

In the Supreme Court of the United States

VERIZON COMMUNICATIONS INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

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

BRIEF FOR THE RESPONDENTS

D. ADAM CANDEUB
General Counsel
JACOB M. LEWIS
Associate General Counsel
SARAH E. CITRIN
*Deputy Associate
General Counsel*
SCOTT M. NOVECK
*Counsel
Federal Communications
Commission
Washington, DC 20554*

D. JOHN SAUER
*Solicitor General
Counsel of Record*
ABIGAIL A. SLATER
Assistant Attorney General
ROBERT B. NICHOLSON
MATTHEW A. WARING
Attorneys
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

The Communications Act of 1934, 47 U.S.C. 151 *et seq.*, empowers the Federal Communications Commission (FCC) to assess monetary forfeiture penalties for certain violations of the Act or the FCC's regulations by issuing a notice of apparent liability, giving the regulated party an opportunity to respond in writing, and then issuing a final decision. If the regulated party declines to pay and the government sues to collect the penalties, the regulated party is entitled to a *de novo* jury trial in a federal district court. Alternatively, the subject of an FCC forfeiture order may pay the monetary penalty and file a petition for review in a court of appeals, thereby triggering a judicial-review proceeding in which no jury is available. The question presented is as follows:

Whether the Communications Act provisions that govern the FCC's assessment and enforcement of monetary forfeitures are consistent with the Seventh Amendment and Article III.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement.....	1
Discussion	4
Conclusion.....	6

In the Supreme Court of the United States

No. 25-567

VERIZON COMMUNICATIONS INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

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

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 156 F.4th 86. The order of the Federal Communications Commission (Pet. App. 41a-151a) is reported at 39 FCC Rcd 4259.

JURISDICTION

The court of appeals issued its judgment on September 10, 2025. The petition for a writ of certiorari was filed on November 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Communications Act of 1934 (Communications Act or Act), 47 U.S.C. 151 *et seq.*, establishes the Federal Communications Commission (FCC or Commission) and empowers it to regulate communications services. Under Section 503 of the Act, which Congress

added to the statute in 1960, persons who have “willfully or repeatedly failed to comply” with the Act or the agency’s regulations (or who have committed certain other violations) “shall be liable to the United States for a forfeiture penalty.” 47 U.S.C. 503(b)(1)(B); see Communications Act Amendments, 1960, Pub. L. No. 86-752, § 7, 74 Stat. 894-895.

The Act establishes two alternative administrative procedures through which the FCC may seek monetary penalties. Under the procedure at issue here, the Commission issues a written notice of apparent liability, gives the regulated party an opportunity to respond in writing, and then issues a decision. See 47 U.S.C. 503(b)(4). Under the other procedure, the FCC issues a decision after a hearing before either an administrative law judge or the Commission itself. See 47 U.S.C. 503(b)(3)(A).

When the FCC issues a notice of apparent liability and then a forfeiture order, the regulated party has two options for obtaining judicial review of the monetary forfeiture. First, the party may pay the penalty and 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). The court must then review the agency’s order under standards prescribed by the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, in a proceeding that does not involve a jury.

Alternatively, the party may simply decline to pay the penalty. To enforce the FCC’s order and collect the money, the Department of Justice must then file a civil suit in federal district court under Section 504 of the Act. See 47 U.S.C. 504(a). A civil suit under Section 504 “shall be a trial de novo.” *Ibid.* A Section 504 suit therefore is more than “merely a collection proceeding”; it

enables the defendant “to contest * * * the merits” of the agency decision. S. Rep. No. 1857, 86th Cong., 2d Sess. 10 (1960).

2. In 2020, the FCC issued a notice of apparent liability to petitioner Verizon, seeking a forfeiture penalty based on allegations that petitioner had willfully and repeatedly violated its statutory and regulatory duty to protect the confidentiality of its customers’ data. See Pet. App. 8a-9a (citing 47 U.S.C. 222 and 47 C.F.R. 64.2010). The allegations involved petitioner’s location-based services—*i.e.*, services that track cellphone users’ locations in order to provide information such as maps and traffic alerts. See *id.* at 6a-7a. The agency alleged that petitioner had sold its customers’ location data to third parties without verifying the customers’ consent. See *id.* at 7a.

After reviewing petitioner’s written response, the FCC assessed a forfeiture penalty of \$46,901,250. Pet. App. 41a-151a. Petitioner argued that imposition of the penalty would violate the Seventh Amendment and Article III. The Commission rejected that argument, explaining that Section 504 entitled petitioner to a trial *de novo* in federal district court before petitioner could be required to pay the forfeiture. *Id.* at 132a.

3. Petitioner paid the penalty and filed a petition for review in the Second Circuit, which denied the petition. Pet. App. 1a-40a.

The court of appeals rejected petitioner’s contention that the FCC’s forfeiture order had “deprived the company of a jury trial in an Article III forum and so infringed its Seventh Amendment rights.” Pet. App. 2a; see *id.* at 34a-40a. The court “assume[d] for the sake of argument that [petitioner] has a Seventh Amendment right to trial by jury on the charges here.” *Id.* at 35a.

The court found, however, that “there is no Seventh Amendment problem here, because [petitioner] could have gotten such a trial.” *Ibid.* The court explained that petitioner “could have declined to pay the forfeiture and preserved its opportunity for a *de novo* jury trial if the government sought to collect,” but that petitioner had instead “chose[n] to pretermitt any § 504(a) enforcement action and seek immediate review in” the court of appeals. *Id.* at 36a. The court emphasized that the agency’s forfeiture order “does not, by itself, compel payment”; “[t]he government needs to initiate a collection action to do that.” *Ibid.* The court concluded that “the agency’s proceedings before a § 504(a) trial create no Seventh Amendment injury.” *Ibid.*

The court of appeals also rejected petitioner’s contention that “a § 504(a) trial falls short of the Seventh Amendment’s guarantee because [petitioner] would have needed to wait up to five years for the FCC to bring a collection action, during which time [petitioner] would suffer reputational and practical harms.” Pet. App. 37a. The court explained that such “reputational and practical harms” do not “implicate the Seventh Amendment, which requires a jury trial only upon an effort to collect payment of monetary damages.” *Ibid.*

Finally, the court of appeals rejected petitioner’s argument that “defendants in § 504(a) trials cannot challenge the FCC’s legal interpretations or raise constitutional challenges.” Pet. App. 38a. The court explained that Section 504(a), which guarantees a “trial *de novo*,” allows parties to raise “questions of law” as well as those of fact. *Ibid.* (citation omitted).

DISCUSSION

The Second Circuit correctly determined that the forfeiture order at issue here complies with the Seventh

Amendment. The government agrees with petitioner, however, that the question presented warrants this Court’s review and that the petition should be granted.

The government recently filed a petition for a writ of certiorari in *FCC v. AT&T, Inc.*, No. 25-406 (Oct. 2, 2025), a case in which the Fifth Circuit concluded that the Communications Act provisions authorizing the FCC to assess monetary forfeitures through notices of apparent liability violate the Seventh Amendment and Article III. The government explained that the Fifth Circuit’s decision warrants further review because it invalidates an Act of Congress; contravenes this Court’s Seventh Amendment precedents; conflicts with the Second Circuit’s decision in this case and with the D.C. Circuit’s decision in *Sprint Corp. v. FCC*, 151 F.4th 347 (2025); and has significant practical consequences. See Pet. at 15-18, *AT&T, supra* (No. 25-406).

This case presents the same question as *AT&T*. Though the Court could hold the petition for a writ of certiorari in this case pending the resolution of *AT&T*, the government does not object to petitioner’s request (Pet. 33-35) that the Court grant review in both cases. As petitioner observes (Pet. 33-34), when the Court receives two petitions presenting the same certworthy question, it often grants both petitions.

The government also agrees with petitioner that this Court should “realign the parties so that the carriers are on one side and the FCC is on the other.” Pet. 4. The Court need not, however, take that step in its order granting certiorari. Instead, the Court should enter an appropriate order after it grants review and the parties negotiate a briefing schedule. See, e.g., Order, *Campos-Chaves v. Garland*, No. 22-674 (Aug. 4, 2023) (adopting briefing schedule and realigning parties); Order, *Pugin*

v. *Garland*, No. 22-23 (Jan. 30, 2023) (same); Order, *Axon Enterprise Inc. v. FTC*, No. 21-86 (June 1, 2022) (same).

CONCLUSION

The petition for a writ of certiorari should be granted, and the case should be consolidated with *FCC v. AT&T, Inc.*, No. 25-406, petition for cert. pending (filed Oct. 2, 2025). Alternatively, the petition should be held pending the Court's resolution of *AT&T* and then disposed of as appropriate.

Respectfully submitted.

D. ADAM CANDEUB
General Counsel
 JACOB M. LEWIS
Associate General Counsel
 SARAH E. CITRIN
*Deputy Associate
 General Counsel*
 SCOTT M. NOVECK
*Counsel
 Federal Communications
 Commission*

D. JOHN SAUER
Solicitor General
 ABIGAIL A. SLATER
Assistant Attorney General
 ROBERT B. NICHOLSON
 MATTHEW A. WARING
Attorneys

DECEMBER 2025