

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1860

SECURUS TECHNOLOGIES, LLC,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents,

DIRECT ACTION FOR RIGHTS AND EQUALITY,
INC.; PENNSYLVANIA PRISON SOCIETY;
CRIMINAL JUSTICE REFORM CLINIC;
OFFICE OF COMMUNICATION OF
THE UNITED CHURCH OF CHRIST, INC.,
Intervenors.

No. 24-1969

PAY TEL COMMUNICATIONS, INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents,

PENNSYLVANIA PRISON SOCIETY;
DIRECT ACTION FOR RIGHTS AND EQUALITY,
INC.; OFFICE OF COMMUNICATION OF THE
UNITED CHURCH OF CHRIST, INC.,
Intervenors.

Before
Barron, Chief Judge,
Gelpí and Aframe, Circuit Judges.

ORDER OF COURT

Entered: December 9, 2024

The motions seeking transfer are denied, without prejudice to revisitation of relevant issues by the ultimate merits panel. The parties have been directed to confer and jointly propose a consolidated briefing schedule. During briefing, in addition to addressing the merits, the parties should address all relevant gating matters, including the venue issues discussed in the current motions to transfer.

By the Court:
Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1814

DIRECT ACTION FOR RIGHTS AND EQUALITY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: November 13, 2024

On October 3, 2024, this court entered an order to show cause why the above-captioned petition for judicial review should not be dismissed. On October 17, 2024, this court received responses from petitioner Direct Action for Rights and Equality and respondent the Federal Communications Commission.

Having considered the responses to this court's order to show cause, we have determined that this matter may proceed, with the issues flagged in the order to show cause reserved to the ultimate merits panel.

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1859

CRIMINAL JUSTICE REFORM CLINIC,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: November 13, 2024

On October 3, 2024, this court entered an order to show cause why the above-captioned petition for judicial review should not be dismissed. On October 17, 2024, this court received responses from petitioner Criminal Justice Reform Clinic and respondent the Federal Communications Commission.

Having considered the responses to this court's order to show cause, we have determined that this matter may proceed, with the issues flagged in the order to show cause reserved to the ultimate merits panel.

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1861

PENNSYLVANIA PRISON SOCIETY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: November 13, 2024

On October 3, 2024, this court entered an order to show cause why the above-captioned petition for judicial review should not be dismissed. On October 17, 2024, this court received responses from petitioner Pennsylvania Prison Society and respondent the Federal Communications Commission.

Having considered the responses to this court's order to show cause, we have determined that this matter may proceed, with the issues flagged in the order to show cause reserved to the ultimate merits panel.

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1860

SECURUS TECHNOLOGIES, LLC,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents,

No. 24-1927

SECURUS TECHNOLOGIES, LLC,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents,

Before
Barron, Chief Judge,
Gelpí and Aframe, Circuit Judges.

ORDER OF COURT

Entered: October 21, 2024

Petitioner Securus Technologies, LLC, has filed in Appeals 24-8028 and 24-1860 a motion to transfer, which has seen full briefing. Petitioner also has filed a motion for leave to file a supplemental reply in support of its motion to transfer. That motion for leave to file is granted, and the content of the tendered supplemental reply has been considered.

Having carefully reviewed the specific arguments petitioner offers in favor of transfer, we deny the motion, without prejudice to later revisitation of all issues bearing on venue and potential transfer.

Petitioner also has filed in Appeals 24-8028 and 24-1927 an unopposed motion to file under seal the unredacted version of its motion for a stay pending appeal.

The motion to file under seal is granted, and the tendered unredacted version of the stay motion is accepted for filing under seal. Other motions, including other motions relating to sealing, remain pending and will be addressed by separate order(s).

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1814

DIRECT ACTION FOR RIGHTS AND EQUALITY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: October 3, 2024
Pursuant to 1st Cir. R. 27.0(d)

Petitioner Direct Action for Rights and Equality seeks review of a report and order of the Federal Communications Commission released July 22, 2024, captioned “In the Matter of Incarcerated People’s Communications Services: Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,” WC Dockets Nos. 23-62 and 12-375, FCC 24-75. The petition is described as a “protective” petition for review of the full order, triggered by the August 26, 2024, publication of part of the order. However, it appears this court may not have jurisdiction over a petition challenging an agency order before

the publication date. See Western Union Telegraph Co. v. Federal Communications Commission, 773 F.2d 375 (D.C. Cir. 1985) (finding that a petition filed before publication was incurably premature); Council Tree Commc'ns, Inc. v. Federal Communications Commission, 503 F.3d 284, 291 (3d Cir. 2007) (“a petition to review a rulemaking order of the FCC is incurably premature when it is filed before the rulemaking order is published in the Federal Register.”). Additionally, the petition notes that petitioner is not aggrieved by the August 26, 2024, published excerpts of the order. See 28 U.S.C. § 2344 (“Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies.”).

Accordingly, the petitioner and respondents are ordered to show cause, in writing filed by **October 17, 2024**, why this petition should not be dismissed in whole or in part.

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1859

CRIMINAL JUSTICE REFORM CLINIC,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: October 3, 2024
Pursuant to 1st Cir. R. 27.0(d)

Petitioner Criminal Justice Reform Clinic seeks review of a report and order of the Federal Communications Commission released July 22, 2024, captioned “In the Matter of Incarcerated People’s Communications Services: Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,” WC Dockets Nos. 23-62 and 12-375, FCC 24-75.

The petition is described as a “protective” petition for review of the full order, triggered by the August 26, 2024 publication of part of the order and notes that “the portion of the Order which CJRC seeks to challenge (a section of the Report and Order) has not yet

been published in the Federal Register.” It appears this court may not have jurisdiction over a petition challenging an agency order before the publication date. See 28 U.S.C. § 2344 (“Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies.”). See Western Union Telegraph Co. v. Federal Communications Commission, 773 F.2d 375 (D.C. Cir. 1985) (finding that a petition filed before publication was incurably premature); Council Tree Commc’ns, Inc. v. Federal Communications Commission, 503 F.3d 284, 291 (3d Cir. 2007) (“a petition to review a rulemaking order of the FCC is incurably premature when it is filed before the rulemaking order is published in the Federal Register.”).

Accordingly, the petitioner and respondents are ordered to show cause, in writing filed by **October 17, 2024**, why this petition should not be dismissed in whole or in part.

By the Court:

Anastasia Dubrovsky, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-8028

In Re: MCP 191

No. 24-1861

PENNSYLVANIA PRISON SOCIETY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION;
UNITED STATES,
Respondents.

ORDER OF COURT

Entered: October 3, 2024
Pursuant to 1st Cir. R. 27.0(d)

Petitioner Pennsylvania Prison Society seeks review of a report and order of the Federal Communications Commission released July 22, 2024, captioned “In the Matter of Incarcerated People’s Communications Services: Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,” WC Dockets Nos. 23-62 and 12-375, FCC 24-75. The petition is described as a “protective” petition for review of the full order, triggered by the August 26, 2024 publication of part of the order and notes that “the one portion of the Order as to which [petitioner] seeks review has not been published in the Federal Register.”

However, it appears this court may not have jurisdiction over a petition challenging an agency order before the publication date. See Western Union Telegraph Co. v. Federal Communications Commission, 773 F.2d 375 (D.C. Cir. 1985) (finding that a petition filed before publication was incurably premature); Council Tree Commc'ns, Inc. v. Federal Communications Commission, 503 F.3d 284, 291 (3d Cir. 2007) (“a petition to review a rulemaking order of the FCC is incurably premature when it is filed before the rulemaking order is published in the Federal Register.”).

Accordingly, the petitioner and respondents are ordered to show cause, in writing filed by **October 17, 2024**, why this petition should not be dismissed in whole or in part.

By the Court:

Anastasia Dubrovsky, Clerk

STATUTORY PROVISIONS INVOLVED**28 U.S.C. § 2112. Record on review and enforcement of agency orders**

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accord-

ance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from

among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

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