

No. 25-1422

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**

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 DISCLOSURE STATEMENT

The corporate disclosure statement in the petition remains accurate.

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REPLY BRIEF FOR PETITIONERS

INTRODUCTION

This is a classic case for the procedural tool of GVR. In April 2024, the FCC ordered petitioners to pay more than \$92 million in civil forfeitures within 30 days. Petitioners paid under protest and petitioned for review in the D.C. Circuit—as the orders, the FCC’s rules, and D.C. Circuit precedent required.

Two years later, in *FCC v. AT&T, Inc.*, 608 U.S. 531 (2026), the government reversed course, conceding that regulated entities may lawfully refuse to pay FCC forfeiture orders and still raise all legal and factual challenges in a § 504(a) collection action culminating in a *de novo* jury trial. The government also conceded that an order purporting to compel payment exceeds the FCC’s authority, and that it cannot mislead someone into waiving his rights. This Court’s opinion rested on those concessions and declined to endorse the D.C. Circuit’s pay-to-petition precedent.

A GVR would let the court of appeals decide how *AT&T* and the government’s concessions affect this case. The government does not dispute that *AT&T* bears directly on this case. It argues only that *AT&T* should not ultimately change the result—a merits argument, not a cert-stage basis for denying a GVR. The government is also wrong. Petitioners did not voluntarily waive their jury-trial right or willingly part with \$92 million. They paid under protest because the FCC’s orders and rules commanded payment in language the government has since disavowed. And they paid because in 2024, Hobbs Act review was the only mechanism guaranteeing review of petitioners’ legal

objections, and D.C. Circuit precedent made payment a condition of that review. Petitioners are entitled to a refund.

Alternatively, the Court should grant plenary review. On the CPNI question, the decision below and the Second Circuit’s decision in *Verizon* rest on differing views of § 222’s scope. And the court of appeals’ holding that device-location data is CPNI reaches far beyond the programs at issue here, imposing Title II common-carrier duties on broad swaths of information that is covered under Title I, which governs data services. This creates significant regulatory uncertainty for nationwide carriers.

On the penalty-cap question, the BIO is notable for what it does *not* say. The government does not dispute the importance of the question presented—whether a court decides for itself how many “continuing violations” arise from a single failure to act under § 503(b). It concedes that the court of appeals deferred to the FCC. And it nowhere defends deference under the statute or *Loper Bright*. The decision below is thus “a textbook example of *Loper Bright* avoidance,” Chamber Br. 4, in a context that threatens to “tur[n] every misstep into a potentially existential enforcement action,” CTIA Br. 16. The government’s only response is a forfeiture argument that misreads the decision below, which expressly stated that petitioners “renew[ed]” the argument that they committed “at most, a single” continuing violation. App. 36a–37a. Petitioners’ court-of-appeals briefing devoted an *entire section* to that statutory issue.

The Court should grant, vacate, and remand or, alternatively, grant plenary review.

ARGUMENT

I. THE COURT SHOULD GRANT, VACATE, AND REMAND.

The government does not dispute that *AT&T* bears on the legality of the forfeiture orders and on petitioners’ entitlement to a refund. Adopting the government’s concessions, *AT&T* held that an FCC forfeiture order creates no obligation to pay and has no legal effect except to enable a § 504(a) suit—a trial *de novo* before a jury in which the FCC’s legal conclusions and factual findings receive no deference. 608 U.S. at 541–44 & n.1. The government concedes (at 7) that under *AT&T*, “petitioners would be entitled to relief if they could show that the FCC affirmatively misled them.” And the Court declined to endorse the “sound[ness]” of the D.C. Circuit’s precedent “that a regulated entity must first pay the forfeiture before it may obtain review in the court of appeals.” 608 U.S. at 546 n.4.

A GVR would let the court of appeals consider these developments. The government’s opposing arguments are premature and wrong.

1. The government leads (at 6–9) by arguing the merits: It denies that *AT&T* changed the law and insists that the FCC “did not mislead petitioners.” Those arguments are directed to the wrong court. This Court ordinarily lets the court of appeals decide in the first instance how an intervening decision or new government position affects the judgment below. Pet. 23 (collecting cases); see *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this is “a court of review, not of first view”). In *AT&T* itself, the government urged this Court to “leave for remand disputes about

whether” the carriers were “misled.” Tr. of Oral Arg. 75. The Court did so, *AT&T*, 608 U.S. at 548 n.5, and AT&T is now pressing that issue on remand in the Fifth Circuit. Petitioners should have the same opportunity.

2. The government’s merits arguments are also wrong.

a. The government first denies (at 6–7) that *AT&T* changed anything, invoking the principle that when the Court interprets a statute, it announces “what the Act had meant all along.” See *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312–13 (1994). But the government ignores *its own* change of position in *AT&T*, and *Rivers* aptly describes what the Court’s decision did: It “established that the prior decisions of” the lower courts, and the orders and rules of the FCC, “were *incorrect*,” *id.* at 312—and, at minimum, misleading.

In April 2024, no one understood FCC forfeiture orders to be optional. The “**ORDERING CLAUSES**” in petitioners’ orders stated that “[p]ayment of the forfeiture *shall be made ... within thirty (30) calendar days.*” App. 156a, 261a–262a (emphasis added). Contrary to the government’s suggestion (at 8), FCC regulations likewise provided that forfeiture orders specify the “date by which the forfeiture *must be paid*” before referral to DOJ “for *collection.*” 47 C.F.R. § 1.80(g)(4)–(5) (2024) (emphases added). Binding D.C. Circuit precedent required payment as a condition of Hobbs Act review. See *AT&T Corp. v. FCC*, 323 F.3d 1081, 1083–85 (D.C. Cir. 2003). And a carrier that defied an order—something no carrier had done in fifty years, Pet. 20–21—faced a § 504(a)

suit in a forum of the government’s choosing, where the government had argued, and several courts had held, that legal challenges were barred, and where no carrier had ever obtained a jury. See, *e.g.*, *United States v. Stevens*, 691 F.3d 620, 622–23 (5th Cir. 2012); *AT&T*, 608 U.S. at 553 (Thomas, J., dissenting).

AT&T changed that landscape. Adopting the government’s concessions, this Court held that an FCC forfeiture order cannot “create an obligation to pay”; that the “only legal effect” of an unpaid order “is to enable the Department of Justice to file a suit,” in which the carrier receives *de novo* review of “legal conclusions” and “factual determinations” before “a jury”; and that the FCC is “powerless to visit any adverse consequences on a regulated party” who declines to pay. *AT&T*, 608 U.S. at 541–44 & n.1. The Court also noted the government’s concession that it cannot mislead entities into waiving rights, and it pointedly declined to endorse the D.C. Circuit’s pay-to-petition precedent, *id.* at 546 n.4, 548 n.5, reflecting skepticism expressed by multiple Justices, see Pet. 15.

The regulated industry rightly recognized the government’s retrenchment in *AT&T* as a “seismic shift.” CTIA Br. 1. So too did multiple Justices at argument.¹ If *AT&T* “is an authoritative statement of what the statute meant before as well as after the [*AT&T*] decision,” *Rivers*, 511 U.S. at 312–13, then the FCC mis-

¹ See, *e.g.*, Tr. of Oral Arg. 73 (Kavanaugh, J.) (“[Y]ou’ve retreated in multiple ways from the original position that the government had.”); *id.* at 82–83 (Gorsuch, J.) (“[Y]ou’re running as far and as fast from that idea as you possibly can”).

led petitioners and acted unlawfully in 2024 by issuing orders commanding payment the Act never authorized.

b. The government also claims (at 7–8) that the orders were not misleading because, in rejecting petitioners’ Seventh Amendment arguments, they stated that each petitioner was “entitled to a trial *de novo* in federal district court before it can be required to pay.” But that statement—buried in the body of the orders, see App. 141a–142a, 246a–247a—did not qualify the categorical demand for payment within 30 days in the “**ORDERING CLAUSES.**” App. 156a–160a, 261a–265a; see Tr. of Oral Arg. 92–93 (Thomas, J.) (ordering clause lacks “disclaimer-type language”). The government itself conceded that “it might be a good idea” to “change the language of the order.” Tr. of Oral Arg. 93. And in April 2024, an unadorned reference to a “trial *de novo*” was no assurance, because the government maintained that a § 504(a) “trial *de novo*” *did not reach legal questions*. Pet. 18–19. That language did not permit an “intelligent election” about whether to pay. *Moser v. United States*, 341 U.S. 41, 47 (1951).

c. Finally, the government argues (at 9) that *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 U.S. 146 (2025), resolved any uncertainty about the availability of legal challenges in § 504(a) proceedings. But petitioners’ time to seek Hobbs Act review expired in June 2024, see 28 U.S.C. § 2344—months before this Court granted certiorari in *McLaughlin* and a year before it decided that case. *McLaughlin* says nothing about whether petitioners were misled in 2024.

3. The government’s “[t]hree additional considerations” (at 9–11) fare no better.

First, the government argues (at 9) that the decision below “rested on the same understanding of the statute” this Court adopted in *AT&T*. But the decision below held that petitioners “voluntarily surrendered” their jury right by paying rather than awaiting a § 504(a) action. App. 17a–18a. That holding assumes petitioners had a real choice in 2024. They did not: Petitioners paid because the orders, the FCC’s regulations, and D.C. Circuit precedent all required payment, and because a § 504(a) suit guaranteed neither review of legal issues nor a jury. *Supra*, at 4–6.

Second, the government claims (at 10) that petitioners should have argued below that the orders were misleading. But petitioners had no reason to doubt the FCC’s command to pay until the government’s concessions in *AT&T*—made nearly two years after payment, and three months after the D.C. Circuit denied rehearing. Even so, petitioners raised the substance of the issue below by explaining why they were forced to pay. *E.g.*, Pet. C.A. Br. 36 (Congress did not require petitioners “to play the part of a scofflaw”); *id.* at 35–36 (§ 504(a) proceeding inadequate). In any event, this Court does not typically resolve forfeiture disputes in the first instance, *e.g.*, *Dewberry Grp., Inc. v. Dewberry Eng’rs Inc.*, 604 U.S. 321, 330 (2025); if the government stands on its blame-the-victim objection, the D.C. Circuit can “decide whether to entertain these arguments in the first instance,” *Retirement Plans Committee of IBM v. Jander*, 589 U.S. 49, 52 (2020) (per curiam).

Third, the government argues (at 10–11) that a GVR would be inconsistent with the denial of Verizon’s petition for rehearing. Not at all. Verizon’s cert petition presented a single constitutional question about the Communications Act itself. *Verizon Commc’ns Inc. v. FCC*, No. 25-567 (Nov. 6, 2025); see Tr. of Oral Arg. 75. Because the government’s concessions came only in its merits brief, Verizon’s order-based arguments surfaced only in reply, and this Court declined to reach them. 608 U.S. at 548 n.5. The denial of Verizon’s rehearing request following plenary review does not support denying a GVR in a case the Court has not yet reviewed, on a question the petition presents.

* * *

The government should not keep more than \$92 million based on representations it no longer defends without any court considering whether the orders were misleading and unlawful in light of *AT&T*. A GVR is warranted.

II. ALTERNATIVELY, THE COURT SHOULD GRANT PLENARY REVIEW.

If the Court does not grant, vacate, and remand, it should grant plenary review of the two statutory questions presented. Both carry far-reaching consequences for regulated entities and for lower courts applying *Loper Bright*, as *amici* explain. See CTIA Br. 9–12, 15–19; Chamber Br. 18–22.

A. Review Is Warranted To Confirm That Device-Location Data Is Not CPNI.

Section 222 defines location information as CPNI only if it (1) relates to the location “*of use of a telecommunications service*,” and (2) was made available to

the carrier “*solely* by virtue of the *carrier*-customer relationship.” 47 U.S.C. § 222(h)(1)(A) (emphases added). Those requirements track the Act’s structure: Title II—including § 222—governs only common-carrier “telecommunications” service (*i.e.*, voice), while Internet access and texting are Title I “information services” exempt from Title II regulation. Pet. 5–7. The D.C. Circuit’s novel interpretation of CPNI disregards that text and structure and creates regulatory uncertainty nationwide.

1. The government first argues (at 13–14) that the Second Circuit “reached the same result” in *Verizon*’s case. But the Second Circuit held that § 222 reaches device-location data even for a data-only customer with no Title II voice service. *Verizon Commc’ns Inc. v. FCC*, 156 F.4th 86, 96 n.9 (2d Cir. 2025); CTIA Br. 11. The decision below, by contrast, rests on the fact that the same information supports both data and voice services. App. 28a, 31a. On that reasoning, data-only customers would fall outside § 222—yet the decision below does not make that clear.

The government also dismisses (at 14) *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007), and *In re MCP No. 185*, 124 F.4th 993 (6th Cir. 2025), because neither construed the definition of CPNI. That misses the point. Those decisions enforce the line between Title I and Title II services. *See MCP No. 185*, 124 F.4th at 1001–02; *Time Warner*, 507 F.3d at 213. The decision below blurs that line for § 222, subjecting information that supports Title I services to Title II common-carrier regulation and creating “substantial regulatory uncertainty” for nationwide carriers. CTIA Br. 4.

2. The government is wrong (at 14) that the decision below “is highly case-specific and fact-bound” and “lacks prospective importance.” Although the *programs* at issue were terminated, the decision below makes all device-location data CPNI, triggering § 222’s duties for every carrier that holds such data. Pet. 28; CTIA Br. 9–12.

3. Finally, the government argues (at 13) that the decision below does not conflict with *Carpenter v. United States*, 585 U.S. 296 (2018), or *Dubin v. United States*, 599 U.S. 110 (2023), because neither “involved the Communications Act” or CPNI. But *Dubin* confirms that the ordinary meaning of “use” implies “action and implementation,” 599 U.S. at 118, and *Carpenter* confirms that phones generate location information even when the owner “is not using” them, 585 U.S. at 300–01. The decision below nevertheless treats passive connection to the network as “use” of a telecommunications service. App. 28a.

B. Review Is Warranted To Curb *Loper Bright* Avoidance In An Especially Problematic Context.

Section 503(b) caps the penalty for “any continuing violation” by a common carrier at \$2,048,915. 47 U.S.C. § 503(b)(2)(B); 34 FCC Rcd 12824, 12828 (2019). The FCC nonetheless assessed more than \$92 million against petitioners, and the D.C. Circuit upheld that result by deferring to the agency’s reading of § 503(b) rather than analyzing its text. App. 37a & n.6. That *Loper Bright* avoidance—part of a growing pattern in the lower courts, see Chamber Br. 5–10—warrants review and is cleanly presented.

1. The government admits (at 16–17) that the D.C. Circuit “reviewed the agency’s decision only for reasonableness”—and tellingly, it does not defend that deference on its own terms. It does not claim that the number of “continuing violations” arising from undisputed conduct is a question of fact or policy, or identify any language in § 503(b) granting the FCC discretion to decide it. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394–95 (2024). Its sole defense is that deference was correct “[u]nder these circumstances” (at 16) because, as it reads the decision, the court of appeals deemed petitioners’ statutory argument forfeited. The government’s opposition thus rises or falls with its forfeiture argument.

2. The government attempts to muddy the waters by invoking (at 17) a footnote on forfeiture. But that footnote concerned an argument about a different statutory phrase—“single act or failure to act”—that the parties did not dispute. App. 37a n.6; see Pet. 30 n.7. Petitioners squarely challenged the FCC’s interpretation of “continuing violation,” as the court recognized two paragraphs earlier: Petitioners “renew[ed] their claim that ‘each Company committed, at most, a single’ violation.” App. 36a (quoting Pet. C.A. Br. 65). The government’s reading of the footnote as forfeiture of “*any* statutory challenge,” BIO 17 (emphasis added), cannot be squared with that acknowledgment. Indeed, petitioners’ briefing devoted an *entire section* to arguing that the penalties exceeded the cap because the statute “speaks in terms of an ‘act.’” Pet. C.A. Br. 64–67; Pet. C.A. Reply Br. 32–33.

3. Nor does the government dispute the question’s enormous importance. If the FCC may decide for itself how many “continuing violations” a single course

of conduct comprises, Congress’s cap is no cap at all: “a single, systemic failure” becomes “however many separate and continuing violations the Commission chooses to find.” App. 168a (Simington, dissenting). That discretion makes every enforcement action “potentially existential” for a carrier. CTIA Br. 16.

Left unreviewed, the decision below is a blueprint for resurrecting *Chevron*. Neither the D.C. Circuit nor the government contends that § 503(b) delegates discretion in a manner *Loper Bright* recognizes. Chamber Br. 19–22. If a court may defer to an agency’s reading of a statute simply by recharacterizing a legal question as a factual one, *Loper Bright* is easily evaded.

CONCLUSION

The Court should grant, vacate, and remand 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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