SULLIVAN & CROMWELL LLP

TELEPHONE: 1-202-956-7500
FACSIMILE: 1-202-956-7676
WWW.SULLCROM.COM

1700 New York Avenue, N.W.
Suite 700
Washington, D.C. 20006-5215

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April 16, 2026

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
Washington, D.C. 20543

Re:

Re: *FCC* v. *AT&T, Inc.*, No. 25-406
Verizon Communications Inc. v. *FCC*, No. 25-567

Dear Mr. Harris:

I write to correct an error in the reply brief in the above-captioned cases. Page 11 of the reply brief discusses this Court's decision in *NICOA* v. *Kleppe*, 423 U.S. 388 (1976), which concerned the Federal Coal Mine Health and Safety Act of 1969. The brief states:

> [I]t is far from clear that the civil penalties assessed under that statute were actually non-binding. If a defendant "fail[ed] to pay the penalty within the time prescribed in [the agency] order," Pub. L. No. 91-173, § 109(a)(4), 83 Stat. 742, 757 (1969), an ensuing collection action would involve "de novo" review of "issues relevant to the amount of the penalty." *NICOA* v. *Kleppe*, 423 U.S. 388, 393 (1976). As this Court explained, the statute did not make "trial de novo . . . *available on the factual basis of the violation*." *Id.* at 393 n.3 (emphasis added).

As written, the last sentence implies that this Court definitively resolved whether a trial was available on the factual basis of a violation. That is incorrect. Although *Kleppe* cited a Fourth Circuit decision reaching that conclusion, this Court described the question as "less than clear" and noted that it "need not reach the issue." 423 U.S. at 393 n.3. The last sentence should thus have stated (consistent with the first quoted sentence) that the statute did not *clearly* make a trial de novo available on the factual basis of the violation. I apologize for any misimpression caused by the omission of that qualification. I would appreciate if you could distribute this letter to the Members of the Court.

Sincerely,

/s/ Jeffrey B. Wall
Jeffrey B. Wall

cc: D. John Sauer
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
supremectbriefs@usdoj.gov
Ph: (202) 514-2217

Pratik Arvind Shah
Akin Gump Strauss Hauer & Feld, LLP
2001 K Street N.W.
Washington, D.C. 20006
pshah@akingump.com
Ph: (202) 887-4210