No. 25-567

IN THE

Supreme Court of the United States

VERIZON COMMUNICATIONS INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.
Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF OF CTIA – THE WIRELESS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

In the decision below, the Second Circuit denied Petitioner Verizon Communications ("Verizon") its Seventh Amendment jury-trial right based on a fiction about a Federal Communications Commission ("FCC" or "Commission") forfeiture order. The Second Circuit concluded that the FCC's forfeiture order "does not, by itself, compel payment." Pet. App. 36a. One need look no further than the text of the FCC's order itself to see the flaw with that holding:

> Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Verizon Communications **IS LIABLE FOR A MONETARY FORFEITURE** .... Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.

Pet. App. 138a–39a (emphasis in original).

CTIA – The Wireless Association ("CTIA") urges this Court to grant Verizon's petition to review the Second Circuit's decision on this important constitutional issue. The decision has deepened an existing circuit split between the D.C. Circuit and the

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus*, its members, or its counsel made a monetary contribution to fund the brief's preparation or submission. *Amicus* provided timely notice of this filing to all parties.

Fifth Circuit. Further, it is wrong and effects an end-run around this Court's opinion in *SEC v. Jarkesy*, 603 U.S. 109 (2024).

CTIA has an interest in this case because its members are regulated by—and have significant business before—the FCC. CTIA represents the U.S. wireless industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association's members include wireless providers, device and equipment manufacturers, and suppliers, as well as app and content companies. These members all fall within the purview of the FCC's sectoral jurisdiction in some manner—and many have already had to answer to the FCC's roving (and expanding) enforcement efforts.

Thus, if the Second Circuit's analysis stands, these members risk being denied their right to a jury trial whenever they are accused of violating the Communications Act or the FCC's rules. It is for that reason that CTIA filed an *amicus* brief in the proceeding below and in related proceedings before the D.C. Circuit and the Fifth Circuit. *See AT&T, Inc. v. FCC*, 149 F.4th 491 (5th Cir. 2025); *Sprint Corp. v. FCC*, 151 F.4th 347 (D.C. Cir. 2025). To protect its members' constitutional rights, CTIA urges this Court to grant the petition.

SUMMARY OF ARGUMENT

This case stems from an investigation of four major wireless providers: AT&T, Sprint, T-Mobile, and Verizon. Following that investigation into an interrelated set of facts, the FCC accused each of these

providers of failing to take reasonable measures to protect certain information in violation of Section 222 of the Communications Act. *See* 47 U.S.C. § 222. The FCC preliminarily determined that each of these companies violated the statute and, after reviewing its own conclusion (without any involvement by an Article III court), the agency affirmed itself. It issued forfeiture orders against each company declaring them "**LIABLE FOR A MONETARY FORFEITURE**" of tens of millions of dollars and ordering that each "shall" make "[p]ayment of the forfeiture." *E.g.*, Pet. App. 138a–39a (emphasis in original). Each of the companies paid its respective forfeiture and challenged the orders under the Hobbs Act, 47 U.S.C. § 402(a); 28 U.S.C. § 2342(1), on the ground that, *inter alia*, the orders failed to give the companies an opportunity to defend themselves before a jury in violation of the Seventh Amendment.

Those challenges resulted in three decisions issued by three different Circuits over the course of a month: *AT&T, Inc. v. FCC*, 149 F.4th 491 (5th Cir. 2025); *Sprint Corp. v. FCC*, 151 F.4th 347 (D.C. Cir. 2025); and, at issue here, *Verizon Communications Inc. v. FCC*, 156 F.4th 86 (2d Cir. 2025). The Fifth Circuit, closely following this Court's recent decision in *SEC v. Jarkesy*, 603 U.S. 109 (2024), held that the FCC violated the Seventh Amendment. The D.C. and Second Circuits disagreed and found that the possibility of a "trial de novo," 47 U.S.C. § 504(a), in an optional subsequent collection proceeding by the Department of Justice ("DOJ") satisfied the Seventh Amendment.

The Court should grant Verizon's petition for writ of certiorari to review the Second Circuit's decision.

Every consideration governing review on certiorari favors a grant. First, there is an entrenched, acknowledged split in authority among the courts of appeals. Second, the Second Circuit's decision is wrong and would create a Seventh Amendment "exception" that "would swallow the rule" of entitlement to a jury. *Contra Jarkesy*, 603 U.S. at 131. And third, the Second Circuit's error raises an exceptionally important constitutional question that threatens to deprive parties before the FCC of their right to a jury trial.

ARGUMENT

I. THE CIRCUIT SPLIT WARRANTS THIS COURT'S REVIEW.

The petition here concerns a circuit split in its starkest form. Three different courts of appeals have, within the span of a single month, considered the same constitutional question applied to the same statutory scheme arising out of the same agency investigation involving essentially the same facts. One court held that the FCC violated the Seventh Amendment; two held that it did not. And the disagreements among these courts turn on pure questions of law, with the latter two courts expressly acknowledging the split.

First, in *AT&T, Inc. v. FCC*, 149 F.4th 491 (5th Cir. 2025), the Fifth Circuit held that the FCC's "in-house adjudication violated the Constitution by denying [AT&T] an Article III decisionmaker and a jury trial." *Id.* at 494. The Fifth Circuit's decision was a straightforward application of *Jarkesy*. It first found that the FCC's "civil penalties … are 'a type of

remedy at common law that could only be enforced in courts of law'"—a factor which was "'all but dispositive' of the Seventh Amendment issue." *Id.* at 498 (quoting *Jarkesy*, 603 U.S. at 123, 125). It then found that the FCC's "section 222 action [wa]s analogous to common law negligence," which also implicates the Seventh Amendment. *Id.* at 498–99.

With application of the Seventh Amendment established under a textbook *Jarkesy* analysis, the Fifth Circuit next addressed the Commission's backup arguments. The court first declined to create a blanket exception to the Seventh Amendment for suits that "involve[ ] common carriers" because the common-law tradition supports no such exception. *Id.* at 500–02.

The Fifth Circuit then rejected the FCC's contention that its forfeiture scheme satisfies the Seventh Amendment because "a carrier who fails to timely pay a forfeiture penalty may be sued by DOJ in federal district court" and, there, demand "a back-end section 504 trial." *Id.* at 503. Under Section 504 of the Communications Act, forfeitures are immediately "payable into the Treasury," but, if a target fails to pay, the forfeiture is "recoverable … in a civil suit in the name of the United States" via a "trial de novo." 47 U.S.C. § 504(a).[2] The Fifth Circuit explained that this "back-end" trial was insufficient because it was too uncertain and too late: "by the time DOJ sues (if it does), the Commission would have already adjudged

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[2] The Hobbs Act (which each of the providers followed here) allows a target to pay the forfeiture and seek review in an appropriate Court of Appeals. But this requires foregoing a jury trial completely.

a carrier guilty of violating section 222 and levied fines." *AT&T*, 149 F.4th at 503. And those fines, implemented through "forfeiture orders," are "not mere suggestions;" they carry "real-world impacts on carriers" that "refuse to pay." *Ibid.* With that, the Fifth Circuit concluded that the FCC's forfeiture order violated the Seventh Amendment.

Next, in *Sprint Corp. v. FCC*, 151 F.4th 347 (D.C. Cir. 2025), the D.C. Circuit rejected an identical Seventh Amendment argument raised by Sprint and T-Mobile. It did so under the FCC's second backup argument rejected by the Fifth Circuit. That is, the D.C. Circuit determined that the FCC's enforcement scheme comported with the Seventh Amendment because the providers had the "right to 'do nothing at all'"—just ignore the FCC's command, default on the agency's order, and wait "until the government brought an enforcement action" under Section 504 to demand a jury in "a trial *de novo*." *Id.* at 359–62. The D.C. Circuit expressly noted that it was disagreeing with the Fifth Circuit. *See id.* at 361. In the D.C. Circuit's view, a provider's "right to 'do nothing at all'" was sufficient to satisfy the Seventh Amendment because the FCC's final determination of liability and unambiguous demand for millions of dollars in penalties did not determine any "legal rights" or set any "legal penalties." *Ibid.*[3]

The last decision is the one at issue here. In *Verizon Communications Inc. v. FCC*, 156 F.4th 86 (2d Cir. 2025), the Second Circuit was confronted with the

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[3] That flawed decision is currently subject to a petition for rehearing, but—regardless of outcome—a circuit split will remain between the Fifth and Second Circuits.

dueling decisions of the Fifth and D.C. Circuits. It sided with the latter, again in reliance on the FCC's second backup argument that enforcement targets have a right to do nothing. Pet. App. 34a–40a. The Second Circuit held that the FCC did not violate Verizon's right to a jury trial because "Verizon could have declined to pay the forfeiture," defaulted on its debt, and waited for "a *de novo* jury trial if the government sought to collect." *Id.* at 36a. The Second Circuit disagreed with the Fifth Circuit that the FCC's final adjudication of guilt and the resulting "real-world impacts" "implicate the Seventh Amendment." *Id.* at 36a–37a (quoting *AT&T*, 149 F.4th at 503).

The result of these decisions is a clean circuit split on a single issue: in the face of a final FCC order declaring a provider's actions unlawful and requiring payment, does the so-called "right to do nothing" and wait for a collection proceeding satisfy the Seventh Amendment? Granting this petition and the Solicitor General's companion petition in the Fifth Circuit case, *see* Petition for Writ of Certiorari, *FCC v. AT&T* (No. 25-406) (filed Oct. 3, 2025) ("AT&T Pet."), will allow this Court to consider decisions on both sides of the split and to resolve the important underlying constitutional issue.

II. THE GRAVITY OF THE SECOND CIRCUIT'S ERROR WARRANTS THIS COURT'S REVIEW.

The Second Circuit's decision is wrong. Start with what is not in dispute: the FCC's imposition of forfeiture penalties undoubtedly "implicates the Seventh Amendment." *Jarkesy*, 603 U.S. at 121.

Forfeiture penalties are "a form of monetary relief" designed "to punish culpable individuals," *id.* at 123, and the substantive "cause of action"—an alleged failure to implement "reasonable" security measures—is analogous to "common law" negligence, *see id.* at 125; *accord AT&T*, 149 F.4th at 498–99. Indeed, the Second Circuit assumed as much, Pet. App. 35a, and the Government now concedes the point. *See* AT&T Pet. 7 ("The government does not seek review of the Fifth Circuit's holding[ ] that … a case in which the FCC seeks a forfeiture penalty to enforce Section 222 of the Act is a suit at common law.").

The Second Circuit erred in nevertheless finding "no Seventh Amendment problem" on the theory that "[t]he FCC's forfeiture order … does not, by itself, compel payment." Pet. App. 35a–36a. The forfeiture order, the Communications Act, and the real-world consequences show why that is wrong.

The order itself is unambiguous. It reads: "**IT IS SO ORDERED**" that "Verizon Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of forty-six million, nine-hundred and one thousand, two hundred and fifty dollars ($46,901,250) for willfully and repeatedly violating section 222 of the Act and section 64.2010 of the Commission's rules." Pet. App. 138a (emphasis in original). "Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order." *Id.* at 139a. The FCC thus "ruled definitively" on Verizon's liability, thereby "giv[ing] rise to direct and appreciable legal consequences." *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S.

590, 598 (2016). And it ordered that payment "shall be made" within a specified time, invoking words of compulsion. *See CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 232 (2025) ("the use of the word 'shall' creates an obligation").

The text of the Communications Act contemplates that such FCC orders are binding. Violations of the statute are "determined by the Commission." 47 U.S.C. § 503(b)(1). Upon such a determination, the subject of a forfeiture order "shall be liable to the United States for a forfeiture penalty." *Ibid.* "The amount of such forfeiture penalty shall be assessed by the Commission" or "its designee." *Id.* § 503(b)(2)(E). Such "forfeitures … shall be payable into the Treasury of the United States." *Id.* § 504(a). At issuance of the order, the forfeiture has been "imposed pursuant to the" Communications Act. *Ibid.*

The Second Circuit wrongly disregarded these legal consequences solely based on the possibility of a future collection proceeding. In such a proceeding, if a party disobeys the FCC's command to pay, the forfeiture is "recoverable … in a civil suit in the name of the United States brought in" federal district court. 47 U.S.C. § 504(a). And "any suit for the recovery of a forfeiture imposed pursuant to [the Communications Act] shall be a trial de novo." *Ibid.* In the Second Circuit's view, the FCC's unambiguous determination of liability and demand for payment did not matter because "Verizon could have declined to pay the forfeiture and preserved its opportunity for a *de novo* jury trial if the government sought to collect." Pet. App. 35a–36a. In other words, Verizon should have simply defaulted on its debt and "exercise[d] [its] right to 'do nothing at all.'" *Sprint Corp.*, 151 F.4th at 361.

But that hypothetical future collection proceeding does not undo the fact that Verizon was already subject to a "Suit[ ] at common law" at the FCC, U.S. Const. amend. VII, which culminated in a forfeiture order determining liability and requiring payment. Upon issuance of that order, the FCC had "already adjudged a carrier guilty of violating section 222 and levied fines," acting "as prosecutor, jury, and judge" through a "completely in-house" proceeding. *AT&T*, 149 F.4th at 503. Indeed, in any other context, including a potential collection action brought by DOJ, it seems unlikely the FCC would be shy about emphasizing the finality, certainty, and legally binding nature of its order.

As Verizon explains (at 21–23), any future Section 504 collection suit cannot remedy the deprivation of a jury trial in the FCC's forfeiture proceeding because that subsequent suit would be its own "distinct legal action." After all, Section 504 itself makes clear that a "civil suit" serves to collect a "forfeiture" that has already been "*imposed*." 47 U.S.C. § 504(a) (emphasis added). That past-tense wording makes clear that Congress—the creator of the enforcement scheme and the Government's cause of action—deemed the imposition of civil penalties complete upon the issuance of a forfeiture order. *See Hewitt v. United States*, 606 U.S. 419, 427 (2025) ("Congress' use of a verb tense is significant in construing statutes"). Because the issuance of a forfeiture order marks the completion of the "initial adjudication," *Jarkesy*, 603 U.S. at 128, the relevant suit at common law ends before any Section 504 collection action begins. "A proceeding that has already happened cannot be undone"—and so a subsequent collection suit (if the government ever chooses to bring it) cannot remedy

the FCC's prior "illegitimate proceeding" and its "unconstitutionally structured decisionmaking process." *Cf. Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191–92 (2023).

The facts on the ground reinforce that the issuance of a forfeiture order marks the completion of a distinct common-law suit. As the Fifth Circuit explained, the FCC's "forfeiture orders … are not mere suggestions—to the contrary, they have real-world impacts on carriers." *AT&T*, 149 F.4th at 503. Being publicly branded a lawbreaker and ordered to pay millions "leaves most" forfeiture-order targets "with little practical alternative but to dance to the [FCC]'s tune." *Sackett v. EPA*, 566 U.S. 120, 132 (2012) (Alito, J., concurring). Parties in Verizon's shoes suffer "reputational harm" because a federal agency's formal determination of wrongdoing is typically "widely publicized and reported." *AT&T*, 149 F.4th at 503 (citing *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 256 (2012)). And with multi-million-dollar judgments hanging over their heads like a Sword of Damocles, forfeiture-order targets may struggle to access credit, obtain insurance, close transactions, or capitalize on other business opportunities. These parties must, at a minimum, set aside funds to be ready to pay millions of dollars as they "wait for DOJ to drag [them] into court," *AT&T*, 149 F.4th at 503, at some point in the next half decade (if ever), *see* 28 U.S.C. § 2462. They must also report their debt "payable into the Treasury," 47 U.S.C. § 504(a), to a slew of federal and state regulators. The subject of one of these determinations of liability can clear its name in front of a jury only when and if the Government, in its sole discretion, brings a suit.

If the Court were to accept this legal theory, it would create a Seventh Amendment "exception" that "would swallow the rule." *Jarkesy*, 603 U.S. at 131. In the Second Circuit's view, an agency can hold a party liable for violations of federal law and demand financially ruinous penalties (which, in the FCC's view, could have reached $236 trillion for the alleged conduct here, *see* Pet. 32) without ever presenting its case before a jury—so long as there is a theoretical option for a party to "wait[ ] for" the agency "to 'drop the hammer' in order to have their day in court," *Hawkes*, 578 U.S. at 600. In other words, Congress can vest plenary, jury-free, adjudicatory power with federal agencies as long as those agencies then hold targets in years-long purgatory with what ultimately has turned out to be an illusory opportunity for a jury trial at the end of the tunnel. *See* Pet. 8 ("No Section 504 jury trial has actually occurred, at least within the last 50 years.").

That cannot be the law. "If the protections extended to" Americans "by the Bill of Rights can be so easily circumvented, most of them would be … vain and idle enactments, which accomplished nothing, and most unnecessarily excited Congress and the people on their passage." *Monge v. California*, 524 U.S. 721, 738–39 (1998) (Scalia, J., dissenting) (alterations accepted). The gravity of the Second Circuit's error thus further counsels in favor of this Court's review.

III. THE IMPORTANCE OF THE QUESTION PRESENTED WARRANTS THIS COURT'S REVIEW.

This Court has a "solemn responsibility … to safeguard constitutional rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). This case directly implicates that responsibility.

The FCC has a routine—and ongoing—policy of depriving parties of their Seventh Amendment right to a jury trial. Indeed, despite the Fifth Circuit's determination that the FCC's forfeiture procedure is unconstitutional, the agency has continued its unlawful practice undeterred. *See, e.g.*, *Masner Beauplan*, Forfeiture Order, FCC 25-56, 2025 WL 2622226, ¶ 1(rel. Sep. 10, 2025) ("We impose a penalty of $920,000"). The agency has apparently taken the position that it can continue to impose monetary penalties without a jury trial because it has no "alternative" (i.e., constitutional) "avenue for seeking monetary penalties." AT&T Pet. 18. Thus, absent intervention by this Court, the FCC will continue to impose massive financial penalties and deprive enforcement targets of their Seventh Amendment jury-trial right as a matter of course.

The Seventh Amendment's right to a jury trial is simply too "dear to the American people," *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 434 (1830), to leave fundamental questions about its scope unanswered. The Court should thus grant the petition to ensure that "any seeming curtailment of the right" is "scrutinized with the utmost care." *Jarkesy*, 603 U.S. at 121 (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)).

CONCLUSION

The Court should grant the petition.

December 12, 2025

Respectfully Submitted,

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