

No.

IN THE
Supreme Court of the United States

SPRINT CORPORATION, NOW KNOWN AS SPRINT LLC,
AND T-MOBILE USA, INC.,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA,
Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The D.C. Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case arises from Federal Communications Commission forfeiture orders just like the ones in *FCC v. AT&T, Inc.*, 608 U.S. ____ (2026). The decision below addressed the same questions at issue in *AT&T*, but without the benefit of this Court’s decision in *AT&T* or the government’s significant legal concessions about the limited force of FCC orders and the proper scope of enforcement proceedings.

This petition also presents two important statutory questions. The Communications Act of 1934 requires providers of telecommunications service—*i.e.*, voice service—to protect the confidentiality of “customer proprietary network information” (CPNI), defined in relevant part as information that both (i) relates to the “destination, location, and amount *of use* of a telecommunications service,” and (ii) is made available to the telecommunications carrier “*solely* by virtue of the carrier-customer relationship.” 47 U.S.C. § 222(h)(1) (emphasis added). The Act also caps the total penalties that the FCC may assess “for any continuing violation” involving a single act or failure to act. *Id.* § 503(b)(2)(B). The questions presented are:

1. Whether this Court should, at minimum, grant, vacate, and remand in light of *AT&T* and the government’s concessions in that case.
2. Whether “location” CPNI under § 222 refers only to call-location information, not other information about the location of a mobile device.
3. Whether the number of “continuing violations” arising from a single failure to act under § 503(b) is a legal question for courts to decide, without deferring to the FCC’s conclusion.

PARTIES TO THE PROCEEDING

Petitioners are Sprint Corporation (Sprint), now known as Sprint LLC, and T-Mobile USA, Inc. (T-Mobile) (NASDAQ: TMUS).¹ The court of appeals consolidated Sprint's and T-Mobile's petitions for review and resolved them in a single opinion. Respondents are the Federal Communications Commission and the United States of America.

¹ T-Mobile's corporate parent merged with Sprint in 2020, but the FCC initiated the proceedings here before the merger and imposed separate forfeiture orders on T-Mobile and Sprint in 2024. The orders were thus litigated in consolidated proceedings under T-Mobile's and Sprint's names.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Sprint Corporation (now known as Sprint LLC) is a wholly owned subsidiary of petitioner T-Mobile USA, Inc., a Delaware corporation, which in turn is a wholly owned subsidiary of T-Mobile US, Inc., a Delaware corporation and a publicly traded company listed on the NASDAQ Global Select Market of NASDAQ Stock Market LLC (NASDAQ: TMUS).

Deutsche Telekom Holding B.V., a limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) organized and existing under the laws of the Netherlands (DT B.V.), owns more than 10% of the shares of T-Mobile US, Inc. DT B.V. is a direct, wholly owned subsidiary of T-Mobile Global Holding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of the Federal Republic of Germany (Holding). Holding is a direct, wholly owned subsidiary of T-Mobile Global Zwischenholding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of the Federal Republic of Germany (Global). Global is a direct, wholly owned subsidiary of Deutsche Telekom AG, an *Aktiengesellschaft* organized and existing under the laws of the Federal Republic of Germany (Deutsche Telekom). Deutsche Telekom is traded on the Frankfurt Stock Exchange (Xetra: DTE.DE or DTEGn.DE). Deutsche Telekom AG American Depositary Receipts also trade over-the-counter in the United States (DTEGY).

RELATED PROCEEDINGS

U.S. Court of Appeals for the D.C. Circuit:

Sprint Corp. v. FCC,
No. 24-1224 (Aug. 15, 2025)

T-Mobile USA, Inc. v. FCC,
No. 24-1225 (Aug. 15, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners T-Mobile USA, Inc. and Sprint Corporation respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the D.C. Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1–39a) is reported at 151 F.4th 347. The orders of the court of appeals denying rehearing and rehearing en banc (App. 276–79a) are not reported, but the order denying rehearing en banc is available at 2026 WL 226504. The Federal Communications Commission’s forfeiture order against T-Mobile (App. 42–170a) is available at 39 FCC Rcd 4350 (2024). The forfeiture order against Sprint (App. 171–275a) is available at 39 FCC Rcd 4305 (2024).

JURISDICTION

The court of appeals issued its opinion on August 15, 2025, and denied a timely petition for rehearing and rehearing en banc on January 23, 2026. App. 276–79a. On April 10, 2026, the Chief Justice extended the time to file a petition for certiorari until May 23, 2026. On May 8, 2026, the Chief Justice further extended the time to file a petition for certiorari until June 22, 2026. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the appendix. App. 280a *et seq.*

INTRODUCTION

This case arises from FCC forfeiture orders just like the ones in *FCC v. AT&T, Inc.*, 608 U.S. ____ (2026).² As in *AT&T*, petitioners paid the forfeitures under protest and petitioned for review in the court of appeals—here, the D.C. Circuit. In August 2025, the court of appeals issued an opinion addressing the same questions regarding the Seventh Amendment, the FCC’s forfeiture authority, and the scope of judicial review of FCC orders that this Court decided in *AT&T*.

The Court should grant this petition, vacate the judgment, and remand for further proceedings (GVR) in light of this Court’s decision and the government’s significant legal concessions in *AT&T*. *AT&T* worked a historic shift in FCC forfeiture law. While the Court rejected the carriers’ constitutional challenges to the FCC’s forfeiture authority, it did so only because it accepted major legal concessions by the Office of the Solicitor General, including that: (i) the FCC lacks authority to issue forfeiture orders compelling payment, as the orders here purported to do; and (ii) regulated entities may lawfully decline to pay forfeitures and still raise all factual and legal challenges in a *de novo* jury trial under 47 U.S.C. § 504(a), contrary to the government’s prior positions and the holdings of lower courts. *AT&T* further memorialized the government’s admission that FCC forfeiture orders cannot mislead a regulated entity into waiving its jury-trial right by paying the forfeiture—exactly what happened here. And this Court specifically declined to endorse the

² Decided together with No. 25-567, *Verizon Communications Inc. v. FCC*, on certiorari to the Second Circuit.

D.C. Circuit’s longstanding precedent requiring regulated entities to pay a forfeiture *before* seeking review under § 402(a) and the Hobbs Act. *AT&T* thus fundamentally changed the decades-old rules of the road for FCC forfeiture orders. A GVR is appropriate to allow the court of appeals to reassess its decision and the underlying forfeiture orders, including petitioners’ right to a refund, in light of this Court’s opinion and the government’s concessions in *AT&T*.

Alternatively, this Court should grant plenary review. The decision below raises two important and recurring questions about the FCC’s authority under the Communications Act of 1934 that warrant review and were not presented in *AT&T*.³

First, the court of appeals adopted a sweeping interpretation of “customer proprietary network information” (CPNI) that subjects wireless carriers to common-carrier liability for mobile-device location information that falls outside the FCC’s authority. Wireless companies are subject to common-carrier regulation under Title II of the Act *only* insofar as they offer a “telecommunications service”—that is, a *voice* service. Internet, texting, and other data services are Title I services exempt from Title II regulation. In the decision below, however, the D.C. Circuit interpreted CPNI in § 222—a Title II provision—to include *all* information about the location of a mobile device, even

³ The Fifth Circuit in *AT&T* did “not reach” these additional questions because it agreed with AT&T’s “Seventh Amendment and Article III challenges.” *AT&T, Inc. v. FCC*, 149 F.4th 491, 497 (5th Cir. 2025). Verizon, which sought to consolidate its petition for certiorari with *AT&T*, raised only the questions addressed in *AT&T*. See Pet. I, 14, *Verizon Commc’ns Inc. v. FCC*, No. 25-567 (Nov. 6, 2025).

when the device is not using any voice service. That decision vastly and improperly expands the FCC’s authority. Location information is not CPNI—and is not subject to Title II regulation—unless it *both* (i) relates to the “location ... *of use* of a telecommunications service,” and (ii) is made available to a telecommunications carrier “*solely* by virtue of the carrier-customer relationship.” 47 U.S.C. § 222(h)(1)(A) (emphasis added). “[C]all location information” satisfies that definition, as other subsections make clear. *Id.* § 222(d)(4), (f)(1). But information about the location of a mobile device that is not using a Title II service does not. The D.C. Circuit’s contrary decision conflicts with this Court’s decisions interpreting the terms “use” and “solely” and collapses the distinction between Titles I and II. It also creates intolerable regulatory uncertainty for carriers who operate nationwide.

Second, the decision below improperly deferred to the FCC’s interpretation of the statutory penalty cap in § 503(b), holding that it was “reasonable” for the FCC to impose more than \$80 million in penalties on T-Mobile and more than \$12 million on Sprint—even though the Act provides that “the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act,” 47 U.S.C. § 503(b)(2)(B), subject to inflation adjustment. The FCC circumvented that cap by recharacterizing each petitioner’s single failure to immediately terminate a (beneficial) program as dozens of separate “continuing violations”—one for each entity that participated in the program. The FCC even claimed authority to find *tens of millions* of separate violations based on the number of petitioners’ subscribers, which

would yield *hundreds of trillions* of dollars in penalties. The D.C. Circuit deferred, calling the FCC’s view “reasonable” and noting the agency had “interpreted section 503(b) as giving it ‘discretion’ to determine ‘the number of violations’ represented by a carrier’s conduct.” App. 37a & n.6. The court of appeals’ deferential review conflicts with *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and other decisions requiring courts to decide questions of law *de novo*. Indeed, the decision below applied *Chevron* deference in all but name, and on a question—a cap on the agency’s own penalty authority—where deference is especially indefensible. This case is an excellent vehicle for the Court to reject such “*Loper Bright* avoidance,” which has implications far beyond § 503(b). *Am. Gas Ass’n v. U.S. Dep’t of Energy*, 157 F.4th 476, 506 (D.C. Cir. 2025) (Rao, J., dissenting), *vacated and remanded*, 608 U.S. ___ (2026).

The Court should GVR in light of its decision in *AT&T* and the government’s significant positional changes in that case. Alternatively, it should grant the petition and set the case for briefing and argument.

STATEMENT

A. Legal Background

1. The services that wireless companies offer to customers are subject to different regulatory schemes under the Communications Act. Voice telephone service is a “telecommunications service” subject to “mandatory common-carrier regulation” under Title II. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 973 (2005); see 47 U.S.C. § 153(50)–(51), (53). Voice service is thus subject to

“an array of statutory restrictions and requirements” set forth in Title II. *Mozilla Corp. v. FCC*, 940 F.3d 1, 17 (D.C. Cir. 2019) (per curiam); see *Brand X*, 545 U.S. at 975–76.

By contrast, Internet access, texting, and similar data services are classified as “information services” under Title I of the Act and are “not subject to mandatory common-carrier regulation under Title II.” *Brand X*, 545 U.S. at 975–76; see 47 U.S.C. § 153(24); *In re MCP No. 185*, 124 F.4th 993, 998 (6th Cir. 2025) (Internet); 33 FCC Rcd 12075 (2018) (texting).⁴

A company like T-Mobile that offers both a Title II telecommunications service (voice) and non-Title II information services (e.g., data, texting) is a Title II common carrier “*only* to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(51) (emphasis added).

2. This case implicates a Title II provision. Section 222 requires a “telecommunications carrier” to protect the confidentiality of CPNI. 47 U.S.C. § 222(c)(1). The FCC has read this provision to require carriers to “take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.” 47 C.F.R. § 64.2010(a).

Information is not CPNI unless it satisfies two statutory requirements, both of which are expressly linked to Title II “telecommunications” services—that

⁴ In 2024, the FCC issued an order purporting to classify broadband Internet access service as a “telecommunications service.” *Safeguarding and Securing the Open Internet*, 89 Fed. Reg. 45,404 (May 22, 2024). That order is not at issue, both because the Sixth Circuit vacated it and because it postdated the conduct and forfeiture orders here. See *MCP No. 185*, 124 F.4th 993.

is, voice calls. First, the information must “relat[e] to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier.” 47 U.S.C. § 222(h)(1)(A). Second, the information must have been made available to the telecommunications carrier by the customer “solely by virtue of the carrier-customer relationship.” *Ibid.* Section 222 elsewhere refers to “location” CPNI as “call location information.” *Id.* § 222(d)(4), (f)(1).

3. The Communications Act purports to authorize the FCC to impose a civil “forfeiture penalty” on regulated entities for violations of the Act and FCC rules. 47 U.S.C. § 503(b)(1)(B). The Act states that the FCC may impose these penalties in one of two ways: It may either proceed before an administrative law judge in a formal adjudicatory proceeding, *id.* § 503(b)(3), or it may impose a penalty itself in a final forfeiture order after issuing a Notice of Apparent Liability (NAL) and giving the forfeiture subject an opportunity to respond to the NAL in writing, *id.* § 503(b)(4). In practice, the FCC almost always uses the NAL process. *AT&T*, 608 U.S. at __ (slip op., at 2).

FCC forfeiture orders are final agency actions that purport to adjudicate liability and compel payment by a specified date, typically within 30 days. *E.g.*, App. 156a, 261–62a (ordering payment of \$80,080,000 and \$12,240,000 within 30 days); see also, *e.g.*, *AT&T*, No. 25-406, Pet. App. 131–32a (ordering payment of \$57,265,625 within 30 days). Refusal to timely pay the forfeiture violates the order and can result in a government-initiated enforcement action under 47 U.S.C. § 504(a).

The only way for a regulated entity to initiate judicial review of an FCC forfeiture order is to petition for review in a court of appeals under 47 U.S.C. § 402(a) and the Hobbs Act, 28 U.S.C. § 2342. The D.C. Circuit has long held that regulated entities seeking review under § 402(a) must first pay the forfeiture to secure jurisdiction in the court of appeals, reasoning that “section 504(a) establishes district courts as the exclusive forum for challenges to unpaid forfeiture orders.” *AT&T Corp. v. FCC*, 323 F.3d 1081, 1085 (D.C. Cir. 2003) (citing *Pleasant Broad. Corp. v. FCC*, 564 F.2d 496 (D.C. Cir. 1977)). And as a practical matter, reputable regulated entities consistently understood FCC forfeiture orders to be mandatory and paid them under protest to seek review under § 402(a) and the Hobbs Act. *Infra*, at 20–21. Such a petition for review must be filed within 60 days. 28 U.S.C. § 2344.

Failure to pay an FCC forfeiture penalty authorizes the Department of Justice to file an enforcement action. 47 U.S.C. § 504(a). In April 2024—when the forfeiture orders here were issued—refusing to pay a forfeiture and awaiting a possible § 504(a) proceeding was not a viable mechanism for raising legal challenges to a forfeiture order. Although § 504(a) mentions a “trial de novo,” the government maintained—and many courts agreed—that the scope of review in § 504(a) actions is limited to *de novo* review of *factual* issues and does not encompass legal challenges to the forfeiture order. *Infra*, at 19–20. And while some courts took a more permissive approach or had not addressed the issue, § 504(a) actions are initiated by the Department of Justice under the statute’s nationwide

venue provision—meaning that a carrier has no control over the court in which the action is filed, and the government has every incentive to pick a favorable venue. 47 U.S.C. § 504(a) (venue “in any district through which the line or system of the carrier runs”). The government has up to five years to file a § 504(a) proceeding. See 28 U.S.C. § 2462.

4. Congress capped the maximum penalty that the FCC can impose in a forfeiture proceeding. 47 U.S.C. § 503(b)(2)(B). The statute authorizes daily penalties for a continuing violation, “except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.” *Ibid.* Adjusted for inflation, that total cap was fixed at \$2,048,915 when the NALs were issued in 2020. 34 FCC Rcd 12824, 12828 (2019).

B. Factual and Procedural Background

1. Petitioners T-Mobile and Sprint are wireless companies that each offered Title II telecommunications service (voice) and non-Title II information services (including data and texting) during the time relevant here. App. 6a.⁵ Like AT&T and Verizon, T-Mobile and Sprint offered a location-based service (LBS) program allowing customers to consent to share information about the location of their mobile device with third-party service providers. This program enabled customers to obtain valuable location-based services, like medical-emergency response from LifeAlert, roadside assistance from AAA, and bank-fraud

⁵ Sprint merged with T-Mobile’s corporate parent in April 2020, after the NALs were issued.

prevention from financial institutions. App. 7a; see COA JA210.

The device-location information used in petitioners' LBS programs was not tied to Title II voice services; it was based on general network-registration information. Mobile devices register periodically with nearby signal towers when they are powered on, including when the customer is not actively using the device or is using data. App. 165a; see App. 6a. This information facilitates both non-Title II data services and Title II voice services; indeed, customers who subscribed *only* to data plans used this same information in the LBS program. App. 163–64a, 268–69a.

2. In May 2018, the *New York Times* reported that, from 2014 to 2017, one LBS provider (Securus) may have misused location information from all four major wireless carriers for unauthorized purposes without customers' consent. App. 9a. Petitioners responded by promptly terminating Securus's access to location information and, after further review, winding down their LBS programs entirely. App. 10–11a.

In February 2020, the FCC issued NALs against all four major carriers, proposing more than \$200 million in total penalties. App. 44a, 173a; *AT&T*, 149 F.4th at 496; *Verizon Commc'ns Inc. v. FCC*, 156 F.4th 86, 93–94 (2d Cir. 2025). These NALs marked the first time the FCC had taken the position that device-location data unrelated to Title II voice calls constitutes CPNI. The NALs did not propose penalties for the Securus incident itself, which fell outside the one-year limitations period. 47 U.S.C. § 503(b)(6)(B). Instead, the FCC claimed that each carrier had committed “continuing violations” by failing to completely

shut down its LBS program or adopt program-wide improvements immediately after the Securus article was published. *E.g.*, App. 122–27a. To avoid the statutory cap on continuing-violation penalties, the FCC contended that each carrier engaged in “separate” continuing violations with respect to each service provider remaining in the program, including LifeAlert, AAA, and dozens of others—even though the carriers had no reason to believe those providers ever misused data. *Ibid.* Petitioners filed written responses objecting to the NALs in May 2020 and supplemented them in June 2023.

On April 29, 2024, a bare 3-2 majority of the FCC issued final forfeiture orders rejecting petitioners’ arguments and imposing \$80,080,000 in civil penalties on T-Mobile and \$12,240,000 on Sprint. App. 156a, 261–62a. The orders included “**ORDERING CLAUSES**” stating: “**IT IS ORDERED** that” each petitioner “**IS LIABLE FOR A MONETARY FORFEITURE**” and that “[p]ayment of the forfeiture shall be made ... within thirty (30) calendar days after the release of this Forfeiture Order.” *Ibid.*

Two Commissioners dissented. Now-Chairman Carr explained that the orders “plainly” exceeded the FCC’s authority under § 222 because location CPNI is limited to call-location information—it must relate to the “use of a telecommunications service” and be made available “solely by virtue of” a Title II voice-service relationship. App. 163–66a. The location data used in the LBS programs did not satisfy these requirements because it was created “whenever a customer’s device pinged the carrier’s cell site, even when the device was otherwise idle,” and “even in the absence of a voice plan.” *Ibid.* Commissioner Simington’s dissent

focused on the penalty amount. He argued that the FCC had “exceed[ed] our section 503 statutory authority” by going above the “statutory maximum,” and critiqued the majority’s decision to treat a “single, systemic failure to follow the Commission’s rules” as “however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology.” App. 168–69a.

3. Petitioners sought review in the D.C. Circuit under § 402(a) and the Hobbs Act, and—as required by longstanding D.C. Circuit precedent—paid the forfeitures under protest. *AT&T*, 323 F.3d at 1085 (citing *Pleasant Broad.*, 564 F.2d 496).

On August 15, 2025, the D.C. Circuit denied the petitions. The court rejected petitioners’ Seventh Amendment and Article III arguments under *SEC v. Jarkesy*, 603 U.S. 109 (2024), holding petitioners had “waived” their right to a jury trial by “voluntarily” paying more than \$92 million and seeking direct appellate review, rather than refusing payment and awaiting a potential § 504(a) enforcement action. App. 18a, 20–24a. The court also held that information about the location of a mobile device is CPNI under § 222, even when the device is not making or receiving a phone call. App. 27–32a. Finally, the court upheld the penalty amounts, stating that “the Commission interpreted § 503(b) as giving it ‘discretion’ to determine ‘the number of violations’ represented by a carrier’s conduct” and that “its approach” to the penalties “was reasonable.” App. 37a & n.6 (quoting App. 126–27a).

Petitioners sought rehearing and rehearing en banc on September 22, 2025.

4. In parallel proceedings, AT&T and Verizon also paid their forfeitures under protest and sought review under § 402(a)—AT&T in the Fifth Circuit, and Verizon in the Second. The Fifth Circuit granted AT&T’s petition and vacated the forfeiture order, holding that the FCC’s imposition of monetary penalties violated the Seventh Amendment and Article III, *AT&T*, 149 F.4th at 498–503; the government sought this Court’s review. The Second Circuit denied Verizon’s petition. See *Verizon*, 156 F.4th 86. Verizon sought this Court’s review of the constitutional issues and asked the Court to consolidate its case with *AT&T*.

This Court granted both petitions for certiorari on January 9, 2026 and consolidated them for briefing and argument under the *AT&T* caption. Shortly thereafter, the D.C. Circuit denied petitioners’ rehearing petitions. App. 276–79a.

On March 20, 2026, the Office of the Solicitor General filed a response brief in *AT&T* on behalf of the FCC and the United States (*AT&T* FCC Br.). Rather than defending the FCC’s authority to issue forfeiture orders that compel payment—which had been the focus of the case up to that point—the government argued that forfeiture orders are constitutional because they have *no* legal effect. The government thus offered a series of significant affirmative concessions, arguing for the first time that the Communications Act does not “empower the FCC to command payment or punish nonpayment,” *AT&T* FCC Br. 11; that a regulated party “may lawfully decline to pay a forfeiture

assessed by the FCC,” *id.* at 10; and that “[i]f a particular order purports to compel payment, a court should hold that the order exceeds the FCC’s authority under the Act,” *id.* at 17. The government likewise argued that a “trial de novo” under § 504(a) “enables a party to contest the merits anew, before a neutral judge and impartial jury,” *id.* at 11—thereby disavowing its prior position and the holdings of numerous courts. *Infra*, at 19–20.

This Court heard oral argument in *AT&T* on April 21, 2026. Several Justices noted the “government’s retreat on how it’s interpreting this statute,” Tr. of Oral Arg. 82 (Gorsuch, J.), and expressed “concern” about “how this case proceeded and that the Petitioners were misled ... into paying the money without realizing that you would switch positions later and say, oh, by the way, you didn’t have to pay, you could have just waited for the charges to be brought,” *id.* at 73 (Kavanaugh, J.). The government stated:

[I]f you do have concerns about whether AT&T was misled, we do think it’s important for the government to turn square corners when it’s dealing with the citizenry. The government cannot mislead someone into waiving his jury trial rights.

So what we would suggest is that the Court should rule for us on the question presented, which is just about the statute, and then leave for remand disputes about whether this particular waiver of the jury trial right was knowing and voluntary or whether AT&T was misled.

Id. at 75. Multiple members of the Court also expressed skepticism about the D.C. Circuit’s precedent requiring a party to first pay a forfeiture to seek judicial review under § 402(a). *Id.* at 15–20, 32, 41, 90–92 (Sotomayor, Gorsuch, & Barrett, JJ.). And the government conceded, in response to direct questioning, that a § 504(a) trial *de novo* must encompass questions “both of fact and law.” *Id.* at 78.

On June 4, 2026, this Court issued its opinion in *AT&T*. The Court held that the provisions of the Communications Act authorizing the FCC to issue forfeiture orders do not violate the Seventh Amendment. But, adopting the government’s legal concessions, the Court emphasized that FCC forfeiture orders cannot lawfully “create an obligation to pay” and that a regulated entity can raise both questions of law and fact in a § 504(a) trial *de novo*, where it has the right to a jury trial. *AT&T*, 608 U.S. at __ (slip op., at 6–7, 8 n.1).

The Court left open the carriers’ argument “that the specific forfeiture orders in this case misled them into paying, and that a refund is therefore appropriate.” *AT&T*, 608 U.S. at __ (slip op., at 14 n.5). Although the Court declined to resolve that issue in the first instance (as the government requested, *supra*, at 14), it memorialized the government’s concession that “it ‘cannot mislead someone into waiving his jury trial rights’” and cited Justice Thomas’s dissenting opinion, which would have addressed the issue and held that the forfeiture orders did exactly that. *Ibid.* The Court also specifically declined to opine on the “sound[ness]” of the D.C. Circuit’s precedent requiring a regulated entity to “first pay the forfeiture before it may obtain review in the court of appeals under the Hobbs Act.” *Id.* at 12 n.4 (citing *AT&T*, 323 F.3d at 1083–85).

REASONS FOR GRANTING THE PETITION

This Court’s decision and the government’s concessions in *AT&T* fundamentally changed the law governing FCC forfeiture orders. Together, they bear directly on the legality of the forfeiture orders here and strongly suggest that petitioners are entitled to a refund of the penalties they paid under protest. Because petitioners and the court of appeals did not have the benefit of this Court’s decision or the government’s concessions, the Court should grant certiorari, vacate the decision below, and remand for further proceedings. Petitioners should have the opportunity to show that they are entitled to a refund of the more than \$92 million they were required to pay under protest, based on prior precedents and misleading, *ultra vires* forfeiture orders that this Court and the government now say have no legal effect and can properly be challenged as unlawful, without paying, in a § 504(a) proceeding—the same opportunity AT&T will have on remand from this Court’s decision.

Alternatively, the Court should grant plenary review. The decision below dramatically expanded the FCC’s authority in two ways that conflict with the Communications Act and the decisions of this Court. *First*, the court of appeals stretched § 222’s definition of CPNI to reach *all* information about the location of a mobile device, not just Title II call-location information—even though § 222 covers only information that relates to a customer’s “use of” a Title II voice service and is made available “solely by virtue of” the Title II relationship. 47 U.S.C. § 222(h)(1)(A). *Second*, the court departed from *Loper Bright* by deferring to the FCC’s resolution of a pure question of law: whether petitioners’ failure to immediately terminate

their LBS programs constituted one “continuing violation” or dozens for purposes of § 503(b)(2)(B)’s penalty cap.

I. THE COURT SHOULD GRANT, VACATE, AND REMAND IN LIGHT OF *AT&T* AND THE GOVERNMENT’S CONCESSIONS.

This Court’s decision in *AT&T* worked a significant change in the law governing FCC forfeiture orders, which bears directly on whether petitioners were “misled ... into paying” more than \$92 million under protest in order to challenge the orders and on whether the orders were unlawful. *AT&T*, 608 U.S. at __ (slip op., at 14 n.5). Together with legal concessions made by the Office of the Solicitor General, the Court’s opinion in *AT&T*: (i) established for the first time that the FCC lacks authority to issue orders compelling payment; (ii) affirmed that regulated entities may raise legal challenges in § 504(a) proceedings, contrary to other courts’ and the government’s prior position; (iii) affirmed that a jury trial is available in a § 504(a) proceeding, contrary to the government’s prior positions in these very cases; and (iv) declined to endorse D.C. Circuit precedent requiring regulated entities to pay forfeitures before seeking review—precedent that petitioners were bound to follow in this case. This Court should grant the petition, vacate the judgment below, and remand for further proceedings so that petitioners can argue “that a refund is ... appropriate.” *Ibid.*

1. This Court’s decision in *AT&T*, together with the government’s concessions, moved the law in at least four important ways that directly bear on this case.

First, *AT&T* endorsed the government’s new, affirmative concession that the FCC lacks authority to issue forfeiture orders compelling payment. *AT&T*, 608 U.S. at __ (slip op., at 7–8). The government even embraced the position that “[i]f a particular order purports to compel payment, a court should hold that the order exceeds the FCC’s authority under the Act.” *AT&T* FCC Br. 17. And this Court incorporated into its opinion the government’s “acknowledg[ment] that it ‘cannot mislead someone into waiving his jury trial rights’” by issuing a forfeiture order purporting to compel payment, *AT&T*, 608 U.S. at __ (slip op., at 14 n.5) (citing Tr. of Oral Arg. 75).

Second, *AT&T* endorsed the government’s new position that regulated entities “may challenge the Commission’s legal conclusions in a § 504 enforcement action just as they may contest the Commission’s factual determinations.” *AT&T*, 608 U.S. at __ (slip op., at 8 n.1) (citing *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 152 (2025); Tr. of Oral Arg. 78). This holding—and the government’s position—directly contradicted the government’s prior position that the phrase “trial de novo” in § 504(a) did *not* allow a court to review issues of law. *E.g.*, Br. for Appellee at 13, *United States v. Stevens*, No. 11-50862 (5th Cir. Jan. 27, 2012) (“In a forfeiture enforcement proceeding brought in district court pursuant to 47 U.S.C. § 504(a), the district court [is] limited to a de novo review of only factual determinations.”). And it abrogated the decisions of the Fifth Circuit and numerous other courts that had adopted the

government's prior position. See *AT&T*, 608 U.S. at __ (slip op., at 8 & n.1) (opinion of Thomas, J.).⁶

Third, this Court endorsed the government's concession that a jury trial *is* available in a § 504 proceeding. *AT&T*, 608 U.S. at __ (slip op., at 1, 6–8 & n.1) (majority); *AT&T* FCC Br. 20. This, too, was an explicit reversal of position by the government, which had argued in the carriers' forfeiture orders and in the court of appeals "that the [Seventh] Amendment does not entitle the carriers to a jury trial at any stage of the forfeiture proceedings." *AT&T* FCC Br. 20. The government did "not advance that theory" in this Court. *Ibid*.

Fourth, this Court's opinion in *AT&T* declined to endorse—and multiple Justices cast doubt on—longstanding D.C. Circuit precedent requiring petitioners to pay a forfeiture as a condition of securing review under § 402(a). See *AT&T*, 323 F.3d at 1085 (citing *Pleasant Broad.*, 564 F.2d 496). The government defended this pay-first precedent at oral argument, but the Court's opinion pointedly refused to

⁶ See *United States v. Stevens*, 691 F.3d 620, 622 (5th Cir. 2012); see also, e.g., *United States v. Rhodes*, 2022 WL 17484847, *3–4 (D. Mont. Dec. 7, 2022); *United States v. Dudley*, 2020 WL 4284052, *3 (N.D. Ala. July 27, 2020); *United States v. Neely*, 595 F. Supp. 2d 662, 669 (D.S.C. 2009); *United States v. Metzger*, 2008 WL 11336647, *2–3 (M.D. Fla. July 7, 2008); *United States v. TravelCenters of Am.*, 597 F. Supp. 2d 1222, 1227 (D. Or. 2007); cf. *United States v. Any & All Radio Station Transmission Equip.*, 207 F.3d 458, 463 (8th Cir. 2000) (reaching similar conclusion in context of in rem forfeitures under 47 U.S.C. § 510, relying on § 504(a) precedents). Other courts limited penalty-amount challenges. E.g., *United States v. Hodson Broad.*, 666 F. App'x 624, 627–28 (9th Cir. 2016).

approve its “sound[ness].” *AT&T*, 608 U.S. at __ (slip op., at 12 n.4).

2. *AT&T*’s endorsement of the government’s sweeping positional shifts strongly supports the conclusion that the April 2024 forfeiture orders here “misled [petitioners] into paying.” *AT&T*, 608 U.S. at __ (slip op., at 14 n.5). A GVR is warranted to allow the court of appeals to consider under this new forfeiture framework whether a “refund is ... appropriate,” *ibid.*, just as *AT&T* itself will have the opportunity to argue on remand.

The forfeiture orders here purport to adjudicate liability and compel payment—exactly what *AT&T* holds, and the government now agrees, the orders *cannot* do. The “**ORDERING CLAUSES**” state: “**IT IS ORDERED** that” each petitioner “**IS LIABLE FOR A MONETARY FORFEITURE**,” and purport to require that “[p]ayment of the forfeiture *shall be made* ... within thirty (30) calendar days after the release of this Forfeiture Order.” App. 156a, 261–62a (last emphasis added); see *supra*, at 13. These orders, moreover, were issued against a legal backdrop in which regulated entities like petitioners uniformly understood FCC forfeiture orders to *require* payment. See *AT&T*, No. 25-406, Chamber of Commerce Amicus Br. 18–19 (*AT&T* Chamber Amicus Br.). It was not until March 2026 that the Office of the Solicitor General affirmatively stated that a regulated entity “may lawfully decline to pay a forfeiture assessed by the FCC,” and that “[i]f a particular order purports to compel payment, a court should hold that the order exceeds the FCC’s authority under the Act.” *AT&T* FCC Br. 10, 17. Prior to that, “no carrier” or other reputable regulated entity had dared refuse to comply

with a forfeiture order “in at least fifty years.” *AT&T* Chamber Amicus Br. 19; see also, *e.g.*, *AT&T*, No. 25-406, CTIA Amicus Br. 7–13 (regulated entities “underst[ood] that when the FCC *orders* them to pay penalties for violating the law, that is no mere suggestion”). The fact that each of the well-counseled carriers in these cases paid tens of millions of dollars before challenging the orders proves the point—they would not have paid if they did not believe they needed to.

Pre-*AT&T* references to a § 504(a) “trial de novo” do not cure the problem for two reasons. *First*, petitioners could not count on a *jury* trial in a § 504(a) action prior to *AT&T*. The forfeiture orders here invoked the public-rights exception to the Seventh Amendment and Article III, and the government maintained that position in the court of appeals. App. 149–53a, 254–59a (citing *Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm’n*, 430 U.S. 442, 450 (1977)); see App. 17a n.2. Further, at least one court had suggested that “[f]orfeiture is a sui generis process, which may curtail any jury involvement.” *United States v. Pennington*, 2023 WL 2542594, *4 n.10 (E.D. Ky. Mar. 16, 2023). It was this Court’s decision in *AT&T*, following the government’s change of position, that definitively held § 504(a) proceedings require a jury. *Supra*, at 13–15.

Second, even if a jury were available for *factual* issues, the government and many lower courts had taken the view that a § 504(a) “trial de novo” does *not* include *de novo* review of legal issues or penalty amounts. *Supra*, at 18–19. Indeed, petitioners have consistently argued—and the government has never disputed—that if petitioners had refused to pay the April 2024 forfeiture orders, the government would

have had both the right and the incentive to rely on § 504(a)'s nationwide venue provision to file an enforcement action in a forum that restricted legal challenges to forfeiture orders. See *AT&T*, 608 U.S. at __ (slip op., at 5) (opinion of Thomas, J.) (citing *T-Mobile USA, Inc. Amicus Br.* 8–9); 47 U.S.C. § 504(a) (venue “in any district through which the line or system of the carrier runs”).

Only at oral argument in *AT&T* did the government finally concede that a § 504(a) “trial de novo” means that regulated entities may raise both legal and factual challenges, thereby jettisoning the government’s contrary prior position. *Supra*, at 14. This Court endorsed that view in its opinion and thus abrogated lower-court decisions limiting § 504(a) proceedings. *AT&T*, 608 U.S. at __ (slip op., at 8 n.1) (citing *McLaughlin*, 606 U.S. at 152; Tr. of Oral Arg. 78).

Petitioners did not have the benefit of those significant legal developments in April 2024, when the forfeiture orders were issued. At the time, a petition for review under § 402(a) and the Hobbs Act was the *only* proceeding in which the government and the courts agreed that judicial review of legal issues was available—and longstanding D.C. Circuit precedent *required* petitioners to pay the forfeiture to invoke this right to review. *Supra*, at 8. *AT&T*’s holding that regulated entities can raise legal challenges to forfeitures in § 504(a) actions—and its refusal to endorse the D.C. Circuit’s pay-to-petition precedent—thus bears directly on whether petitioners were misled into paying the penalties in 2024. *Supra*, at 15.

3. This is a clear case for a GVR. Petitioners in 2024 paid more than \$92 million under protest based

on premises this Court later rejected in *AT&T* and legal representations the government no longer defends. Indeed, the government in this Court “re-treated in multiple ways from [its] original position,” *AT&T*, Tr. of Oral Arg. 73 (Kavanaugh, J.), and was “running as far and as fast” as it could from the widely accepted view that FCC forfeiture orders had “legal consequence,” *id.* at 83 (Gorsuch, J.). The government even admitted that “it might be a good idea” to change the forfeiture orders’ mandatory language. *Id.* at 93.

None of this was “regular order.” *AT&T*, Tr. of Oral Arg. 73 (Kavanaugh, J.). The propositions that this Court rejected in *AT&T* and the government now concedes are wrong were established law in 2024. They thus precluded petitioners from making an “intelligent election” about whether to comply with the government’s forfeiture demand—a demand everyone now agrees the government had *no lawful authority to make* in the first place. *Moser v. United States*, 341 U.S. 41, 47 (1951) (holding petitioner “did not knowingly and intentionally waive his rights” in light of “the misleading circumstances of th[e] case”).

Neither petitioners nor the D.C. Circuit had the benefit of this Court’s *AT&T* decision or the government’s concessions. The Court should GVR to allow the D.C. Circuit to consider these significant developments and address petitioners’ entitlement to a refund under the new forfeiture framework. See, e.g., *Olivas v. United States*, 144 S. Ct. 2711 (2024) (GVR in light of intervening decision); *Breland v. United States*, 565 U.S. 1153 (2012) (GVR in light of government’s change of position); *Am. Gas Ass’n v. Dep’t of Energy*, No. 25-879, 608 U.S. ____ (June 8, 2026) (similar).

II. ALTERNATIVELY, THE COURT SHOULD GRANT PLENARY REVIEW.

If the Court does not GVR, it should grant plenary review. The decision below adopted an expansive, erroneous view of CPNI that sweeps in *all* information relating to the location of a mobile device, regardless of whether the device is engaged in a Title II voice call and regardless of whether the information is made available solely by virtue of a Title II relationship. 47 U.S.C. § 222(h)(1)(A). The court also incorrectly recharacterized a pure legal question—whether petitioners’ failure to immediately terminate their LBS programs amounted to one “continuing violation” or many under § 503(b)(2)(B)—as committed to the FCC’s discretion and subject only to deferential review. Both issues are important and recurring, and the decision below conflicts with the statutory text and this Court’s precedents.

A. The D.C. Circuit’s Interpretation Of CPNI Warrants Review.

Section 222 provides that information is CPNI only if it satisfies two requirements. First, the information must “relat[e] to the quantity, technical configuration, type, destination, *location*, and amount of *use of a telecommunications service*.” 47 U.S.C. § 222(h)(1)(A) (emphasis added). Second, it must be made available to the carrier “*solely* by virtue of the *carrier-customer* relationship.” *Ibid.* (emphasis added).

The D.C. Circuit held that all location information about a mobile device—not just call-location information—satisfies that definition. That erroneous, sweeping decision warrants review.

1. As now-Chairman Carr explained, the statutory requirement that location information “relate’ to the ‘*use of a telecommunications service*’” means that “the statute covers a particular type of data known as ‘call location information’—namely, the customer’s location *while making or receiving a voice call.*” App. 164a (Carr, dissenting) (first emphasis added).

Section 222 itself confirms this by twice referring to location CPNI as “call location information.” 47 U.S.C. § 222(d)(4), (f)(1). These two provisions governing the use of call-location information were added in 1999 as part of the same amendment that added the word “location” to the CPNI definition, confirming that “location” CPNI is synonymous with “call location information.” See Pub. L. No. 106–81, 113 Stat. 1286, 1288–89 (1999).

Prior to the NALs here, the FCC itself understood CPNI to refer to call-related information—for example, the “telephone numbers of calls dialed and received *and the location of the device at the time of the calls,*” and the “*location, date, and time a handset experiences a network event, such as a dialed or received telephone call [or] a dropped call.*” 28 FCC Rcd 9609, ¶¶ 22, 25 (2013) (emphasis added). The FCC never suggested that CPNI includes device-location information created when a mobile device is idle or engaged in a data session. To the contrary, it expressly *excluded* “information that pertains to the device’s *access of the carrier’s data network.*” *Id.* ¶¶ 22, 28 & n.66 (emphasis added).

Despite all this, the D.C. Circuit endorsed the novel, sweeping view of CPNI that a bare majority of the FCC adopted in the NALs and forfeiture orders

here. According to the decision below, “location CPNI is not limited to call location information” because “a customer ‘uses’ a telecommunications service *whenever his or her device connects to the carrier’s network.*” App. 28a, 30a (emphasis added); see App. 27a (“whenever a device connects to the network, the carrier is making telecommunications *available*” (emphasis added)).

The D.C. Circuit’s interpretation of CPNI conflicts with this Court’s precedents describing the ordinary meaning of “use.” The term “use” “impl[ies] action and implementation”—here, actively making or receiving a voice call—and does not include the “passive” act of registering on a network while the device is not being used. *Dubin v. United States*, 599 U.S. 110, 118–19 (2023); see *Black’s Law Dictionary* (7th ed. 1999) (“use” is “[t]he application or employment of something”). *Carpenter v. United States* confirmed as much, explaining that most modern smartphones “tap into the wireless network several times a minute whenever their signal is on, even if the owner is *not using* one of the phone’s features.” 585 U.S. 296, 300–01 (2018) (emphasis added). Thus, the Fourth Amendment issues in *Carpenter* were “not about ‘using a phone,’” but about obtaining data based on mere “physical presence” while a phone is not in use. *Id.* at 315 (emphasis added). The D.C. Circuit’s decision contradicts that straightforward interpretation.

2. Location information must also satisfy the second prong of the CPNI definition—it must be made available to the “telecommunications carrier ... *solely by virtue of* the carrier-customer relationship.” 47 U.S.C. § 222(h)(1)(A) (emphasis added). Call-location

information satisfies that definition; general device-location information does not.

A “telecommunications carrier” under § 222 is a “provider of *telecommunications* services,” *i.e.*, a provider of *voice* services subject to Title II common-carrier regulation. 47 U.S.C. § 153(51) (emphasis added); see *id.* § 153(11) (“carrier” refers to “common carrier”). The Communications Act draws a sharp distinction between telecommunications services (voice services) and information services (data and texting services). Only the former are subject to common-carrier regulation under Title II; the latter are subject to light-touch regulation under Title I. *Supra*, at 5–6. And the statute is clear that a company is a telecommunications carrier “*only* to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(51) (emphasis added).

The “carrier-customer relationship” regulated by § 222 (a Title II provision) therefore cannot encompass Title I information services. Yet it is undisputed that the device-location information used in the LBS programs was generated whenever a mobile device was powered on, even when it was not supporting any Title II voice services. See App. 6–7a, 165–66a. It is therefore “implausible” to conclude that the information was made available “*solely* by virtue of the *carrier-customer* relationship.” App. 166a (Carr, dissenting) (second emphasis added). This information was made available “even in the absence of a call, and even in the absence of a voice plan.” *Ibid.*

The D.C. Circuit said device-location information is covered because “the Carriers did not stop being carriers because they were also information-service

providers.” App. 31a. But that is not the test. Information is not CPNI unless it is made available “solely by virtue of” the voice-service relationship between the telecommunications carrier and the customer. 47 U.S.C. § 222(h)(1)(A) (emphasis added). And as this Court has explained, “[s]olely” means “alone,” or “for no reason other than.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 768 (2018); see also *Milner v. Dep’t of Navy*, 562 U.S. 562, 570 n.4 (2011) (phrase “relat[e] solely” in Freedom of Information Act “mean[s], as usual, ‘exclusively or only’”); *Nixon v. United States*, 506 U.S. 224, 231 (1993) (“[s]ole” means “‘having no companion,’ ‘solitary,’ ‘being the only one,’ and ‘functioning ... independently and without assistance or interference’”).

3. The D.C. Circuit’s dramatic expansion of CPNI merits review. The decision below treats *all* device-location information as CPNI and upholds \$92 million in forfeitures based on that definition. This holding will have significant consequences for carriers because it will trigger both the general duty to protect CPNI, see 47 U.S.C. § 222(c); 47 C.F.R. § 64.2010(a), and other FCC rules regarding access to and disclosure of that information, 47 C.F.R. §§ 64.2005–.2011. The decision below thus exposes wireless companies to significant new liability.

The decision below is particularly intolerable because petitioners, like other wireless companies, operate nationwide. It thus creates significant uncertainty as to which data will be deemed CPNI in which locations. For example, location data is frequently used to support broadband Internet access, which the Sixth Circuit has held “may not be classified” as a Title II service. *MCP No. 185*, 124 F.4th at 999, 1002.

The Third Circuit has likewise recognized that “[o]nly telecommunications service is subject to mandatory regulation under Title II.” *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205, 213 (3d Cir. 2007) (emphasis added). By sweeping data supporting information services into Title II, the decision below leaves carriers without a coherent, nationwide rule.

B. The D.C. Circuit’s Deference To The FCC’s Interpretation Of The Act’s Penalty Cap Warrants Review.

The D.C. Circuit also wrongly held that the FCC has discretion to determine whether a failure to act constitutes one “continuing violation” or many for purposes of the Act’s cap on penalty amounts—giving the FCC an easy mechanism for evading the cap.

1. The Communications Act imposes a cap on the total penalty amount for a continuing violation: “[T]he amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act” 47 U.S.C. § 503(b)(2)(B); see 34 FCC Rcd at 12828 (inflation adjustment setting this amount at \$2,048,915 for 2020). Petitioners argued that the forfeiture penalties here—\$80,080,000 for T-Mobile, and \$12,240,000 for Sprint—exceeded that cap as a matter of law because the forfeiture orders, by their terms, described only one “continuing violation”—namely, that each carrier had allegedly “placed its customers’ location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers’ location information.” App. 122a, 125–27a, 235a, 237–39a.

The FCC attempted to avoid the penalty cap by treating this failure to act as dozens of separate “continuing violations” under § 503(b)(2)(B)—one for every service provider that was allowed to continue offering services to customers under the LBS program after the *New York Times* published its Securus article. T-Mobile was thus deemed to have committed 73 continuing violations for failing to immediately terminate its program, and Sprint was deemed to have committed 11 continuing violations. App. 125–30a, 139–40a, 237–42a.

The D.C. Circuit acknowledged petitioners’ argument that they each “committed, at most, a single violation by continuing to operate their LBS programs.” App. 36a (quotation marks omitted).⁷ It further agreed that the facts are “undisputed”—“[n]either” T-Mobile nor Sprint “denies what happened.” App. 3a. Yet rather than interpret and apply the statutory language to the facts in the forfeiture order, the court rejected petitioners’ argument by deferring to the FCC, stating: “The Commission saw things differently, *and its approach was reasonable.*” App. 37a (emphasis added). According to the court, the FCC had

⁷ The court separately held in a footnote that petitioners had “forfeited” a statutory argument focused on the phrase “single act or failure to act.” App. 37a n.6. That conclusion is not at issue here because the parties ultimately did not dispute that issue. Each forfeiture order was premised on each carrier’s single “failure to terminate its program or impose reasonable safeguards,” App. 122a, 235a, and the government never argued otherwise. The key question was whether each company’s course of conduct amounted to more than one “continuing violation” within the meaning of § 503(b)(2)(B). The court of appeals agreed that petitioners “renew[ed]” this argument on appeal and rejected it by deferring to the FCC. App. 36a.

“interpreted section 503(b) as giving it ‘discretion’ to determine ‘the number of violations’ represented by a carrier’s conduct,” App. 37a n.6, and “it was reasonable for the Commission to conclude that each third-party relationship” with a LBS provider “formed the basis of a distinct violation,” App. 38a.

2. This Court should grant review to hold that courts decide for themselves whether the undisputed facts established in an FCC forfeiture order amount to one “continuing violation” under § 503(b)(1) or multiple violations. While challenges to the underlying factual findings *themselves* may be reviewed deferentially in the context of a Hobbs Act petition for review, deciding the number of “violation[s]” *supported by* those facts under § 503(b) is a question of law for courts to decide. This Court should reject the D.C. Circuit’s attempt to recharacterize this legal question as one committed to agency discretion.

The interpretation of a statute is a question of law for courts to decide. *Loper Bright*, 603 U.S. at 394. So too is the application of a statutory standard to established or undisputed facts. See *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 227 (2020). Indeed, when faced with a “mixed” question of law and fact, the meaning of the statute—including whether a legal standard is satisfied by certain evidence—is a question of law decided *de novo*. See *Bufkin v. Collins*, 604 U.S. 369, 382 (2025).

Under these principles, it did not matter whether the *agency* “interpreted section 503(b) as giving it ‘discretion’ to determine ‘the number of violations’ represented by a carrier’s conduct,” App. 37a n.6, because “agency interpretations of statutes ... are not entitled

to deference,” *Loper Bright*, 603 U.S. at 392. The court should have decided for itself whether, as a matter of law, each petitioner’s “failure to terminate its program or impose reasonable safeguards” (App. 122a, 235a) amounted to more than one “continuing violation” under § 503(b)(2)(B).

This is not a case where Congress authorized the FCC to “exercise a degree of discretion” or “fill up the details’ of a statutory scheme.” *Loper Bright*, 603 U.S. at 394–95. The decision below did not and could not identify any language in § 503 delegating to the FCC discretion to determine whether a given set of facts supports one or multiple “continuing violation[s]” under § 503(b)(2)(B). It merely deferred to the FCC’s claim of interpretive discretion and its application of the statute. That deference conflicts with *Loper Bright* and other precedents.

3. The decision below was not just wrong. By deferring to the FCC’s application of § 503(b)’s penalty cap to petitioners’ failure to act—finding 73 continuing violations for T-Mobile and 11 for Sprint—the court issued the FCC a blank check and created a blueprint for circumventing *Loper Bright*.

The FCC candidly acknowledged in the forfeiture orders that it sees no principled limit on its claimed authority to determine how many violations result from a single failure to act. According to the FCC, it “could well have chosen to look to the total number of ... subscribers when determining the number of violations,” which would have resulted in “tens of millions” of violations. App. 128a, 240a. That approach would

yield forfeitures reaching into the *hundreds of trillions* of dollars.⁸

Nor is the decision below an isolated error. The Second Circuit followed suit in *Verizon*, upholding penalties of nearly \$47 million for 63 purported violations. *Verizon*, 156 F.4th at 103. While the Second Circuit paid lip service to *Loper Bright*, it too interpreted § 503(b) to give the FCC the same *Chevron*-style discretion as the D.C. Circuit: the “discretion to select, from a reasonable range of possibilities, the unit of prosecution that can be considered a single violation of the Act.” *Id.* at 102.

To explain this position is to refute it. As Commissioner Simington explained, Congress did not authorize the FCC to treat “a single, systemic failure to follow the Commission’s rules” as “however many separate and continuing violations the Commission chooses to find.” App. 168a (Simington, dissenting). “It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an ‘act’ into its individual constituent parts” and “counting the members of whatever class of objects may be related to the alleged violation.” App. 169a.

The decision below has implications beyond § 503(b) as well—it is yet another instance of “*Loper Bright* avoidance.” *Am. Gas Ass’n*, 157 F.4th at 506 (Rao, J., dissenting). Although “*Chevron* is overruled,” *Loper Bright*, 603 U.S. at 412, it has not gone

⁸ T-Mobile and Sprint reported about 79.7 million and 54.5 million subscribers, respectively, during the relevant period. See T-Mobile, 2018 Form 10-K, <https://perma.cc/R6FJ-HC5B>; Sprint, 2018 Form 10-K, <https://perma.cc/WWB8-MURZ>.

away quietly. Courts have repeatedly found ways to defer to agency interpretations, effectively “resurrecting *Chevron*.” *Lopez v. Bondi*, 151 F.4th 1196, 1198 (9th Cir. 2025) (Bumatay, J., dissenting from denial of rehearing en banc); see, e.g., *Am. Gas Ass’n*, 157 F.4th at 488–94 (majority) (concluding statute has “ambiguity” and “[w]e have no reason to second-guess DOE’s view”); *Tennessee v. Becerra*, 131 F.4th 350, 373 (6th Cir. 2025) (Kethledge, J., dissenting in part) (disagreeing with agency’s claim that “*Loper Bright* is of no moment whatever” in determining its authority), *cert. granted, judgment vacated sub nom. Tennessee v. Kennedy*, 607 U.S. ____ (2026).

This case is an ideal vehicle for addressing judicial review of FCC penalty determinations under § 503(b). The issue is squarely presented, the penalties far exceed the roughly \$2 million inflation-adjusted cap, and the orders claim sweeping discretion to impose even *higher* penalties by finding tens of millions of violations on the same facts—even describing the result here as “eminently *conservative*.” App. 128a, 240a. This Court should grant certiorari to confirm that, under *Loper Bright*, courts do not defer to FCC conclusions about how many “violations” are established on the undisputed facts in a forfeiture order.

CONCLUSION

The petition for a writ of certiorari should be granted, the court of appeals' judgment should be vacated, and the case should be remanded for further consideration in light of *AT&T* and the government's concessions. Alternatively, the petition should be granted and the case set for briefing and argument.

Respectfully submitted.

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