission, Abigail A. Slater, Assistant Attorney General, Omeed Assefi, Acting Assistant Attorney General, and Robert B. Nicholson and Robert J. Wiggers, Attorneys, U.S. Department of Justice, were on brief, for respondents.

Stephen A. Raher and Tabor Law Group on brief for National Consumer Law Center, Electronic Privacy Information Center, Prison Policy Initiative, and the Utility Reform Network as amici curiae supporting respondents.

John Bergmayer on brief for Public Knowledge, the Benton Institute for Broadband & Society, Center for Digital Democracy, and Free Press as amici curiae supporting respondents.

Brian L. Schwalb, Attorney General of the District of Columbia, Caroline S. Van Zile, Solicitor General, Ashwin P. Phatak, Principal Deputy Solicitor General, Chloe Q. Pan, Assistant Attorney General, Letitia James, Attorney General of New York, Barbara D. Underwood, Solicitor General, Judith N. Vale, Deputy Solicitor General, and Daniel S. Magy, Assistant Solicitor General, on brief for the District of Columbia, the States of New York, California, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, and Rhode Island, and the Commonwealth of Massachusetts as amici curiae supporting respondents.

October 6, 2026

BARRON, Chief Judge. In 2024, the Federal Communications Commission ("FCC" or "Commission"), in response to an amendment to the Communications Act of 1934, revised the way that it regulates the provision of incarcerated people's communications services ("IPCS") -- or, to use more familiar terminology, communications services that private companies provide to those serving time in carceral facilities. We have before us numerous petitions for review of the FCC's 2024 actions, all of which have been consolidated for this appeal.¹

The petitions for review are brought by nonprofit organizations, IPCS providers, and state governments. After we heard oral arguments on these consolidated petitions in the fall of 2025, the FCC again revised the way that it regulates IPCS. Accordingly, we asked the parties for supplemental briefing about the effect, if any, of the FCC's 2025 actions on the pending petitions for review.

In response, the service providers voluntarily request that their petitions for review be dismissed, the state governments contend that portions of their petitions for review have been rendered moot, and the nonprofit organizations argue that their

¹ The parties have filed a stipulation of voluntary dismissal as to Petitioner Commonwealth of Virginia. Upon consideration of the parties' joint stipulation, it is hereby ordered that this case be voluntarily dismissed with respect to Petitioner Commonwealth of Virginia, with the parties to bear their own costs and fees.

petitions for review remain live. The FCC, in its supplemental briefing, agrees to the voluntary dismissal of the service providers' petitions for review. It also agrees with the state governments that the portions of their petitions for review that they highlighted as being moot are moot. The FCC disagrees, however, with the nonprofit organizations' mootness analysis with respect to two sets of challenges in their petitions for review. Nonetheless, the FCC agrees with the nonprofit petitioners that the most efficient path forward would be for us to hold those challenges in abeyance, pending our consideration of the consolidated petitions for review challenging the 2025 Order.

We agree to the service providers' voluntary request to dismiss their petitions for review, and so we dismiss those petitions. We also conclude that the portions of the petitions for review by the state governments that they and the FCC agree have been rendered moot are moot. We therefore dismiss those portions of their petitions for review for lack of jurisdiction. We also hold in abeyance the portion of the nonprofit organizations' petitions that they and the FCC agree should be so held. We deny, however, the remaining portions of the nonprofit organizations' and state governments' petitions for review, save for the portion of the state governments' petitions that challenge the constitutionality of the FCC. We dismiss that portion of their petitions for lack of statutory jurisdiction.

Therefore, in summary, we decide as follows. We dismiss the service providers' petitions for review in full; we dismiss the state governments' petitions for review for lack of jurisdiction in part and deny them in part; and we deny the nonprofit organizations' petitions for review in part and hold them in abeyance in part.

I.

A.

The path to the FCC's 2024 actions starts nearly a century ago, with the enactment of the Communications Act of 1934, ch. 642, 48 Stat. 1064 (codified as amended in scattered sections of 47 U.S.C.). That statute "establishe[d], among other things, a system of dual state and federal regulation over telephone service." La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 360 (1986). Specifically, it directed the FCC to ensure "[a]ll charges, practices, classifications, and regulations" for interstate and foreign communication service are "just and reasonable," 47 U.S.C. § 201, while leaving the regulation of intrastate communication service primarily to the States, see id. § 152(b). See La. Pub. Serv. Comm'n, 476 U.S. at 360.

At that time, "local phone service was thought to be a natural monopoly" because local exchange carriers -- in regulatory parlance, "LECs" -- owned the infrastructure associated with payphone service. AT & T Corp. v. Iowa Utils. Bd., 525 U.S. 366,

371 (1999); see New Eng. Pub. Commc'ns Council, Inc. v. FCC, 334 F.3d 69, 71 (D.C. Cir. 2003). In the 1980s, however, new developments in payphone technology "enabled independent," non-LEC payphone service providers "to begin competing against the payphone operations of the LECs." Ill. Pub. Telecomms. Ass'n v. FCC, 117 F.3d 555, 558 (D.C. Cir. 1997) (per curiam); see AT & T Corp., 525 U.S. at 371.

Even still, LECs were able to discriminate "in favor of their own payphone service." New Eng. Pub., 334 F.3d at 71; see also Glob. Tel*Link v. FCC, 866 F.3d 397, 401 (D.C. Cir. 2017) (describing LEC "dominat[ion of] the payphone industry to the detriment of other providers"). Seeking "to promote competition," Congress stepped in by enacting the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56, 56 (codified as amended in scattered sections of 47 U.S.C.); see also 3 Reams & Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), at S710. In pertinent part, that Act required the FCC "to prescribe regulations that . . . establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call." 47 U.S.C. § 276(b)(1)(A) (1996).

Thus, the FCC, in 1996, had authority to ensure that "[a]ll charges, practices, classifications, and regulations for

and in connection with" "interstate or foreign communication" service are "just and reasonable." 47 U.S.C. § 201(a)-(b). And, as of that time, it also had regulatory authority over, among other things, intrastate communication in connection with its obligation to establish a "compensation plan" for payphone service providers. See AT & T Corp., 525 U.S. at 381 n.8 (noting that the Telecommunications Act of 1996 "removed a significant area from the States' exclusive control").

In 2013, citing its authority under § 201(b) and § 276(b)(1)(A), the FCC issued an interim order setting rate caps for interstate IPCS. Rates for Interstate Inmate Calling Servs., 28 FCC Rcd. 14107, 14114-16, 14132-33 (2013). Then, in 2015, based solely on its "compensation plan"-based authority under § 276(b)(1)(A), the FCC expanded its rate-cap regulations and, "for the first time," Glob. Tel*Link, 866 F.3d at 401, imposed rate caps on intrastate IPCS, Rates for Interstate Inmate Calling Servs., 30 FCC Rcd. 12763, 12814-15 (2015).

The FCC's efforts to impose intrastate IPCS rate caps were challenged. And, in 2017, the District of Columbia Circuit ruled that the FCC's rationale for imposing the caps was "legally infirm." Glob. Tel*Link, 866 F.3d at 412. That was so, the court reasoned in part, because the FCC's rationale for imposing the caps was "based on a 'just, reasonable and fair' test that [was] not enunciated" in § 276(b)(1)(A). Id. Indeed, the court noted

that the "just and reasonable" language appeared only in § 201(b), which confers authority to regulate IPCS "for and in connection with interstate telecommunications services." Id.

In 2022, Congress again amended the Communications Act of 1934, this time via the Martha Wright-Reed Just and Reasonable Communications Act of 2022 ("MWRA"), which sought "to ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities." Pub. L. No. 117-338, 136 Stat. 6156, 6156 [hereinafter "Martha Wright-Reed Act"] (codified at 47 U.S.C. §§ 152-53, 276, 609 note). Consistent with that purpose, the MWRA revises § 276(b)(1)(A) to read:

[T]he [FCC] shall take all actions necessary . . . to prescribe regulations that . . . establish a ~~per-call~~ compensation plan to ensure that all payphone service providers are fairly compensated, **and all rates and charges are just and reasonable,** for ~~each and every~~ completed intrastate and interstate call ~~using~~ **communications using** their payphone **or other calling device,** except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.

Martha Wright-Reed Act § 2(a).²

Specifically, then, the MWRA removed from § 276(b)(1)(A) the requirements that the compensation plan be "per call" and that fair compensation be for "each and every call." Id. § 2(a)(1).

² Words deleted from the statute are struck-through whereas words added are bolded and underlined.

It also added to that statute a "just and reasonable" requirement that resembled the language in § 201(b). Id. Additionally, the MWRA, among other things, mandates that the FCC "consider costs associated with any safety and security measures necessary to provide" IPCS. Id. § 3(b)(2). And it extended § 276(b)'s coverage to "other calling device[s]." Id. § 2(a)(1)(E).

B.

The FCC actions challenged by the consolidated petitions for review at hand all became effective through a document, Implementation of the Martha Wright-Reed Act, 39 FCC Rcd. 7647 (July 22, 2024) [hereinafter "2024 Order"], published in the Federal Register in two parts on, respectively, August 26, 2024, and September 20, 2024. See Implementation of the Martha Wright-Reed Act, 89 Fed. Reg. 68369 (Aug. 26, 2024) (codified as amended at 47 C.F.R. pt. 64); Implementation of the Martha Wright-Reed Act, 89 Fed. Reg. 77244 (Sept. 20, 2024) (codified as amended at 47 C.F.R. pts. 14, 64) [hereinafter "Sept. Pub."]. We will refer to these documents collectively as the 2024 Order.

As pertinent to those petitions, the 2024 Order did the following:

(1) It adopted rate caps for intrastate, interstate, and international IPCS, Sept. Pub. ¶¶ 3-4, at 77244-45, that

(a) accounted for some, but not all, "safety and security costs" of providing IPCS, id. ¶ 339, at 77304;

(b) accounted for an "estimate[d]" amount of "correctional facility costs" of providing such services, id. ¶ 163, at 77272; and

(c) excluded from the calculation of the rate caps the costs associated with the payment of "site commissions," id. ¶ 278, at 77293 -- payments (whether monetary or in-kind) that service providers make to state and local governmental entities to secure the contractual right to provide services to incarcerated persons held in carceral facilities, id. ¶ 248, at 77288-89;

(2) it "prohibit[ed] IPCS providers from entering into contracts allowing or requiring the payment of site commissions," id. ¶ 302, at 77298;

(3) it "preempt[ed] state and local laws and regulations allowing or requiring site commission payments," id. ¶ 302, at 77298;

(4) it allowed IPCS providers, for the first time, to offer "alternate pricing plans" -- that is, plans that charge users on something other than a per-minute basis, id. ¶ 427, at 77322-23; and

(5) it "required IPCS provider disclosures" to be "clear, accurate, and conspicuous," id. ¶ 514, at 77338.

C.

In late August and early September, three nonprofit organizations³ (collectively, the "Nonprofit Petitioners") and an

³ Direct Action for Rights and Equality, Criminal Justice Reform Clinic, and Pennsylvania Prison Society.

IPCS provider⁴ filed petitions for review challenging certain aspects of the 2024 Order. On September 18, 2024, the United States Judicial Panel on Multidistrict Litigation ("JPML") consolidated these petitions for review and transferred them to our Court by way of a "lottery." In re: MCP 191, 158 F.4th 294, 298-99 (1st Cir. 2025) (per curiam); see 28 U.S.C. § 2112(a)(3).

Additional petitions for review were then filed by a group of states⁵ (collectively, the "State Petitioners") and a different IPCS provider⁶ (collectively with the other service provider, the "Provider Petitioners"). These petitions were transferred to our Court pursuant to the JPML's "lottery" determination as well. See 28 U.S.C. § 2112(a)(5).

The consolidated petitions were set for oral argument before our Court on October 7, 2025. On September 4, 2025, however, the FCC apprised us that it was planning "to vote on a new order governing [IPCS]" and asked us to postpone oral argument until it had done so. We declined and heard oral argument as scheduled.

⁴ Securus Technologies, LLC.

⁵ Indiana, Arkansas, Alabama, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, and Virginia. The states are also joined by four Louisiana sheriffs and the Louisiana Sheriffs' Association.

⁶ Pay Tel Communications, Inc. ("Pay Tel").

As part of their briefing, the Provider Petitioners contended that a lottery should never have occurred, and, thus, notwithstanding the JPML transfer order, the consolidated petitions for review were not properly before this Court. In re: MCP 191, 158 F.4th at 301-02. They argued that we were therefore required to transfer the consolidated petitions to the Fifth Circuit. Id.

We rejected that contention in an opinion issued on October 31, 2025. Id. at 295, 298, 303. Then, a little over a month later, the FCC published a new order (the "2025 Order") in the Federal Register. Implementation of the Martha Wright-Reed Act, 90 Fed. Reg. 56013 (Dec. 5, 2025) (codified at 47 C.F.R. pt. 64) [hereinafter "2025 Order"].

The 2025 Order, among other things, adopts higher rate caps that "include all" reported "safety and security costs." Id. ¶¶ 8-9, at 56014-15 (emphasis added). Additionally, it changes how "correctional facility costs" are estimated. Id. ¶¶ 37-51, at 56021-23. The 2025 Order does not otherwise alter the features of the 2024 Order described above.

Following publication of the 2025 Order, we requested that the parties file supplemental briefs "addressing whether the adoption of the FCC's new order . . . moot[ed] any issues" on review and "whether and how that order otherwise b[ore] on those

issues." We received the last of these supplemental briefs on April 10, 2026.

The Provider Petitioners aver that they "no longer seek judicial review" as to any of the issues raised in their petitions for review -- moot or not -- and, as such, request that their petitions for review "be dismissed" "in their entirety." The State Petitioners concede that the 2025 Order's publication rendered portions of their pending petitions for review of the 2024 Order moot.⁷ And the Nonprofit Petitioners argue that the 2025 Order did not affect their petitions for review and that we should therefore "reach the merits" of all the issues contained therein.

The FCC, for its part, agrees with most of the petitioners' mootness contentions. It diverges from the Nonprofit Petitioners' view as to mootness, however, with respect to two set of claims in which the Nonprofit Petitioners allege that the 2024 Order violated the Administrative Procedure Act ("APA") by accounting for certain "safety and security" and "facility" costs in setting higher rate caps.

The Nonprofit Petitioners argue that "this Court remains able to determine whether the Commission's treatment of communications security services costs and facility costs" in the

⁷ The National Sheriffs' Association, intervening on behalf of the State Petitioners, also concedes that its related challenges have become moot.

2024 Order violated the APA. The FCC disagrees and argues that the calculation of new rates renders these challenges moot.

Finally, various parties (both new to this case and old) began filing petitions for review challenging portions of the 2025 Order. As was the case with the petitions for review of the 2024 Order, see In re: MCP 191, 158 F.4th at 298-99, the JPML consolidated these newly filed petitions and transferred them by way of a lottery. This time, however, the JPML transferred the consolidated petitions to the District of Columbia Circuit.

Nevertheless, on April 16, 2026, the District of Columbia Circuit entered an order, pursuant to 28 U.S.C. § 2112(a), transferring the consolidated petitions to this Court. See Order, United Church of Christ Media Just. Ministry, Inc. v. FCC, No. 25-1280 (D.C. Cir. Apr. 16, 2026). Thus, in addition to the petitions for review challenging the 2024 Order, there are now pending in our Court the petitions for review challenging the 2025 Order as well.

II.

Under the APA, we must set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," id. § 706(2)(C). The petitioner bears the burden to establish that an agency's action is arbitrary and capricious.

P.R. Tel. Co. v. Telecomms. Regul. Bd. of P.R., 665 F.3d 309, 329 (1st Cir. 2011) (citing Sorenson Commc'ns, Inc. v. FCC, 567 F.3d 1215, 1221 (10th Cir. 2009)).

In applying the APA's arbitrary and capricious standard, we ask whether an agency's action is "reasonable and reasonably explained." FCC v. Prometheus Radio Project, 592 U.S. 414, 423 (2021). In other words, we "simply ensure[] that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." Id.

"As a general matter," we review an agency's interpretation of a statute de novo. Seven Cnty. Infrastructure Coal. v. Eagle County, 605 U.S. 168, 179 (2025) (citing Loper Bright Enters. v. Raimondo, 603 U.S. 369, 391-92 (2024)). With that said, "[w]hen the best reading of a statute is that it delegates discretionary authority to an agency," our role is to ensure that the agency "has engaged in reasoned decisionmaking within" the "boundaries of the delegated authority." Loper Bright, 603 U.S. at 395 (citation modified).

III.

We first consider the petitions for review brought by the State Petitioners. Given the 2025 Order's publication, the only challenges that remain for us to consider in these petitions concern the 2024 Order's prohibition against the payment of site

commissions and the 2024 Order's related preemption of state and local laws requiring such payments. Sept. Pub. ¶ 302, at 77298. After describing the relevant background to these aspects of the 2024 Order, we will address each of the State Petitioners' grounds for challenging them.

A.

IPCS providers compete for contracts to serve as a correctional facility's sole supplier of IPCS. See Sept. Pub. ¶ 247, at 77288 (noting that "IPCS providers have monopoly power in the facilities they serve"). As part of the bidding process, correctional authorities often place significant weight on what an IPCS provider can offer a facility -- that is, on "site commissions." Id. ¶ 248, at 77288-89.

Site commissions can take many forms, including "monetary payment[s], in-kind payment requirement[s], gift[s]," id., and even "a percentage of [an IPCS provider's] gross revenue," id. ¶ 282, at 77294. IPCS providers "ultimately recover[] the costs of their site commission payments" by charging higher rates to incarcerated people. Id. ¶ 252, at 77289. Indeed, the FCC found that site commissions historically account for thirty-three percent of what incarcerated people pay for IPCS, id. ¶ 253, at 77289, and IPCS providers reported having paid over \$446 million in site commissions in 2022, id.; see id. app. F.

Based on the MWRA's mandate to "establish a compensation plan to ensure . . . all rates and charges are just and reasonable," 47 U.S.C. § 276(b)(1)(A), the FCC, in the 2024 Order, "separat[ed] out from [the] definition of 'site commissions' the reimbursement IPCS providers make to correctional facilities for [used and useful] costs those facilities incur," Sept. Pub. ¶ 278, at 77293. It then excluded the payments of "site commissions" from the 2024 Order's rate-cap calculations. Id. ¶ 269, at 77292. In addition, the FCC, acting pursuant to its authority in 47 U.S.C. § 276(b)(1)(A) and, alternatively, 47 U.S.C. § 201(b), took two additional actions with respect to site commissions: It "prohibit[ed] IPCS providers from entering into contracts allowing or requiring the payment of site commissions," and it "preempt[ed] state and local laws and regulations allowing or requiring site commission payments." Id. ¶ 302, at 77298.

In their petitions for review, the State Petitioners do not directly challenge the 2024 Order's exclusion of site commission payments from its rate-cap calculations. Instead, they direct their challenges to the 2024 Order's provisions that "preclude [IPCS] providers from paying site commissions" and "preempt state and local law" as to such commissions.

B.

The State Petitioners contend that the challenged site-commission-related provisions cannot stand because "[t]he FCC

and its commissioners aren't sufficiently accountable to the President."⁸ On this basis, the State Petitioners argue that "the [2024] Order cannot lawfully be administered or enforced." Before we may review this challenge, however, we must confirm that we have statutory jurisdiction to do so. We conclude that we do not.

As the Commission points out, 47 U.S.C. § 405(a), "in substance, provides that no 'questions of fact or law' can be brought to the reviewing court unless they have been raised before the Commission either initially or by a petition for rehearing." Presque Isle TV Co. v. United States, 387 F.2d 502, 504 (1st Cir. 1967) (quoting 47 U.S.C. § 405). The State Petitioners concede that this constitutional challenge "was not made in the underlying agency proceeding," either initially or in a petition for rehearing. We thus appear to be foreclosed from reviewing this challenge by § 405's mandatory exhaustion requirement.

The State Petitioners disagree and urge us to recognize an implicit exception in § 405's language based on the perceived futility in their asking the FCC to declare itself unconstitutional. We may not do so. See id. at 504 ("The statute does not purport to make any exception."); Booth v. Churner, 532 U.S. 731, 741 n.6 (2001) ("[W]e will not read futility or other

⁸ The State Petitioners contend that 47 U.S.C. § 154(c)(1)(A), which reads that "[a] commissioner . . . shall be appointed for a term of 5 years," unconstitutionally insulates FCC heads from at-will removal by the President.

exceptions into statutory exhaustion requirements where Congress has provided otherwise.").

The State Petitioners argue otherwise based on a District of Columbia Circuit opinion, Washington Association for Television & Children v. FCC, 712 F.2d 677 (D.C. Cir. 1983). There, the court "construe[d] § 405 to incorporate the traditionally recognized [futility] exception[] to the exhaustion doctrine." Id. at 682. That case, however, predated by several decades the Supreme Court's decision in Ross v. Blake, which held that "courts have a role in creating exceptions," including "standard administrative-law exceptions" like futility, "only if Congress wants them to." 578 U.S. 632, 639, 642 n.2 (2016). And the State Petitioners fail to identify anything to indicate that Congress has authorized courts to create the exception in question.

We therefore join several of our sister circuits who have similarly found § 405 unamenable to a futility carveout. See Fones4All Corp. v. FCC, 550 F.3d 811, 818 (9th Cir. 2008); In re FCC 11-161, 753 F.3d 1015, 1151 (10th Cir. 2014) ("Because § 405(a) involves a statutory exhaustion requirement, we are not free to recognize a futility exception."); see also Gray Television, Inc. v. FCC, 130 F.4th 1201, 1214 (11th Cir. 2025) (doubting that the "judge-made [futility] exception" could be "engraft[ed] . . . onto" § 405). Accordingly, we dismiss this

aspect of the State Petitioners' challenge to the 2024 Order's site-commission-related provisions.

C.

The State Petitioners also contend that the FCC lacks statutory authority, see 5 U.S.C. § 706(2)(C), both "to preclude [IPCS] providers from paying site commissions" and to "preempt state and local law that requires IPCS providers to make [those] payments." For the reasons that follow, we are not persuaded by the State Petitioners' arguments.

1.

The State Petitioners' contention that the FCC lacks the statutory authority to bar IPCS providers from paying site commissions has merit only if the FCC lacks that authority under either 47 U.S.C. § 201(b) or 47 U.S.C. § 276(b)(1)(A). As we will explain, even if we were to assume that the FCC lacks such authority under § 276(b)(1)(A), we are not persuaded by the State Petitioners' arguments for concluding that the FCC lacks such authority under § 201(b).

a.

State Petitioners first argue that § 201(b) does not authorize the FCC to impose its prohibition against site commission payments because the FCC's prohibition covers even payments of such commissions that pertain to intrastate (and so not only

interstate) IPCS. Their argument on this score proceeds as follows.

Section 201 authorizes the FCC to regulate to ensure "just and reasonable" "charges, practices, classifications, and regulations for and in connection with" "interstate" communication service (emphasis added). 47 U.S.C. § 201. Thus, § 201 makes no reference to intrastate communication service. Moreover, 47 U.S.C. § 152(b) states that, unless otherwise provided for, "nothing in [the Communications Act] shall be construed to apply or to give the [FCC] jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service." 47 U.S.C. § 152(b).

That said, the State Petitioners acknowledge that § 152(b) has been construed to give the FCC jurisdiction under the Communications Act "with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service" where "(1) it is not possible to separate the interstate and intrastate aspects of the service, and (2) federal regulation is necessary to further a valid federal regulatory objective." Minn. Pub. Utils. Comm'n v. FCC, 483 F.3d 570, 578-79 (8th Cir. 2007); see also La. Pub. Serv. Comm'n, 476 U.S. at 375 n.4. And the State Petitioners do not appear to dispute the existence of this exception to § 152(b),

which the parties refer to as the "impossibility exception." The State Petitioners nonetheless contend that the exception has no application here because it is possible to separate the interstate and intrastate components of IPCS in prohibiting site commission payments. Hence, they contend, the FCC has no authority to impose the prohibition against site commissions that is at issue, given that the prohibition regulates not only interstate IPCS but also intrastate IPCS.

In the 2024 Order, the FCC found that there is "no evidence that . . . the practice of paying site commissions" can "practicably be separated" along interstate and intrastate lines. Sept. Pub. ¶ 338, at 77304. State Petitioners nonetheless argue that the practice of paying site commissions can be "differentiate[d] between interstate and intrastate" IPCS and that the FCC has not made the case otherwise.

Other than an underdeveloped argument that "the FCC's" finding of "impracticability is insufficient," however, the State Petitioners' only argument in support of this ground for challenging the FCC's prohibition against site commission payments is that "providers can presumably determine whether a call is interstate or intrastate," "making it neither infeasible nor impractical to charge site commissions based on a call's location." (Emphasis added.) The State Petitioners do not explain, however, why site commission payments can be "differentiate[d]" in the

relevant respect just because individual calls can be categorized as "interstate or intrastate." Nor is it readily apparent that such differentiation would be possible, given that IPCS providers make site commission payments to carceral facilities in exchange for the right to provide IPCS (both intrastate and interstate) to incarcerated persons, Sept. Pub. ¶¶ 23, 248, at 77247-48, 77288-89. Cf. La. Pub. Serv. Comm'n, 476 U.S. at 363, 375 & n.4 (FCC could not regulate intrastate where it "concede[d]" that "it is certainly possible to" "separate the interstate and the intrastate components of the asserted FCC regulation."). Thus, because the State Petitioners have not explained the basis for their contention that site commission payments can plausibly be differentiated along interstate and intrastate lines just because individual phone calls can be, we must reject their contention that the impossibility exception does not apply.

b.

The State Petitioners next argue that, even if we were to set aside questions about the applicability of the impossibility exception here, the FCC still could not rely on § 201(b) to impose the prohibition against site commission payments that they challenge. That is so, the State Petitioners contend, because the interpretive principle that a "specific provision controls over one of more general application" precludes § 201(b) from being construed to give the FCC such authority. Gozlon-Peretz v. United

States, 498 U.S. 395, 406-07 (1991) (applying specific/general principle).

The specific/general principle applies where "in the same statute" there is "a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former." RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 646 (2012) (quoting United States v. Chase, 135 U.S. 255, 260 (1890)). The controlling "specific" provision that the State Petitioners have in mind here is § 276(b)(1)(A), as they contend that it limits the more general § 201(b).

The State Petitioners point out that, although § 201(b) expressly authorizes the FCC to regulate "practices" in addition to "charges," § 276(b)(1)(A) does not. It instead allows the FCC to "establish a compensation plan to ensure that all payphone service providers are fairly compensated" and that "rates and charges" for intrastate and interstate communications completed using "payphone[s] or other calling device[s]" are "just and reasonable." 47 U.S.C. § 276(b)(1)(A). The State Petitioners therefore argue that, precisely because § 201(b) expressly refers to "practices" but § 276(b)(1)(A) does not, § 276(b)(1)(A) must be construed not to authorize the FCC to regulate "practices" pursuant to that provision.

From this premise about limits on the FCC's authority under § 276(b)(1)(A) to regulate "practices," the State

Petitioners then go on to contend that, because the payment of site commissions is a "practice," the FCC cannot prohibit their payment pursuant to its authority under § 276(b)(1)(A). Instead, they argue, the FCC at most can prohibit their payment pursuant to its authority under § 201(b), given that, unlike § 276(b)(1)(A), § 201(b) does expressly give the FCC the authority to regulate "practices."

The State Petitioners nonetheless contend that the specific/general principle precludes the FCC from relying on § 201(b) to impose the prohibition against site commissions that they challenge. And that is because the State Petitioners argue that a construction of § 201(b) that would permit the FCC to do so would "displace" the "specific limits" on the FCC's authority under § 276(b)(1)(A) -- namely, the FCC's "lack of authority" under that provision "to regulate IPCS practices as opposed to rates."

In the single paragraph of their opening brief that spells out this argument, however, the State Petitioners do not make clear the precise respect in which they are asserting that § 276(b)(1)(A) is more specific than § 201(b). Indeed, all that the State Petitioners say in support of that assertion in that paragraph is that "[§] 276 specifically addresses intrastate IPCS." But we fail to see how that assertion suffices to support the State Petitioners' contention that the specific/general

principle precludes § 201(b) from being construed in the way that they contend that the principle does.

After all, while § 201(b) does not "specifically address intrastate IPCS[,]" neither does § 276(b)(1)(A). Section 276(b)(1)(A) instead confers authority on the FCC to regulate matters that concern the more expansive category of "intrastate and interstate communications" made using "payphone[s] or other calling device[s]." Yet the State Petitioners do not contend at any point in their briefing to us that the specific/general principle would preclude § 201(b) from being construed to provide any authority to regulate "practices" involving a "payphone or other calling device." And it is not evident to us how the specific/general principle could preclude § 201(b) from being construed to authorize the FCC to regulate intrastate IPCS but not other "practices" concerning a "payphone or other calling device."

Moreover, if the State Petitioners mean to be contending that the specific/general principle limits the scope of § 201(b) here because of the extent to which that provision permits the FCC to regulate intrastate relative to the extent to which § 276(b)(1)(A) does, we cannot see why that would be. Section 201(b) at most gives the FCC the authority to engage in the kind of incidental intrastate regulation that the impossibility exception to 47 U.S.C. § 152(b) would permit, while § 276(b)(1)(A) gives the FCC the authority to engage in intrastate regulation to

the same extent that it gives the FCC the authority to engage in interstate regulation. It is thus not clear that § 276(b)(1)(A) is more specific than § 201(b) along that particular dimension.

In sum, we cannot decipher the respect in which the State Petitioners mean to be contending that § 276(b)(1)(A) is more specific than § 201(b), such that the specific/general principle requires us to construe § 201(b) to preclude the FCC from imposing the prohibition against site commission payments that is at issue. We therefore reject the State Petitioners' contention that the specific/general principle prevents the FCC from relying on § 201(b) to prohibit those payments. See United States v. Torres-Rosa, 209 F.3d 4, 7 (1st Cir. 2000) ("The party seeking to adopt an argument has a burden, at the very least, to ensure that it is squarely before the court and to explain how and why it applies in his case.").

c.

Finally, the State Petitioners invoke the canon against superfluity to argue that the FCC lacks the authority under § 201(b) to impose the prohibition against the payment of site commissions that they challenge. See Corley v. United States, 556 U.S. 303, 314 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004))). They argue that, "[i]f

[§] 201(b) applied to intrastate IPCS via the impossibility exception," then the MWRA would have been unnecessary.

Even after the MWRA amended § 276(b)(1)(A), however, that provision would reach some intrastate communication service (including some intrastate IPCS) that § 201(b) does not. The reason is that, even if § 201(b) could be construed to permit some regulation of intrastate IPCS pursuant to the impossibility exception, § 276(b)(1)(A) is not constrained by the strictures of the impossibility exception. Instead, it expressly confers the authority to regulate intrastate to the same extent it confers the authority to regulate interstate. Thus, while there may be some overlap between § 276(b)(1)(A) and § 201(b), that fact alone does not mean that the FCC's reading of § 201(b) would render § 276(b)(1)(A) superfluous. See In re BankVest Cap. Corp., 360 F.3d 291, 301 (1st Cir. 2004) ("[R]edundancy is not the same as surplusage," even when there is "substantial overlap among the provisions.").

d.

Thus, having carefully reviewed the arguments that the State Petitioners have made to us, we conclude that the State Petitioners have failed to identify a reason for us to conclude that the FCC lacks authority to prohibit the payment of site commissions under § 201(b). And, because the State Petitioners have not made this showing with respect to § 201(b), we need not

address their arguments regarding § 276(b)(1)(A). Accordingly, we must reject this aspect of their challenge.

2.

We now turn to the State Petitioners' challenge to the portion of the 2024 Order that preempts state and local laws requiring site commission payments. See Sept. Pub. ¶ 313, at 77300. Federal law preempts state law where "the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Me. Forest Prods. Council v. Cormier, 51 F.4th 1, 6 (1st Cir. 2022) (quoting Arizona v. United States, 567 U.S. 387, 399 (2012)).

The FCC determined that state and local laws and regulations that require site commission payments pose an obstacle to its actions pursuant to § 201(b) "to ensure that rates and practices for and in connection with certain interstate and international [IPCS] are just and reasonable." Sept. Pub. ¶¶ 322-26, at 77301-02. Based on that determination, the FCC concluded that § 201(b) provided it with the authority to preempt state and local laws and regulations requiring site commission payments. Id.

The State Petitioners do not challenge the FCC's conflict preemption analysis. Instead, they contend that the FCC cannot preempt state and local laws requiring site commission payments for two distinct reasons, neither of which is persuasive.

First, the State Petitioners contend that the FCC does not have the authority it claims to preempt state and local laws and regulations requiring site commission payments because the FCC lacks the authority to impose the prohibition on the payment of site commissions itself. As we have just explained, however, the State Petitioners have failed to show that the FCC lacks the authority under § 201(b) to impose the prohibition. As a result, this argument fails.

Second, the State Petitioners rely on § 152(b) to challenge the FCC's preemption of state and local laws and regulations requiring site commission payments. They contend that § 152(b) provides "a rule of construction that, where ambiguous, the [Communications Act] cannot be read to grant the FCC authority to regulate intrastate communications practices, and thus to preempt state law concerning them." They then go on to characterize § 152(b) as an "anti-preemption rule" that "flatly bar[s]" the FCC's authority under § 201(b) and the impossibility exception to preempt state law requiring site commission payments.

The impossibility exception, however, is an exception to § 152(b). See Minn. Pub. Utils. Comm'n, 483 F.3d at 576; La. Pub. Serv. Comm'n, 476 U.S. at 375 & n.4. Thus, this argument has merit only if the FCC cannot rely on § 201(b) to regulate intrastate IPCS in circumstances in which the impossibility exception to § 152(b) otherwise would permit the FCC to do so. As a result,

§ 152(b) itself cannot be the reason that the exception does not apply. Indeed, in construing § 152(b) in Louisiana Public Service Commission, the Supreme Court noted that the FCC may preempt state law "[w]here [the] FCC acted within its authority" and the inconsistent state regulations "would negate the federal" regulation. 476 U.S. at 375 n.4 (first citing N.C. Utils. Comm'n v. FCC, 537 F.2d 787 (4th Cir. 1976); and then citing N.C. Utils. Comm'n v. FCC, 552 F.3d 1036 (4th Cir. 1977)). Accordingly, because the State Petitioners have failed to show that (at least given the impossibility exception) the FCC did not act within its authority to ban site commission payments (including for intrastate IPCS) pursuant to § 201(b), the State Petitioners have failed to demonstrate that § 152(b) in and of itself prevents the FCC from preempting state and local measures requiring such payments.

D.

Finally, the State Petitioners contend that the FCC's decision to prohibit IPCS providers from making site commission payments is arbitrary and capricious. The State Petitioners assert that, "[d]espite its history of accepting data and acknowledging the direct costs of providing IPCS," the FCC determined that "no allowance for correctional facility costs is warranted." They then advance five reasons for why we must conclude that the FCC's

determination is arbitrary and capricious. We are not persuaded by any of them.

1.

First, the State Petitioners argue that the FCC's determination "goes against" the MWRA's requirement that the FCC "consider costs associated with any safety and security measures" necessary to provide IPCS. (Quoting Martha Wright-Reed Act § 3(b)(2).) But the 2024 Order does not include "'safety and security measures necessary' for the provision of IPCS" within its definition of site commissions. 2024 Order, ¶ 246 & n.847; see also Sept. Pub. ¶ 278, at 77293. We thus do not see how the prohibition against the payment of site commissions -- as those commissions have been defined in the 2024 Order -- is inconsistent with the provision of the MWRA that the State Petitioners highlight.

2.

Second, the State Petitioners claim that the 2024 Order's decision to "exclud[e] site commission payments 'defies reasoned decisionmaking because site commissions obviously are costs of doing business incurred by [IPCS] providers.'" (Quoting Glob. Tel*Link, 866 F.3d at 413.) This argument is set forth in a single sentence. The State Petitioners do not explain in that sentence, however, why it follows from the fact that IPCS providers would incur a cost in paying for site commissions -- as they

obviously would -- that the FCC acted arbitrarily and capriciously in prohibiting those payments from being made (and thereby preventing IPCS providers from incurring that cost in the first instance). Thus, we find this argument too undeveloped to be meritorious.

3.

Third, the State Petitioners assert that the FCC did not "engag[e] with th[e] evidence" provided by the National Sheriffs' Association or the "corroborat[ing]" evidence submitted by Pay Tel concerning site commissions, and instead "denounced [the evidence's] reliability" in a "[c]onclusory" fashion. We cannot agree.

The 2024 Order explained that the "self-reported data" provided by the National Sheriffs' Association "involve[d] 'inappropriately expansive descriptions' of IPCS-related tasks" that made "it very likely that the . . . data overstated correctional facility costs . . . and severely limit[ed] the data's value." Sept. Pub. ¶ 167, at 77273. And, the 2024 Order continued, the data provided by Pay Tel was "unrepresentative" because it "encompasse[d]" "less than 1% of all [correctional] facilities" that were part of the data collection survey and "cover[ed] only 'small county jails and large regional facilities' thereby excluding prisons and large jails." Sept. Pub. ¶ 175, at 77274-75; see also Martha Wright-Reed Act, § 3(b)(2) (directing

the Commission to consider the "differences in the costs . . . by small, medium, or large facilities").

4.

Fourth, the State Petitioners contend that the 2024 Order is "internally contradictory." That is so, they argue, because "[w]hile" the 2024 Order "claim[s] to eliminate site commission[]" payments, it "simultaneously 'permits IPCS providers to reimburse correctional facilities for the used and useful costs the facilities incur to enable the provision of IPCS.'" (Quoting Sept. Pub. ¶ 246, at 77288.) We do not see why these two provisions are contradictory.

The 2024 Order's definition of site commission payments excludes "the used and useful costs the facilities incur to enable the provision of IPCS."⁹ Sept. Pub. ¶ 246, at 77288; see also id. ¶¶ 267, 278 at 77292-93. Thus, there is no contradiction in eliminating site commissions, as defined, while permitting the reimbursement of used and useful costs incurred to enable the provision of IPCS.

5.

Fifth, and finally, the State Petitioners assert that "the record makes it exceedingly clear that failing to provide

⁹ Under the "used and useful" standard, the FCC "exclude[s] . . . any costs that do not benefit [end] users." Sept. Pub. ¶ 43, at 77251.

for" certain site commission payments "will result in decreased access to IPCS." They then contend that the failure contravenes "the fundamental goal of [§] 276 -- to 'promote the widespread deployment of payphone services to the benefit of the general public.'" (Quoting 47 U.S.C. § 276(b)(1).) Thus, the State Petitioners argue, the FCC's decision to prohibit site commission payments was not "rational" and so was arbitrary and capricious. (Quoting Penobscot Air Servs., Ltd. v. FAA, 164 F.3d 713, 720 (1st Cir. 1999).)

The 2024 Order states, however, that it was "highly unlikely that correctional facilities would limit or deny access to IPCS as a result of the elimination of site commission payments[,]" given the "well-documented benefits" of allowing "'access to' IPCS" and the "intensely negative backlash" that would "likely" result if IPCS access was curtailed. Sept. Pub. ¶ 312, at 77299-300. In support of that conclusion, the 2024 Order noted that there was "no indication that IPCS deployment has decreased or been eliminated in states that have eliminated site commissions." Id.; see also Brief for the District of Columbia, et al. as Amici Curiae Supporting Respondent at 18, In re: MCP 191, No. 24-8028 (1st Cir. Apr. 29, 2025) (arguing that, even though several states have banned the payment of site commissions, there is no evidence that eliminating such payments has "led to any reduction in [IPCS] services" there). Accordingly, the FCC

has "articulate[d] a satisfactory explanation for its action" by offering a "rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)).

IV.

That still leaves the Nonprofit Petitioners' petitions for review. In them, the Nonprofit Petitioners advance three separate challenges to the 2024 Order. The first challenge is to the method by which the 2024 Order allows "alternate pricing plans." The second challenge is to the 2024 Order's failure to adopt "the IPCS consumer protection label requested by commenters." The third challenge is to the 2024 Order's incorporation of certain "safety and security costs" and "correctional facility costs" into its rate-cap calculations. We see no merit in the first two challenges. We hold, however, the Nonprofit Petitioners' petitions for review in abeyance with respect to the third challenge, given the pendency of petitions for review challenging the 2025 Order.

A.

The Nonprofit Petitioners challenge the provisions of the 2024 Order that allow IPCS providers, for the first time, to offer "alternate pricing plans" to users, Sept. Pub. ¶¶ 427, 437, at 77322-23, 77324. An "alternate pricing plan" refers to "the

offering of IPCS to consumers using a pricing structure other than per-minute pricing." Id. ¶ 437, at 77324. For example, an alternate pricing plan may allow an incarcerated person to pay a flat fee in exchange for unlimited calling minutes per month, id. ¶ 465, at 77329, or may "consist[] of [X] calls per month for \$[Y]," id. ¶ 522, 77340.

The Nonprofit Petitioners do not challenge the FCC's authority to permit alternate pricing plans as a general matter. They challenge only the way that the FCC has provided for alternate pricing plans in the 2024 Order. They do so on three grounds, but, as we will explain, none of them has merit.

1.

The Nonprofit Petitioners first contend that the provisions of the 2024 Order permitting the alternate pricing plans are "contrary to law," see 5 U.S.C. § 706(2)(A), because those provisions violate 47 U.S.C. § 276(b)(1)(A)'s requirement that the FCC ensure "just and reasonable" rates. Specifically, the Nonprofit Petitioners argue that the 2024 Order allows service providers to offer alternate pricing plans that can lead to users paying effective rates that are higher than the applicable rate caps. That is so, the Nonprofit Petitioners contend, because the 2024 Order "presume[s] lawful" any alternate pricing plan that offers "a breakeven point equal to or less than the applicable rate cap." See Sept. Pub. ¶ 448, at 77326.

The Nonprofit Petitioners explain that, even though an alternate pricing plan has a "breakeven point," a user may not reach that point. They go on to assert that, in that event, the user will end up paying an effective rate that is higher than the rate they would have paid if they had enrolled in a per-minute plan. By way of example, the Nonprofit Petitioners reference a "pilot program run by" one of the IPCS providers wherein "10% to 34% of consumers had low usage and[,] as a result, paid more using the [alternate pricing plan] than they would have paid under per-minute rates." (Citation modified.)¹⁰

To show that the 2024 Order's provisions that allow IPCS providers to offer alternate pricing plans are not "in accordance with law," 5 U.S.C. § 706(2)(A), however, the Nonprofit Petitioners must do more than demonstrate that those provisions will allow users to purchase plans that could result in users paying effective rates that are higher than the rate caps themselves. The Nonprofit Petitioners must show that it is not "just and reasonable" for the FCC to permit an alternate pricing plan that has that possible consequence. 47 U.S.C. § 276(b)(1)(A).

¹⁰ The Nonprofit Petitioners give a hypothetical example in which a "flat-rate plan" could "offer[] 500 minutes for \$30 a month," which, under a six cent rate cap, would mean that a user would reach the breakeven point only after they utilize the full 500 minutes. Thus, if the user utilizes anything less than 500 minutes, they will be effectively paying "more than the rate cap of [six] cents per minute."

The Nonprofit Petitioners do not develop an argument, however, about why an alternate pricing plan is necessarily "[un]just and [un]reasonable" simply because it may, in some instances, result in rates that are higher than the rate caps. Nor is it evident that such a plan necessarily is.

It may be true that, for example, a per-minute plan is not "just and reasonable" if its charges exceed the rate caps. But it does not follow that a pre-paid plan, which gives users the opportunity to budget ex-ante, see Sept. Pub. ¶ 432, at 77323-24, also is not "just and reasonable." Cf. Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 600-02 (1944) (noting that "[i]f the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under" a similar statute that requires "all natural gas rates" to be "just and reasonable" "is at an end").

Moreover, the 2024 Order requires that any alternate pricing plan be "optional," Sept. Pub. ¶ 438, at 77324, subject to cancellation, see id. ¶ 460, at 77328, and limited to one-month in interval, see id. ¶ 442, at 77325. These "guardrails," id. ¶ 428, at 77323, further protect against abuses by service providers, at least when they are paired with the requirement that providers disclose to consumers "[t]he breakeven point[] and an explanation in plain language that the breakeven point is the amount of plan

usage the consumer must make to start to save money," id. ¶ 519, at 77339.

Thus, the Nonprofit Petitioners have not shown that the 2024 Order's alternate pricing plan provisions are contrary to law. And that is because they have failed to make a more developed argument tied to the statutory language itself.

2.

The Nonprofit Petitioners next contend that the 2024 Order's alternate-pricing plan provisions are arbitrary and capricious, see 5 U.S.C. § 706(2)(A), because "the Commission ignored an important part of the problem." (Citing State Farm, 463 U.S. at 43.) They contend that the FCC did so because the 2024 Order does not "ensure[] that providers cannot use alternate pricing plans to circumvent [the] rate caps," despite claiming to have done so. (Quoting Sept. Pub. ¶ 448, at 77326.)

As support for this contention, the Nonprofit Petitioners point to data from the pilot program referenced above, in which, as the 2024 Order itself recognized, "10% to 34%" of users did not meet the breakeven point. Additionally, the Nonprofit Petitioners note that the 2024 Order requires consumers to meet a plan's breakeven point before they may lodge a complaint with the FCC. See Sept. Pub. ¶ 444, at 77326.

In the 2024 Order, however, the FCC recognized the potential for abuse if alternate pricing plans were allowed. See

id. ¶¶ 434-35, at 77324. It nonetheless concluded that the benefits arising from such plans -- including "potential savings and increased communication" between IPCS users and their loved ones -- justified the risk, at least when the safeguards described above, see supra Section IV.A.1, are put in place. Sept. Pub. ¶ 435, at 77324.

Thus, the 2024 Order's discussion of alternate-pricing plans, their potential for abuse, and the safeguards it adopted to "provide sufficient consumer protections," 2024 Order, ¶ 435 n.1573, demonstrates that the FCC considered that aspect of the problem that the Nonprofit Petitioners contend that the FCC ignored. Cf. Baystate Franklin Med. Ctr. v. Azar, 950 F.3d 84, 91 (D.C. Cir. 2020) (finding that the Secretary of the Department of Health and Human Services did not "fail[] to consider an important aspect of the problem" because he provided a "summary" that "illustrate[d] his consideration of that aspect of the problem"); State Farm, 463 U.S. at 43 (noting that an agency's rule is arbitrary and capricious if it "entirely failed to consider an important aspect of the problem" (emphasis added)). We therefore do not agree that the FCC "ignored" the potential for abuse that alternate pricing plans can produce.

3.

Finally, the Nonprofit Petitioners argue that, in putting the alternate-pricing plans in place, the FCC acted

arbitrarily and capriciously by "ignor[ing] commenters' suggestion that" providers be required to "'tru[e] up' a consumer's account" -- that is, reimburse a consumer's account so that the cost of the minutes actually used would be the same as the rate caps -- if the consumer does not meet the breakeven point. Specifically, the Nonprofit Petitioners fault the Commission for not "address[ing] the possibility" nor "explain[ing] why it would be unreasonable" to adopt such a measure.

We may excuse the Nonprofit Petitioners' failure to cite any supporting precedent or otherwise explain the basis for their assertion that the FCC was required to respond to this specific comment, but we conclude that, even still, this challenge is meritless. The comment in question appears in a single paragraph nested within a document that spans over a dozen pages. It suggests that the FCC require providers "to implement a true-up procedure to ensure that [IPCS] users will pay, at worst, the same as they would under the current rate cap regime." In a footnote, the comment alternatively suggests that the FCC require providers to roll-over unused minutes "into the next billing cycle."

It is true that the 2024 Order does not explicitly reject the "true-up procedure" offered in the comment. The 2024 Order does, however, discuss the potential that consumers who do not reach the breakeven point may end up paying more than they would under the per-minute rate. See Sept. Pub. ¶ 434, at 77324.

Furthermore, the 2024 Order explicitly refrained from requiring providers "to roll over unused minutes," reasoning that to do so "may undermine IPCS providers' incentives to offer alternate pricing plans." Id. ¶ 464, at 77329. In support of this conclusion, the 2024 Order cited a comment that not only discouraged the Commission from requiring the roll-over of unused minutes but also warned against "requiring true ups." See 2024 Order, ¶ 464 n.1663 (citing Securus Techs., LLC, Reply Comment Letter on In the Matter of Rates for Interstate Inmate Calling Services (Mar. 5, 2023)).

We therefore read the 2024 Order to have implicitly rejected the suggested "true-up" procedure. See U.S. Satellite Broad. Co. v. FCC, 740 F.2d 1177, 1188 (D.C. Cir. 1984). As a result, we do not agree that the FCC "ignored" the comment in question. See Pub. Citizen, Inc. v. FAA, 988 F.2d 186, 197 (D.C. Cir. 1993) ("[T]he agency's response to public comments need only enable us to see what major issues of policy were ventilated and why the agency reacted to them as it did." (citation modified)).

B.

The Nonprofit Petitioners separately argue that the FCC "failed to adequately explain why it declined to adopt the IPCS consumer protection label requested by commenters" as arbitrary and capricious. In their letters to the FCC, several commenters requested that the Commission adopt an IPCS disclosure label that

mirrored the "consumer broadband label adopted" by the FCC in a 2022 order regulating broadband internet service providers. 2024 Order, ¶ 515 n.1838; see also Empowering Broadband Consumers Through Transparency, 87 Fed. Reg. 76959, 76978 (Dec. 16, 2022) (codified at 47 C.F.R. pt. 8).

It is true that the 2024 Order declined to adopt any "specific 'IPCS label.'" Sept. Pub. ¶ 515, at 77338. The FCC reasoned that to require such a label would be "overly prescriptive and unnecessary." Id. Instead, to "minimize unnecessary burdens on providers and to allow flexibility," id., the 2024 Order issued a more general regulation requiring that all IPCS provider disclosures to consumers be "clear, accurate and conspicuous," id. ¶ 514, at 77338.

The Nonprofit Petitioners argue that this "reasoning was arbitrary and capricious" because providers have "adopt[ed] disclosure practices that [have] confused consumers," even though the FCC has required IPCS providers' disclosures to be "clear, accurate, and conspicuous" since 2015, see 47 C.F.R. § 64.6110(a) (2015). In other words, the Nonprofit Petitioners claim that "the Commission failed to accord due weight to providers' history of non-compliance" in issuing the disclosure regulations and that it was "arbitrary and capricious" for the FCC "to predict compliance without a rational explanation." (Quoting Sierra Club v. W. Va. Dep't of Env't Prot., 64 F.4th 487, 502 (4th Cir. 2023).)

We conclude that the FCC adequately explained its decision. Each of the examples that the Nonprofit Petitioners cite in their petition as evidence of IPCS providers' past "non-compliance" was documented in the 2024 Order. See Sept. Pub. ¶¶ 514-15, at 77338. Because of those "practices," the 2024 Order recognized, providers' websites, "while technically providing" required information, "continue to be difficult for consumers to navigate." Id. ¶ 515, at 77338. The FCC therefore found it "necessary" to amend its disclosure rules to require that "providers make their rates, charges, and associated practices available on their websites in a manner in which consumers can easily find the information." Id.; see id. ¶¶ 506-15, at 77336-38 (amending disclosure requirements). The 2024 Order made clear that the practices identified by the Nonprofit Petitioners to us would violate those amended disclosure requirements. See id. ¶¶ 514-15, at 77338.

Moreover, the 2024 Order acknowledged the Nonprofit Petitioners' request for a standard disclosure label "so that consumers can make informed decisions before making a call." Id. ¶ 515, at 77338. But the FCC found such a label to be "overly prescriptive and unnecessary," as it found instead that its revised disclosure rules, which added considerable detail to the previous disclosure rule, compare 47 C.F.R. § 64.6110 (2022), with id. § 64.6110 (2024), gave providers sufficiently "'clear guidance'

regarding the information [they] must disclose and how it must be disclosed." Sept. Pub. ¶ 515, at 77338. The revisions, the FCC determined, "will reduce consumer confusion" and "ensure IPCS users and the public will timely receive clear and transparent information about providers' rates, charges, and practices." Id. The FCC explained that it therefore "decline[d]" to adopt the Nonprofit Petitioners' suggestion in order "[t]o minimize unnecessary burdens on providers and to allow flexibility." Id.

This rationale satisfies the FCC's obligation to provide a "reasoned explanation" for its decision not to adopt a standard disclosure label. The FCC considered the providers' past practices, addressed the Nonprofit Petitioners' alternative, and weighed the competing interests. Its considered judgment reflects a reasonable balance of those interests within its expertise and discretion that we have no reason to second-guess. See Rural Cellular Ass'n v. FCC, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (explaining that the FCC "enjoys broad discretion" when balancing statutory objectives); 47 U.S.C. § 276(b)(1)(A); FERC v. Elec. Power Supply Ass'n, 577 U.S. 260, 292, 295 (2016) ("Our important but limited role is to ensure that the [agency] engaged in reasoned decisionmaking," not to "ask whether [its] decision is the best one possible.").

The Nonprofit Petitioners rely on two out-of-circuit cases as support for their position. Based on those rulings, they

argue that, in light of the providers' purported "history of non-compliance" with the FCC's longstanding "clear, accurate, and conspicuous" disclosure requirement, it was "arbitrary and capricious for [the FCC] to predict compliance without a rational explanation." (Quoting Sierra Club, 64 F.4th at 502; citing Animal Legal Def. Fund, Inc. v. Perdue, 872 F.3d 602, 619-20 (D.C. Cir. 2017).)

In those cases, the reviewing court discussed an agency's unexplained reliance on an entity's purported compliance with regulations to make an adjudication in that entity's favor despite evidence that the entity was, in fact, noncompliant. Faced with this contradiction, each court determined that the respective agency's action was arbitrary and capricious. Sierra Club, 64 F.4th at 502-05; Perdue, 872 F.3d at 619-20.

In the 2024 Order, by contrast, the FCC acknowledged the complained-of practices, clarified that they were unsatisfactory, and found that the revised rules gave providers sufficiently "clear guidance" of the disclosure requirements going forward. Sept. Pub. ¶¶ 514-15, at 77338. As a result, the precedents on which the Nonprofit Petitioners rely fail to provide the claimed support.

C.

There is one last set of challenges in the Nonprofit Petitioners' petitions for review that we must address. The Nonprofit Petitioners contend in these challenges that the 2024

Order's inclusion of "safety and security costs" and "correctional facility costs" in its rate-cap calculations ran afoul of the APA.

As mentioned previously, in their supplemental briefing, the Nonprofit Petitioners and FCC present conflicting arguments concerning whether these challenges were rendered moot when the 2025 Order took effect. The supplemental briefing, however, was submitted before the District of Columbia Circuit transferred the consolidated petitions for review of the 2025 Order to our Court. See Order, United Church of Christ Media Just. Ministry, Inc., No. 25-1280. And the Nonprofit Petitioners' supplemental briefing presses that, should the District of Columbia Circuit transfer that consolidated case to this Court, "the most efficient course would be for [us] to . . . decide the overlapping issues in both cases together." The FCC, for its part, agrees that the "narrow disagreement on mootness [would] have little practical effect" if the petitions for review of the 2025 Order were transferred.

Given the parties' agreement as to how to proceed with respect to these challenges, we choose to hold them in abeyance so that we may resolve them alongside our evaluation of the petitions for review challenging the 2025 Order. Accordingly, we do not address these challenges further here.

v.

For the foregoing reasons, we **dismiss** the Provider Petitioners' petitions for review in full; **dismiss** the State

Petitioners' petitions for review for lack of jurisdiction in part and deny them in part; and deny the Nonprofit Petitioners' petitions for review in part and hold them in abeyance in part.