

In the Supreme Court of the United States

SPRINT CORPORATION, NKA SPRINT LLC, ET AL,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The Federal Communications Commission (FCC) assessed monetary forfeiture penalties against petitioners for failing to take reasonable steps to protect the confidentiality of customer proprietary network information (CPNI). The questions presented are as follows:

1. Whether this Court should grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand the case for further consideration in light of *FCC v. AT&T, Inc.*, 608 U.S. 531 (2026).
2. Whether the court of appeals misconstrued the statutory definition of CPNI.
3. Whether the court of appeals wrongly deferred to the FCC's interpretation of the statute in upholding the FCC's calculation of the amount of the penalty.

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v.

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*ON PETITION FOR A WRIT OF CERTIORARI
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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-39a) is reported at 151 F.4th 347. The orders of the Federal Communications Commission (Pet. App. 42a-170a, 171a-275a) are reported at 39 FCC Rcd 4305 and 39 FCC Rcd 4350.

JURISDICTION

The judgment of the court of appeals (Pet. App. 40a-41a) was entered on August 15, 2025. A petition for rehearing was denied on January 23, 2026 (Pet. App. 276a-277a, 278a-279a). On April 10, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including May 23, 2026. On May 8, 2026, the Chief Justice further extended the time to and including June 22, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Communications Act of 1934 (Act), 47 U.S.C. 151 *et seq.*, establishes the Federal Communications Commission (FCC or Commission) and empowers it to regulate communications services. The Act requires telecommunications carriers to protect the confidentiality of “customer proprietary network information” (CPNI), which is defined as information that “relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service” and that “is made available to the carrier * * * solely by virtue of the carrier-customer relationship.” 47 U.S.C. 222(h)(1)(A). FCC regulations 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).

Under Section 503 of the Act, persons who have “willfully or repeatedly failed to comply” with the Act or FCC regulations “shall be liable to the United States for a forfeiture penalty.” 47 U.S.C. 503(b)(1)(B). At the time relevant to this case, the Act authorized a penalty of up to \$204,892 “for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of [\$2,048,915] for any single act or failure to act.” 47 U.S.C. 503(b)(2)(B); see *In re Adjustment of Civil Monetary Penalties to Reflect Inflation*, 34 FCC Rcd 12824, 12828 (2019). In determining the amount of a penalty, the Commission must “take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 U.S.C. 503(b)(2)(E).

Under the statutory procedure invoked in this case, the FCC may seek a forfeiture penalty by issuing a notice of apparent liability, giving the regulated party an opportunity to respond, and issuing a decision. See 47 U.S.C. 503(b)(4). The party then has two paths to seeking judicial review. First, the party may file a petition for review in a court of appeals under the Hobbs Act, 28 U.S.C. 2342(1). See 47 U.S.C. 402(a), 503(b)(3)(A). Second, the party may decline to pay the penalty. See *FCC v. AT&T, Inc.*, 608 U.S. 531, 537 (2026). To recover the penalty, the Department of Justice must then file a civil suit in district court, where the party may demand a *de novo* jury trial. See 47 U.S.C. 504(a).

2. In 2020, the FCC issued notices of apparent liability to petitioners Sprint and T-Mobile, alleging that they had willfully and repeatedly violated their duty to protect the confidentiality of CPNI. See Pet. App. 93a, 194a. The notices concerned petitioners’ sale of customers’ location data to aggregators, who in turn sold the information to companies that used the data to provide services such as maps and traffic alerts. See *id.* at 6a-7a. The notices alleged that petitioners had continued to disclose customers’ location data for months after learning of significant security vulnerabilities in petitioners’ programs. *Id.* at 7a.

After reviewing petitioners’ written responses, the FCC assessed penalties of \$12,240,000 against Sprint and \$80,080,000 against T-Mobile. Pet. App. 42a-170a, 171a-275a. The Commission rejected petitioners’ argument that the penalties would violate the Seventh Amendment, explaining that the Act “entitled [them] to a trial *de novo* in federal district court before [they] can be required to pay the forfeiture.” *Id.* at 132a, 246a. The Commission also rejected petitioners’ contention

that the location information at issue did not qualify as CPNI. The FCC stated that the information satisfies the statutory definition because it “relates to the location of a telecommunications service” and was obtained “solely by virtue of [petitioners’] customer-carrier relationship[s].” *Id.* at 66a, 71a, 196a, 202a. Finally, the Commission rejected petitioners’ argument that each of them had committed a single continuing violation, instead finding 11 violations by Sprint and 73 by T-Mobile—one for each third party that had been allowed to access customer data without reasonable safeguards. *Id.* at 126a-127a, 238a-239a.

3. Petitioners paid the penalties and sought refunds by filing petitions for review in the D.C. Circuit. Pet. App. 15a. The court denied the petitions. *Id.* at 1a-39a.

The court of appeals rejected petitioners’ contention that the FCC’s order violated the Seventh Amendment. Pet. App. 17a-22a. The court concluded that, by “allow[ing] [petitioners] to obtain a jury trial before suffering any legal consequences,” the Act preserved petitioners’ ability to seek a jury trial. *Id.* at 17a. The court stated that, by “cho[osing] not to wait for such a trial” and instead filing petitions for review, petitioners had “waived” their jury-trial rights. *Ibid.*

The court of appeals also rejected petitioners’ contention that the location information at issue falls outside the statutory definition of CPNI. Pet. App. 24a-32a. The court concluded that the information “‘relates to the location of a telecommunications service’” because it “was generated when customer devices connected to the nearest cell-tower in [petitioners’] networks to gain access to * * * the ability to send and receive calls.” *Id.* at 25a (quoting 47 U.S.C. 222(h)(1)). The court further concluded that the information was

“‘made available’ to [petitioners] ‘solely by virtue of the carrier-customer relationship’” because petitioner obtained the information when customers used their cell towers “to be able to make and receive phone calls.” *Id.* at 26a (quoting 47 U.S.C. 222(h)(1)).

Finally, the court of appeals rejected petitioners’ contention that each petitioner had committed, at most, a single violation of the Act. Pet. App. 36a-38a. The court observed that the “thrust” of petitioners’ challenge was that “the way the Commission viewed the facts was unreasonable.” *Id.* at 37a n.6. The court determined that, although petitioners had “gesture[d] at an argument” that the Commission had misunderstood “the meaning of the statute,” petitioners had not adequately developed that argument and had thus “forfeited any statutory challenge.” *Ibid.* Taking the dispute “‘as the parties ha[d] actually framed it,’” the court found it “reasonable for the Commission to conclude that each third-party relationship in which [petitioners] provided [customer location information] without adequate safeguards formed the basis of a distinct violation.” *Id.* at 37a n.6, 38a (brackets and citation omitted).

Petitioners filed a petition for rehearing, which the court of appeals denied. Pet. App. 276a-277a, 278a-279a.

4. After the court of appeals issued its decision, but before petitioners filed their petition for a writ of certiorari, this Court held in *AT&T* that the FCC forfeiture scheme at issue here complies with the Seventh Amendment. See 608 U.S. at 540-543. The Court explained that an FCC forfeiture order “d[oes] not create an obligation to pay,” and that the order’s “only legal effect is to enable the Department of Justice to file a [recovery] suit,” where the regulated party may demand a de novo jury trial. *Id.* at 541, 543.

REASONS FOR DENYING THE PETITION

Petitioners principally ask this Court (Pet. 17-23) to grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand the case (GVR) for further consideration in light of this Court's recent decision in *FCC v. AT&T, Inc.*, 608 U.S. 531 (2026). That request rests on contentions that lack merit and were forfeited below. This Court rejected a similar request for a remand in *AT&T* itself.

Petitioners alternatively seek (Pet. 24-34) plenary review, contending that the court of appeals misapplied the statutory definition of CPNI and wrongly accorded deference to the FCC's determination that petitioners had committed multiple violations of the Act. But the decision below does not conflict with any decision of this Court or of another court of appeals. The petition for a writ of certiorari should be denied.

1. Petitioners argue (Pet. 16, 22) that the *AT&T* Court "fundamentally changed the law governing FCC forfeiture orders" by holding that such orders do not create an obligation to pay, and that petitioners were "misled into paying" because they "did not have the benefit of those significant legal developments." That contention lacks merit and does not justify a GVR order.

a. When this Court interprets a statute, it identifies the statute's "single, best meaning," which was "fixed at the time of enactment." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) (citation omitted). The Court's reading "is the controlling interpretation of federal law * * * as to all events, regardless of whether such events predate or postdate" the Court's decision. *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312 (1994). The Court's decision in *AT&T* accordingly did

not “change[] the law.” Contra Pet. 16. Instead, it determined what the Act had meant all along.

Petitioners contend (Pet. 22) that they were “misled into paying the penalties” because they “did not have the benefit” of this Court’s guidance in *AT&T*. But while petitioners would be entitled to relief if they could show that the FCC affirmatively misled them, see *AT&T*, 608 U.S. at 548 n.5, they cannot establish an entitlement to relief simply by showing that the Act’s meaning was contested or unsettled before this Court decided *AT&T*. “[J]udicial decisionmaking * * * necessarily involves some peril to individual expectations because it is often difficult to predict [the Court’s interpretation of a statute] until it has been distilled in the crucible of litigation.” *Rivers*, 511 U.S. at 312; see *Loper Bright*, 603 U.S. at 384-385 (“The Framers * * * anticipated that ‘all new laws’ * * * would be ‘more or less obscure and equivocal, until their meaning’ was settled ‘by a series of particular discussions and adjudications.’”) (brackets and citation omitted).

The FCC did not mislead petitioners here. To the contrary, the Commission explained in the contested forfeiture orders that each petitioner was “entitled to a trial *de novo* in federal district court before it can be required to pay”; that each petitioner has a “statutory right to a trial *de novo* before it can be required to pay”; and that the option “to pay the forfeiture voluntarily does not diminish [the] statutory right to a trial *de novo*.” Pet. App. 141a-142a & n.315, 246a-247a & n.249. The same interpretation of the Act is reflected in other FCC orders, guidance issued by the Commission to regulated parties, and the Commission’s debt-collection procedures. See Gov’t Br. at 13-14, *AT&T*, *supra* (No. 25-406). The D.C. Circuit, too, has long read the Act the

same way. See, e.g., *Action for Children's Television v. FCC*, 59 F.3d 1249, 1261 (1995), cert. denied, 516 U.S. 1072 (1996); *Pleasant Broadcasting Co. v. FCC*, 564 F.2d 496, 498 (1977). Despite insisting (Pet. 3) that *AT&T* “changed the decades-old rules of the road,” petitioners do not cite a single judicial decision or FCC order or regulation concluding that an FCC forfeiture order creates an immediate obligation to pay.

Petitioners observe (Pet. 20) that the FCC orders here state that each petitioner “is liable for a monetary forfeiture” and that “payment of the forfeiture shall be made * * * within thirty (30) calendar days.” Pet. App. 156a, 261a-262a (capitalization and emphasis omitted). But in focusing on that isolated language, petitioners disregard the orders’ repeated statements (and the Commission’s longstanding position) that FCC forfeiture orders do not by themselves compel payment. As the government’s brief in *AT&T* explained, the boilerplate language highlighted by petitioners means only that, if the recipient of such an order does not pay the forfeiture within 30 days, the government may then file a civil suit to recover the forfeiture. See Gov’t Br. at 17-18, *AT&T*, *supra* (No. 25-406).

Petitioners argue that, because the forfeiture orders here invoked “the public-rights exception to the Seventh Amendment”—a theory that the government later abandoned in *AT&T*—“petitioners could not count on a jury trial.” Pet. 21 (emphasis omitted). But in including that language in the orders, the FCC meant only that, because these cases (in the agency’s view) involved public rights, the *Constitution* does not entitle the recipient of a Commission forfeiture order to a de novo jury trial. Pet. App. 149a-153a, 254a-259a. The agency recognized that the Act confers a “*statutory* entitlement” to such a

trial. *Id.* at 141a, 247a (emphasis added). In any event, an agency does not “mislead” a regulated party, *AT&T*, 608 U.S. at 548 n.5 (citation omitted), by abandoning an alternative legal theory that it previously advanced.

Finally, petitioners argue (Pet. 21-22) that, before this Court issued its decision in *AT&T*, petitioner faced uncertainty about whether the Hobbs Act, 28 U.S.C. 2342, precludes a district court in a de novo recovery suit from considering legal (as opposed to factual) challenges to an FCC forfeiture order. But any such uncertainty was resolved a year before *AT&T* by this Court’s decision in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 U.S. 146 (2025), which established that the Hobbs Act “does not bar district courts in enforcement proceedings from independently interpreting the meaning of the statute at issue.” *Id.* at 161. As explained above, moreover, mere uncertainty about statutory meaning, as distinguished from agency action that affirmatively misleads a party, does not provide a basis for relief. See p. 7, *supra*.

b. Three additional considerations counsel against a GVR order here.

First, a GVR order is “potentially appropriate” only where an intervening decision reveals a “reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). This case does not satisfy that criterion, since the decision below rested on the same understanding of the statute that this Court later adopted in *AT&T*. Compare Pet. App. 17a-18a (explaining that petitioners “had the option of responding to the notices [of apparent liability] by either (1) paying the penalty and seeking direct review in

a court of appeals * * * or (2) ‘doing nothing at all until they were served with a complaint,’ at which point they would have been ‘entitled to a trial de novo in district court’”) (brackets and citations omitted), with *AT&T*, 608 U.S. at 537 (“[T]he recipient has two options. First, it may seek review in the court of appeals under the Hobbs Act. * * * The recipient’s other option is to do nothing.”). The *AT&T* Court “express[ed] no view on the merits of th[e] argument” that “the specific forfeiture orders in th[at] case misled [the carriers],” *id.* at 548 n.5, and it would make little sense to issue a GVR order based upon an issue on which this Court expressed no opinion.

Second, petitioners had the opportunity to argue in the court of appeals that the language of the forfeiture orders was misleading. But petitioners did not raise that argument, even though they understood the FCC’s litigating position to be that, “if [petitioners] wanted a jury trial, they should have refused to pay the ordered forfeitures and awaited a [de novo recovery suit].” Pet. C.A. Reply Br. 11. Petitioners chose instead to raise the Seventh Amendment arguments that this Court later rejected in *AT&T*. See Pet. C.A. Br. 28-39; Pet. C.A. Reply Br. 5-15. Now that petitioners’ litigation strategy has failed, petitioners are not entitled to revive an alternative line of attack that they previously forfeited.

Third, a GVR order here would be inconsistent with this Court’s disposition of *AT&T*. The carriers there (AT&T and Verizon) argued that, if this Court accepted the FCC’s reading of the Act, it should “[a]t the very least” “vacate[]” the forfeiture orders and “require[] the FCC to return the penalties paid.” Reply Br. at 17, *AT&T, supra* (No. 25-406). But instead of pursuing that course, the Court (a) affirmed the Second Circuit’s

judgment upholding the forfeiture order against Verizon and (b) reversed the Fifth Circuit’s judgment setting aside the forfeiture order against AT&T. Verizon then filed a petition for rehearing, arguing that the Court should remand its case so that the Second Circuit could consider whether Verizon was misled by the FCC’s order. See Verizon Reh’g Pet. at 1-8, *AT&T*, *supra* (No. 25-406). The Court denied that rehearing petition. See *Verizon Communications Inc. v. FCC*, No. 25-567, 2026 WL 2374102 (Aug. 17, 2026). To grant a remand to Sprint and T-Mobile after denying one to Verizon would violate the principle of treating like cases alike.

2. Petitioners also contend (Pet. 24-29) that the court of appeals misinterpreted the statutory definition of CPNI. That contention does not warrant this Court’s review.

a. The Act defines CPNI to include information that “relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service” and “is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.” 47 U.S.C. 222(h)(1)(A). The court of appeals held that the customer location information here satisfies both parts of that definition. The court determined that the information “relates to the * * * location * * * of a telecommunications service,” *ibid.*, because the information “was generated when customer devices connected to the nearest cell tower in [petitioners’] networks to gain access to a telecommunications service—*i.e.*, the ability to send and receive calls,” Pet. App. 25a-26a. And it held that the information was “made available” to petitioners “solely by virtue of the carrier-customer relationship,” 47 U.S.C. 222(h)(1)(A), because petitioners had “obtained the location infor-

mation” as a result of their customers’ use of their cell towers “to be able to make and receive phone calls,” Pet. App. 26a.

Petitioners contend (Pet. 25-26) that information “relates to the * * * location * * * of a telecommunications service,” 47 U.S.C. 222(h)(1)(A), only if it concerns the location from which a customer places or receives a call. But the court of appeals rejected that theory, observing that the Act “refers to the ‘location of a telecommunications service,’ not the location of a voice call,” and that it “defines ‘telecommunications service’ as ‘the *offering* of telecommunications.’” Pet. App. 27a (emphasis added; citation and ellipsis omitted). The court concluded that the information here relates to the offering of telecommunications because it is generated when “cell phones connect periodically to cell towers,” which “is what enables the devices to send and receive calls at any moment.” *Ibid.*

Petitioners also contend (Pet. 26-27) that the information here was not collected “solely by virtue of the carrier-customer relationship,” 47 U.S.C. 222(h)(1)(A), because petitioners provide their customers with both telecommunications and information services, and because information services are not encompassed by the “carrier-customer relationship,” Pet. 27. But the court of appeals rejected that contention as well, noting that petitioners “were providing telecommunications service and were therefore acting as carriers for the purpos[e] of their relationship with their customers.” Pet. App. 31a. In the court’s view, “[t]he fact that [petitioners] also provided information service to customers did not ‘take the resulting relationship outside the scope of the “carrier-customer” relationship.’” *Ibid.* (brackets and citation omitted). The court emphasized that petitioners

“do not suggest that they ha[ve] two separate relationships with each customer,” “one as a carrier and one as an information-service provider,” and that “customers enter a single contract with [petitioners] for both telecommunications and information service[s].” *Ibid.*

b. The court of appeals’ decision does not warrant further review. The decision does not conflict with any decision of this Court. Petitioners contend (Pet. 26) that the court of appeals’ statement that “a customer ‘uses’ a telecommunications service whenever his or her device connects to the carrier’s network,” Pet. App. 28a, conflicts with this Court’s decisions in *Carpenter v. United States*, 585 U.S. 296 (2018), and *Dubin v. United States*, 599 U.S. 110 (2023). But neither of those cases involved the Communications Act, and neither decision interpreted the statutory definition of CPNI. Although the *Carpenter* Court observed that cell-site information can be generated “even if the owner is not using one of *the phone’s* features,” 585 U.S. at 300-301 (emphasis added), the Court did not define the circumstances under which “a customer ‘uses’ *a telecommunications service*” within the meaning of the Act, Pet. App. 28a (emphasis added). And the *Dubin* Court’s discussion of the word “‘use’” noted that the word “takes on different meanings depending on context.” 599 U.S. at 118 (citation omitted).

Nor does the decision below create a circuit conflict. The Second Circuit, the only other court of appeals to address whether location data is CPNI, has reached the same result as the D.C. Circuit here. See *Verizon Communications Inc. v. FCC*, 156 F.4th 86, 94 (2025), *aff’d*, 608 U.S. 531 (2026). Like the court below, the Second Circuit concluded that “device-location data” both “‘re-
lates to the * * * location * * * of a telecommunica-

tions service’” and is obtained “solely by virtue of the carrier-customer relationship.” *Ibid.* (citation and emphases omitted).

Petitioners assert (Pet. 28-29) that the decision below is in tension with a Third Circuit decision stating that “[o]nly telecommunications service is subject to mandatory regulation under Title II” of the Act, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205, 213 (2007), and with a Sixth Circuit decision recognizing that broadband internet service “may not be classified” as a Title II service, *In re MCP No. 185*, 124 F.4th 993, 1002 (2025). But petitioners misread the decision below, which does not purport to reclassify the underlying services or to determine the title of the Act under which they may be regulated. Instead, the decision simply interprets and applies the statutory definition of CPNI, which was not at issue in either *Time Warner* or *MCP*.

Petitioners are wrong to suggest (Pet. 28) that the decision below has “significant consequences.” The court of appeals’ analysis is highly case-specific and fact-bound. For example, in concluding that petitioners had obtained the location information at issue “solely by virtue of the carrier-customer relationship,” 47 U.S.C. 222(h)(1)(A), the court found it significant that “customers enter a single contract with [petitioners] for both telecommunications and information service,” Pet. App. 31a. The court’s decision also lacks prospective importance. Like all major wireless carriers, petitioners have voluntarily terminated their location-based-service programs. See *id.* at 7a. While petitioners emphasize (Pet. 28) the size of the forfeiture penalties (\$92 million in total), they do not claim that those penalties would materially affect their business, which reported \$88.3 billion

in revenue for 2025. See T-Mobile US, Inc., *Annual Report (Form 10-K)*, 59 (Feb. 11, 2026).*

3. Finally, petitioners contend (Pet. 29-34) that, in upholding the FCC’s calculation of the penalty amounts here, the court of appeals erroneously deferred to the agency’s interpretation of the statutory provision that establishes the maximum penalty. That claim lacks merit and does not warrant this Court’s review.

At the time relevant to this case, the Act authorized a penalty of up to \$204,892 “for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of [\$2,048,915] for any single act or failure to act.” 47 U.S.C. 503(b)(2)(B); see p. 2, *supra*. The FCC rejected petitioners’ contention that each petitioner had committed only a single violation, instead finding that each petitioner had committed a separate violation for each third-party service provider that was allowed to access customer data without proper safeguards. Pet. App. 126a-127a, 238a-239a. The court of appeals noted that the Commission’s finding “aligned with [petitioners’] own certification procedures, which imposed contractual obligations on third parties to safeguard CPNI on a relationship-by-relationship basis.” *Id.* at 37a. That finding also reflected petitioners’ practice of “vetting * * * [each] provider to ensure that their data privacy and customer-consent procedures” were adequate. *Ibid.* “That process implicitly recognized that every * * * service provider that accessed customer data in the absence of reasonable safeguards posed an independent danger of CPNI misuse.” *Id.* at 38a.

* https://s29.q4cdn.com/310188824/files/doc_financials/2025/q4/2025-FORM-10-K-vFinal.pdf

The “thrust of [petitioners’] challenge” in the court of appeals was that “the way the Commission viewed the facts was unreasonable.” Pet. App. 37a n.6. Although petitioners had “gesture[d] at an argument that their conduct amounted to only a single ‘failure to act’ within the meaning of the statute,” the court determined that petitioners had “forfeited any statutory challenge to the [FCC’s] determination” because they had raised that issue “in only ‘a cursory fashion, without’ real analysis of the relevant statutory text.” *Ibid.* (citation omitted). Consistent with “‘the principle of party presentation,’” the court “‘t[ook] the dispute as the parties ha[d] actually framed it,’ *i.e.*, as whether the Commission reasonably exercised its discretion.” *Ibid.* (brackets and citations omitted). The court held that “it was reasonable for the Commission to conclude that each third-party relationship in which [petitioners] provided [customer location information] without adequate safeguards formed the basis of a distinct violation.” *Id.* at 38a.

Under these circumstances, the court of appeals correctly deferred to the FCC’s judgment in rejecting petitioners’ challenge. Though courts generally must “decide legal questions by applying their own judgment,” they owe deference to “agency policymaking and fact-finding.” *Loper Bright*, 603 U.S. at 392. “[W]hen an agency exercises discretion granted by a statute, judicial review is typically conducted under the * * * deferential arbitrary-and-capricious standard,” under which “a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained.” *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 179-180 (2025). Because petitioners had contested “whether the Commission reasonably exercised

its discretion,” and the “thrust of [petitioners’] challenge [wa]s that the way the Commission viewed the facts was unreasonable,” the court correctly reviewed the agency’s decision only for reasonableness. Pet. App. 37a n.6.

Petitioners now reframe (Pet. 31) their argument as a purely “legal” challenge to the FCC’s interpretation of the Act. But the court of appeals concluded that petitioners had “forfeited any statutory challenge to the Commission’s determination,” and it therefore declined to consider any such claim. Pet. App. 37a n.6. This Court’s ordinarily denies review where, as here, “the question presented was not pressed or passed upon below.” *United States v. Williams*, 504 U.S. 36, 41 (1992) (citation omitted).

Petitioners contend that they forfeited only “a statutory argument focused on the phrase ‘single act or failure to act,’” and that they now seek to press a purportedly distinct argument based on the term “continuing violation.” Pet. 30 n.7 (citation omitted). The court below concluded, however, that petitioners had “forfeited *any* statutory challenge to the Commission’s determination.” Pet. App. 37a n.6 (emphasis added). And the relevant statutory text authorizes a penalty of up to \$204,892 “for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed [\$2,048,915] for any single act or failure to act.” 47 U.S.C. 503(b)(2)(B). Because the meanings of “continuing violation” and “single act or failure to act” are interrelated, a court cannot properly construe either term without reference to the other. At a minimum, the dispute about whether petitioners have adequately preserved their current con-

tentions makes this issue a poor candidate for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2026