**Nos. 25-406 & 25-567**

# In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
PETITIONERS

*v.*

AT&T, INC.,
RESPONDENT

VERIZON COMMUNICATIONS INC.,
PETITIONER

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
RESPONDENT

*ON WRITS OF CERTIORARI*
*TO THE UNITED STATES COURTS OF APPEALS*
*FOR THE FIFTH AND SECOND CIRCUITS*

## BRIEF FOR THE WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF AT&T AND VERIZON


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## INTEREST OF AMICUS CURIAE[1]

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, government accountability, and the rule of law. WLF often appears as amicus curiae in critical cases involving the Seventh Amendment and the separation of powers. *See, e.g.*, *SEC* v. *Jarkesy*, 603 U.S. 109 (2024); *Lucia* v. *SEC*, 585 U.S. 237 (2018); *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010); *Tull* v. *United States*, 481 U.S. 412 (1987).

"The right to trial by jury is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.' Commentators recognized the right as 'the glory of the English law,' and it was prized by the American colonists." *Jarkesy*, 603 U.S. at 121 (first quoting *Dimick* v. *Schiedt*, 293 U.S. 474, 486 (1935); then quoting 3 W. Blackstone, Commentaries on the Laws of England 379 (8th ed. 1778)).

The rise of administrative agencies, especially those tasked with executing the laws through in-house adjudications, has long threatened to infringe on the jury-trial right. WLF believes that Article III courts—now, more than ever—must preserve the Constitution's guarantees, including the Seventh Amendment's jury-trial right.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus and its counsel made a monetary contribution to its preparation or submission. S. Ct. Rule 37.6.

## SUMMARY OF ARGUMENT

**I.** An illusory right is no right at all. This Court has repeatedly recognized that the government violates constitutional rights when it erects barriers to the exercise of those rights that effectively nullify them. This "unconstitutional conditions doctrine" prevents the government from doing indirectly what it cannot do directly. Threatened injury to reputational or economic interests is precisely the kind of unconstitutional condition the doctrine prohibits.

**II.** The reputational, economic, and regulatory consequences of defying a forfeiture order and instigating enforcement litigation are an unconstitutional condition on carriers' jury-trial rights. As a practical matter, carriers are deterred from exercising any jury-trial right provided by statute. Adverse agency action carries significant consequences, including through unfavorable publicity and loss of business. Those consequences are amplified if a carrier openly defies an FCC forfeiture order and forces the Department of Justice to institute enforcement proceedings, and they cannot be remedied through a jury trial. And the risk of falling out of favor with the FCC—which has the power to effectively end the business of carriers—is often too great for a carrier to bear. WLF has been unable to identify a single case where the subject of a forfeiture order litigated the case to a jury trial, confirming that such a right is illusory.

## ARGUMENT

The FCC "does not seek review" of the holdings below "that (a) a case in which the FCC seeks a forfeiture penalty to enforce Section 222 of the Act is a suit at common law and (b) such a suit falls outside the public-

rights exception to the Seventh Amendment and Article III." FCC Pet. (No. 25-406) at 7. AT&T and Verizon are therefore entitled to a jury trial on the FCC's assessment of forfeiture penalties. *See Jarkesy*, 603 U.S. at 123, 126, 140–41. The FCC also concedes that the statutory scheme's first route—a carrier paying the forfeiture penalty and then petitioning the court of appeals for review—does not provide a right to a jury trial. FCC Pet. (No. 25-406) at 11. Thus, if the second route—47 U.S.C. § 504(a)'s nonpayment "option"—does not provide the jury-trial right, then the statutory scheme violates the Seventh Amendment.

The nominal choice for a jury trial offered to the carrier is illusory. That route is littered with practical consequences that coerce a carrier into paying the forfeiture and relinquishing its right to a jury.

## I. An Illusory Jury-Trial Right Is No Right at All.

"A constitutional prohibition cannot be transgressed indirectly . . . any more than it can be violated by direct enactment." *Bailey* v. *Alabama*, 219 U.S. 219, 239 (1911). Congress therefore cannot, through "practical operation," indirectly restrict rights that it could not restrict "directly." *Speiser* v. *Randall*, 357 U.S. 513, 526 (1958); *see also Cap. Traction Co.* v. *Hof*, 174 U.S. 1, 28 (1899) ("A law containing arbitrary and unreasonable provisions, made with the intention of annihilating or impairing the trial by jury, would be subject to the same considerations as if the object had been openly and directly pursued.").

One way the law may indirectly—and impermissibly—burden constitutional rights is to erect a statutory scheme under which "exercise of those freedoms would in effect be penalized and inhibited."

*Perry* v. *Sindermann*, 408 U.S. 593, 597 (1972). Such schemes are prohibited by the "unconstitutional conditions doctrine," which "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013); *see also* Richard A. Epstein, *Unconstitutional Conditions, State Power, and the Limits of Consent*, 102 Harv. L. Rev. 4, 7 (1988) ("[T]he doctrine prevents the government from asking the individual to surrender by agreement rights that the government could not take by direct action.").

This Court has repeatedly applied this doctrine to declare unconstitutional statutes that effectively deter the exercise of a constitutional right. For example, in *United States* v. *Jackson*, the Court struck down a provision of the Federal Kidnaping Act that encouraged defendants to forgo their right to a jury trial by exempting such defendants from the possibility of the death penalty. 390 U.S. 570, 581–83 (1968). The Court explained that Congress's legitimate policy objectives "cannot be pursued by means that needlessly chill the exercise of basic constitutional rights." *Id.* at 582. Similarly, in *Terral* v. *Burke Construction Co.*, the Court held unconstitutional a state statute requiring the revocation of an out-of-state corporation's business license if the corporation brought or removed an action to a federal court sitting in the State. 257 U.S. 529, 531–33 (1922). And in *Frost* v. *Railroad Commission of State of California*, the Court struck down a State's attempt to condition the use of the State's highways on a private

carrier's consent to treatment as a common carrier. 271 U.S. 583, 591–94 (1926).

An unlawful "condition" on the exercise of a constitutional right may include exposure to reputational or vocational injury. For example, in *Shelton* v. *Tucker*, the Court struck down a state statute that required teachers to file annually an affidavit listing every organization to which they belonged or contributed during the preceding five years. 364 U.S. 479, 480 (1960). In holding that the statute impermissibly burdened teachers' First Amendment rights by discouraging association with politically unpopular groups, the Court pointed to a legitimate "fear of public disclosure" of the disclosed affiliations, "bringing with it the possibility of public pressure upon school boards to discharge teachers who belong to unpopular or minority organizations." *Id.* at 486–87. And even absent public disclosure, "the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy." *Id.* at 486. Likewise, in *Spevack* v. *Klein*, the Court held that "[t]he threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish" their Fifth Amendment privilege against self-incrimination. 385 U.S. 511, 516 (1967). The Court therefore struck down a state disbarment order based on an attorney's refusal to produce self-incriminating documents. *See generally ibid.*

The relevant question here, then, is whether § 504's nominal jury-trial right can *actually* be exercised by carriers in practice. If there are adverse consequences attached to the exercise of such a right or that otherwise

deter its invocation, then the statute has effectively nullified the Seventh Amendment right and is as unconstitutional as a direct prohibition. As shown below, that is precisely what has happened here.

## II. The Practical Consequences of Regulatory Defiance Foreclose a Jury Trial.

Section 504(a) nominally provides that "any suit for the recovery of a forfeiture imposed pursuant to the provisions of the chapter shall be a trial de novo." But to even reach the stage where it could demand a jury trial, the carrier must openly defy a forfeiture order from its primary regulator, risking significant injury to its business. The data confirms that no carrier is willing to accept that risk. Because the consequences of defying an FCC forfeiture order effectively foreclose a carrier from exercising its Seventh Amendment jury-trial right, the statute is unconstitutional.

### A. The Consequences of a § 504 Proceeding Deter Carriers from Exercising Their Rights.

Adverse agency action from the FCC, like such action from other agencies, harms the carrier's reputation among customers and thus its ability to effectively transact business. The reputational harm accrues upon dissemination of the order, and the economic fallout follows shortly thereafter—long before the carrier has its day in court. Opting to ignore the forfeiture order, await an enforcement action by the Department of Justice, and then insist on a jury risks deepening that reputational and economic injury, and there is little hope of remedying it even through a favorable jury verdict. Additionally, defying an FCC forfeiture order and instigating follow-on litigation risks impairing a

carrier's relationship with the FCC—its primary regulator—with potentially devastating consequences. These effects of exercising the jury-trial right impose an unconstitutional "condition" on a carrier's ability to conduct business under the oversight of the FCC.

**1.** A forfeiture order harms a carrier by publicly declaring that the carrier willfully violated law to the detriment of consumers. That reputational injury nearly always leads to corresponding economic injury from loss of business. Defying a forfeiture order and inciting the Department of Justice to file a follow-on § 504 action is likely to exacerbate that injury, with little prospect of any offsetting remedial effect.

The FCC's forfeiture orders issued in these cases state prominently:

> **IT IS ORDERED** that . . . [Verizon / AT&T] **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of [$46,901,250 / $57,265,625] for willfully and repeatedly violating section 222 of the [Communications] Act.

*In re AT&T, Inc.*, 39 F.C.C.R. 4216, 4251–52 (2024) (Appendix C (at 131a) to the FCC's Petition in No. 25-406); *In re Verizon Commc'ns*, 39 F.C.C.R. 4259, 4297 (2024) (Appendix B (at 138a) to Verizon's Petition in No. 25-567). These orders were accompanied by a press release publicly branding AT&T and Verizon as having "*illegally shar[ed] access* to customers' location information without consent."[2] The FCC also publicized on X (formerly Twitter) that it had fined AT&T "more

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[2] Press Release, Federal Commc'ns Comm'n (Apr. 29, 2024) (emphasis added), https://tinyurl.com/yn9zrkhs.

than $57 million" and Verizon "almost $47 million."[3] News articles likewise began pouring in, reporting AT&T and Verizon as having "*illegally shared access* to customers' location data."[4]

This kind of adverse agency action "causes reputational harm" that "changes the terms with which stakeholders such as investors and consumers are willing to exchange with the affected organization." Kishanthi Parella, *Reputational Regulation*, 67 Duke L.J. 907, 941 (2018). Crucially, that reputational harm often leads to "a *financial penalty* levied by consumers or investors," potentially "impos[ing] costs far exceeding any wrong committed." *Id.* at 917, 931 (emphasis added). Indeed, "a public statement made or ordered by an enforcer, directed at the offender," frequently encourages customers to "punish" the offender by "refusing to transact with them." David A. Skeel, Jr., *Shaming in Corporate Law*, 149 U. Pa. L. Rev. 1811, 1820–22 (2001) (citing Eric A. Posner, Law and Social Norms (2000)). This reputational damage may exceed—many times over—the ultimate penalty imposed by the agency. *See* Jonathan M. Karpoff, D. Scott Lee & Gerald S. Martin, *The Cost to Firms of Cooking the Books*, 43 J. Fin. & Quantitative Analysis 581, 582 (2008) (estimating that reputational loss exceeded the legal

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[3] @FCC, X (Apr. 30, 2024, 3:18 PM), https://perma.cc/T86W-85CU.

[4] Rebecca Klar, *AT&T, Verizon, T-Mobile Hit with $200M FCC Fine for Sharing User Location Data Without Consent*, The Hill (Apr. 29, 2024, 4:18 PM ET) (emphasis added), https://tinyurl.com/y4mpvf7v; *see also, e.g.*, *FCC Fines Wireless Carriers for Sharing User Locations Without Consent*, Associated Press News (Apr. 30, 2024, 10:35 AM ET), https://perma.cc/VJN7-YXT6 (the carriers "illegally shar[ed] customers' location data without their consent").

penalty by over 7.5 times in a sample of SEC enforcement actions).

These injuries from adverse regulatory action are not hypothetical. For example, this month, Apple's stock fell five percent (several hundreds of billions of dollars in market capitalization) the same day the Federal Trade Commission sent a letter to CEO Tim Cook "encourag[ing]" Apple to "ensure that Apple News' curation of articles" does not discriminate based on political viewpoint.[5] In 2024, global conglomerate Adani Group lost $27 billion in market capitalization after the Department of Justice accused it of bribery.[6] Similarly, in 2003, the stock price for pharmaceutical manufacturer SuperGen dropped nearly 25% hours after the FDA publicly criticized a press release from SuperGen as "misleading," "demonstrably false," and "egregious." William W. Vodra, Nathan G. Cortez & David E. Korn, *The Food and Drug Administration's Evolving Regulation of Press Releases: Limits and Challenges*, 61 Food & Drug L. J. 623, 649 (2006). These examples are merely the tip of the iceberg—reputational and economic injury from adverse regulatory coverage is the rule, not the exception.

This Court has also recognized the immediate adverse effect of punitive regulatory action. In the

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[5] *See* Letter from Andrew N. Ferguson, Chair, Fed. Trade Comm'n, to Timothy Cook, CEO, Apple Inc. (Feb. 12, 2026), https://perma.cc/2TS2-8XPX; Kara Greenberg, *Here's Why Apple's Stock Dropped 5% Today*, Yahoo! Finance (Feb. 12, 2026), https://tinyurl.com/yvv9v42e.

[6] Sethuraman N R, Bharath Rajeswaran & Indranil Sarkar, *US Indictments Scythe $27 Billion Off Value of India's Adani Group Firms*, Reuters (Nov. 21, 2024), https://tinyurl.com/2bha4fhy.

standing context, for example, the Court has allowed pre-enforcement challenges precisely because "[t]he price of noncompliance"—including potential loss "of public good will in [the] industry"—can be steep. *Gardner* v. *Toilet Goods Ass'n*, 387 U.S. 167, 172 (1967). Likewise, in the due process context, the Court has held that agency "findings of wrongdoing can result in harm to a broadcaster's reputation with viewers and advertisers," emphasizing the severe consequences of "reputational injury." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 256 (2012) (citation and quotation marks omitted).

A carrier who elects to defy an FCC forfeiture order and insists on a jury trial risks further—and potentially dramatic—reputational and economic injury. At the most basic level, the carrier openly ignores an agency order and becomes a debtor to the U.S. government. That kind of defiance can have "a detrimental effect on a corporation," including on its "'public image, stock price, and credit worthiness.'" Note, Crystal Joy Carpenter, *Federal Prosecution of Business Organizations: The Thompson Memorandum and Its Aftermath*, 59 Ala. L. Rev. 207, 214 (2007) (quoting *The Thompson Memorandum's Effect on the Right to Counsel in Corporate Investigations: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 110, at 85 (2006) (statement of Karen J. Mathis, President, American Bar Association)). The harm from the original forfeiture order is thus magnified several times over, branding the carrier as both a lawbreaker and insolent.

The injury is compounded if the Department of Justice—the arm of the government tasked with *criminal* prosecutions—files a § 504 suit against the

carrier. The mere act of the government's filing a lawsuit against a carrier has significant consequences, even if the underlying allegations are never proven. *See* Parella, *supra*, at 965–66; *cf. S. Methodist Univ. Ass'n of Women L. Students* v. *Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) ("[T]he mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm."). That is because "a governmental publication of a legal infringement is generally considered truthful." Sharon Yadin, *Regulatory Shaming*, 49 Envtl. L. 407, 416 (2019). A § 504 suit thus instigates another round of public scrutiny and financial repercussions, likely more harmful than the first round.

Leaving aside the risk of *further* reputational and economic injury, carriers often have limited incentive to pursue a jury trial for a forfeiture order because there may be little benefit. Once a carrier's reputation has been marred by the forfeiture order, there is little hope of repairing it. *See, e.g.*, Anne SY Cheung & Wolfgang Schulz, *Reputation Protection on Online Rating Sites*, 21 Stan. Tech. L. Rev. 310, 314 (2018) ("[G]ood reputation [is] painstakingly earned, easily lost and not readily rebuilt." (second alteration in original) (quoting David A. Anderson, *Reputation, Compensation and Proof*, 25 Wm. & Mary L. Rev. 747, 777 (1984))). There is thus little incentive for the carrier to take on the expense of a jury trial, because even a favorable verdict is unlikely to undo the wide-ranging reputational (and economic) injury associated with adverse agency action. And an adverse verdict, of course, could make things even worse.

Moreover, a carrier's defiance of an FCC forfeiture order extends an already lengthy adjudicative process,

creating uncertainty for the carrier's business and its partners. "If acquiring corporations cannot determine *with certainty* the liabilities and obligations of the target for which they will become responsible, the transaction is less likely to be consummated." Wendy B. Davis, *De Facto Merger, Federal Common Law, and* Erie*: Constitutional Issues in Successor Liability*, 2008 Colum. Bus. L. Rev. 529, 537. Courts likewise recognize, in analogous contexts, that prolonged, delayed resolution of agency action creates "uncertainty" that "may affect" the regulated entity's "ability to make future plans." *Potomac Elec. Power Co.* v. *I.C.C.*, 702 F.2d 1026, 1035 (D.C. Cir. 1983); *see also Cutler* v. *Hayes*, 818 F.2d 879, 896–97 (D.C. Cir. 1987) ("[E]xcessive delay saps the public confidence . . . and creates uncertainty for the parties, who must incorporate the potential effect of possible agency decisionmaking into future plans.").

These combined factors effectively deter a carrier from insisting on a jury trial, lest it compound the reputational and economic injury arising from a forfeiture order. Injury resulting from "public pressure" or harm to "professional reputation" are precisely the kind of disincentives the Court has held impermissibly chill the exercise of constitutional rights. *See Spevack*, 385 U.S. at 516; *Shelton*, 364 U.S. at 486. That is doubly true here, where the reputational effects often lead to significant economic consequences.

**2.** Refusing to comply with an FCC forfeiture order and forcing federal court litigation may also damage the carrier's standing before the FCC. Given the enormous power the FCC wields over regulated entities, drawing the disfavor of the FCC could spur more serious regulatory actions, some of which could end a carrier's

business entirely. Carriers are thus further dissuaded from attempting to exercise their jury-trial rights.

Generally, inviting litigation by defying one's primary regulator "is not an action to be taken lightly." Elliot Ganz, *Suing Your Regulators: A Case Study from a General Counsel's Perspective*, 11 Int'l In-House Counsel J. 1, 6 (2018). Such noncompliance is a "last resort" because regulated entities often are "reluctant to sue and risk souring relations with regulators they work with daily."[7] This wisdom pervades regulated entities across disciplines. *See, e.g.*, David A. Dana, *Land Use Regulation in an Age of Heightened Scrutiny*, 75 N.C. L. Rev. 1243, 1297 (1997) (noting, in the land use and development market, that "established developers whose businesses flourish on the basis of their relationships with regulators have a great deal to lose by seeking restitution and hence are less likely to [sue]").

Defying the FCC poses a particular challenge because many respondents in the FCC's administrative proceedings are heavily regulated entities that make frequent appearances before the agency. *See, e.g.*, *Fox Television Stations*, 567 U.S. 239; *FCC* v. *AT&T Inc.*, 562 U.S. 397 (2011); *Verizon* v. *FCC*, 740 F.3d 623 (D.C. Cir. 2014). Each carrier is therefore incentivized to win and retain the FCC's goodwill. And a carrier that defies an FCC forfeiture order risks a loss of trust with its primary regulator. *See* David Zaring, *The Corporatist Foundations of Financial Regulation*, 108 Iowa L. Rev. 1303, 1330, 1353–60 (2023) ("[T]he lack of litigation

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[7] Michelle Price & Carolina Mandl, *Wall Street Heads to Court to Fend Off Biden's Regulators*, Reuters (Nov. 21, 2023), https://tinyurl.com/3dkwe85w.

turns on the close relationship between regulators and regulated industry," as well as the regulator's wide discretion). Indeed, challenges to regulators "tend to be few and marginal when . . . each company knows the regulator will be repeatedly making discretionary decisions substantially impacting its business into the indefinite future." Nicholas R. Parrillo, *Administrative Law as a Choice of Business Strategy: Comparing the Industries Who Have Routinely Sued Their Regulators with the Industries Who Rarely Have*, 93 Geo. Wash. L. Rev. 1031, 1037 (2025); *see also* Roy Gava, *Challenging the Regulators: Enforcement and Appeals in Financial Regulation*, 16 Regul. & Governance 1265, 1278 (2022) ("Intensively supervised firms, which are assumed to be particular close and keen to keep a good relationship with regulatory authorities, are less inclined to appeal against their national primary regulators.").

Losing the FCC's favor and trust poses a significant risk for a regulated entity. The power of the FCC to punish a disfavored carrier cannot be overstated. A telephone carrier's ability to transmit communications is dependent on the FCC's grant of a license, *see* 47 U.S.C. § 301, and the FCC enjoys broad discretion in determining whether such a grant serves "public convenience, interest, or necessity," *id.* § 307(a); *see also FCC* v. *Pottsville Broad. Co.*, 309 U.S. 134, 138 (1940) (describing the wide "discretion" afforded to the FCC). The FCC conceded before the Fifth Circuit that "AT&T's wireless" business "is wholly contingent" on the FCC's ongoing determination that AT&T acts "consistent with the public interest." Br. for Respondents at 34, *AT&T, Inc. v. FCC*, 149 F.4th 491 (5th Cir. 2025) (No. 24-60223), 2024 WL 4370608. The FCC also claims the power to impose enterprise-ending penalties. In the

forfeiture proceedings here, for example, the FCC has asserted the right to calculate penalties on a per-subscriber basis, potentially exposing carriers to "forfeiture penalties in the hundreds of *trillions* of dollars." AT&T & Verizon Br. 14 (emphasis in original). The FCC therefore has the power to destroy a carrier's business.

The combined effect of this is to deter a carrier from ever trying to exercise its jury-trial right. Doing so would require outright defiance of a final order issued by its primary regulator with the power to end the carrier's business. The risk of such a reaction will often exceed (perhaps by many orders of magnitude) the benefits of a jury trial.

### B. The Data Confirms that Carriers Are Deterred from Exercising Their Rights.

The deterrence effect of the reputational and regulatory consequences of defying an agency order is apparent from real world experience. Of the hundreds of forfeiture orders issued by the FCC, only a small fraction are ever the subject of a recovery action under § 504—WLF has been able to find only *28* complaints brought by the Department of Justice under § 504.

Of those few § 504(a) actions that the United States has brought, WLF is unaware of any case that has proceeded to a jury trial. As the U.S. Chamber of Commerce observed, "[t]he FCC has cited only one 1974 case in which a jury trial 'was available' but was waived": *Ill. Citizens Comm. for Broadcasting* v. *FCC*, 515 F.2d 397, 405 (D.C. Cir. 1974). *See* Br. of Amicus Chamber of Commerce of the United States at 16 in No. 25-567 (citing Appendix A to Verizon's Petition at 125a). Instead, actions under § 504(a) are usually settled or

disposed of quickly on summary or default judgment grounds. *See, e.g.*, *United States* v. *U.S. Telecom Long Distance, Inc.*, No. 2:17-cv-02917-JAD-NJK (D. Nev. Nov. 18, 2018), Dkt. 31 (stipulated dismissal); *United States* v. *Peninsula Commc'ns, Inc.*, No. A02-295 CV (JWS) (D. Ala. Dec. 6, 2005), Dkt. 45 (stipulated dismissal after partial denial of summary judgment); *United States* v. *Neely*, 595 F. Supp. 2d 662, 666 (D.S.C. 2009) (summary judgment granted); *United States* v. *Downer*, No. 13-62428-CIV, 2014 WL 584209 (S.D. Fla. Feb. 14, 2014) (default judgment granted); *see also United States* v. *Mapa Broad., LLC*, No. 03-2149, 2004 WL 1146063 (E.D. La. May 17, 2004) ("Neither party demanded a jury trial."). Most forfeiture orders are paid in full, settled, or challenged in the court of appeals—with no jury ever adjudicating the carrier liable.

A jury trial on an FCC forfeiture order is therefore the rarest of exceptions, a practical unicorn in the world of regulatory enforcement. Carriers instead routinely elect to pay the fine upon issuance of the order or quickly relent once the Department of Justice gets involved. The jury trial promised by § 504 is a fiction, confirming that the statutory scheme unlawfully deprives carriers of their Seventh Amendment rights.

## CONCLUSION

The judgment should be affirmed in No. 25-406 and reversed in No. 25-567.

Respectfully submitted.

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