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.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Second and Fifth Circuits

BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND BUSINESS ROUNDTABLE IN SUPPORT OF AT&T AND VERIZON

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.

Business Roundtable represents more than 200 chief executive officers of America's leading companies. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. gross domestic product. Business Roundtable was founded on the belief that businesses should play an active and effective role in the formulation of public policy, and Business Roundtable members develop and advocate for policies to promote a thriving U.S. economy and expanded opportunity for all. Business Roundtable participates in litigation as *amicus curiae* when important business interests are at stake.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Businesses, and corporate officers and directors, are frequent respondents in administrative enforcement actions brought by the Federal Communications Commission ("FCC"). The Chamber and Business Roundtable have a significant interest in ensuring that those proceedings respect the Constitution's structural limitations. Specifically, they submit this brief to ensure that respondents in FCC enforcement actions are afforded their right to a jury trial and that the agency follows orderly administrative processes subject to judicial review by the federal courts.

As explained below, the Seventh Amendment violations in these cases are straightforward. The FCC leveraged an in-house prosecution scheme to find AT&T and Verizon liable for over $100 million in combined penalties. Worse yet, the FCC imposed these staggering penalties based upon a novel interpretation of the Communications Act, for conduct that was not at the time a violation of any agency rule or law. That enforcement procedure was plainly unconstitutional, and the Court should rule for AT&T and Verizon.

INTRODUCTION AND SUMMARY OF ARGUMENT

These cases demonstrate the perils of agency overreach before juryless tribunals. The FCC imposed a $46.9 million penalty on Verizon and a $57.3 million penalty on AT&T. But the FCC did not prove either case before an Article III judge and jury, as the Constitution requires. Instead, the FCC proved each case to itself, acting as the prosecutor, judge, and jury—while rewriting the law in the process.

The Framers recognized that the "accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 298 (James Madison) (Clinton Rossiter ed., 2003). That is why they separated the legislative and executive powers from the judicial and granted the right to trial by jury as a further check against government overreach.

This "fundamental" right to trial by jury has long served as "one of our most vital barriers to governmental arbitrariness." *Reid v. Covert*, 354 U.S. 1, 9–10 (1957) (plurality op.). Indeed, the American people insisted upon the Seventh Amendment precisely because they feared that the federal government might dispense with the jury in seeking to penalize them for violations of federal law.

Those fears were born from experience. As the Court recently observed in *SEC v. Jarkesy*, British authorities expanded admiralty jurisdiction in the 1760s to enforce unpopular acts of Parliament without juries. *See* 603 U.S. 109, 121 (2024). The people were outraged by the denial of this "great and inestimable privilege." 1 *Journals of the Continental Congress, 1774–1789*, at 69 (Oct. 14, 1774) (W. Ford ed. 1904). And so the Declaration of Independence identified the deprivation of the jury right among its grievances against the Crown. *See The Declaration of Independence* para. 20 (U.S. 1776). Soon after, the Constitution secured that right in criminal cases. *See* U.S. Const. art. III, § 2, cl. 3. But the people demanded more. They refused to tolerate the risk that the federal government might pursue enforcement

actions for monetary penalties before juryless tribunals—just as the British had done in the past. Thus, the Seventh Amendment became "the price exacted in many States for approval of the Constitution." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 342 (1979) (Rehnquist, J., dissenting).

Here, AT&T and Verizon seek to assert their Seventh Amendment rights to check the excesses of arbitrary government power. The Fifth Circuit correctly upheld "the Constitution's guarantees of an Article III decisionmaker and a jury trial" for AT&T. *AT&T, Inc. v. FCC*, 149 F.4th 491, 503 (5th Cir. 2025). Yet the Second Circuit sanctioned the FCC's juryless in-house proceeding because Verizon could theoretically avail itself of a trial by jury in a separate government action to "recover[]" the "forfeiture penalt[y]" under Section 504(a) of the Communications Act. *Verizon Commcn's Inc. v. FCC*, 156 F.4th 86, 107 (2d Cir. 2025).

That peculiar statutory scheme is no substitute for a jury trial in the first instance—as the Fifth Circuit rightly recognized. Under the Second Circuit's view, a telecommunications carrier must default on the penalty imposed by the agency. And after failing to comply, the carrier must wait for the DOJ to commence a separate collection action (which it may never do), leaving the carrier an adjudicated lawbreaker, laboring under a cloud of uncertainty and collateral consequences all the while.

It is unsurprising, then, that no Section 504(a) jury trial has occurred in fifty years. The FCC's forfeiture orders are final agency determinations against highly regulated carriers that compel them to make payment.

The FCC said as much in the forfeiture orders, declaring each carrier "liable for a monetary forfeiture," which "shall be made . . . within thirty (30) calendar days." Verizon.Pet.App.138a–39a (emphasis omitted); AT&T.Pet.App.131a. A carrier's right to petition for judicial review of the final agency order likewise depends upon payment. And the DOJ's separate statutory route to recovery against a defaulting carrier does not cure the lack of jury trial in the initial suit. Nor does it make up for the immediate legal, economic, and reputational harm from the forfeiture order. A jury trial was "necessary" in the "initial adjudication" of the FCC's "common law claims." *Jarkesy*, 603 U.S. at 128.

To make matters worse, the FCC has asserted sweeping power to impose ruinous and unpredictable civil penalties. The FCC reads the Communications Act to grant it broad discretion to impose penalties that, in a case like Verizon's, could reach *$326 trillion*. *See* Verizon.Cert.Pet.32; Pet.Br.14. Lacking an independent check on agency discretion, the FCC's asserted authority invites a "ludicrous . . . result[]" that permits the FCC to regulate in a "draconian fashion." *See United States v. WIYN Radio, Inc.*, 614 F.2d 495, 497–98 (5th Cir. 1980). The FCC's claim to such arbitrary power makes AT&T and Verizon's Seventh Amendment rights at the initial adjudication all the more necessary.

The Court should affirm the Fifth Circuit's judgment and reverse the Second Circuit's misinterpretation of the Seventh Amendment.

ARGUMENT

I. The FCC's Process for Imposing Penalties Contravenes the Seventh Amendment.

The FCC may not impose civil penalties on AT&T and Verizon without the protection of a trial by jury before an Article III court. This Court in *Jarkesy* made that clear. Examining the text, history, and precedent underlying the Seventh Amendment, the Court concluded that "the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud." *Jarkesy*, 603 U.S. at 120. These cases are no different.

A. At the Founding, the People Insisted on the Civil Jury Right to Check Governmental Power.

The Seventh Amendment was adopted specifically to check the government's power to impose penalties upon the people for civil violations. The Framers viewed Parliament's curtailment of that civil jury right as a chief grievance against the British Crown. And the FCC's effort to levy in-house penalties here is strikingly similar to the juryless proceedings that our forebearers fought a revolution to abolish.

1. The Seventh Amendment Arose Out of the Crown's Expansion of Juryless Admiralty Courts.

The Framers recognized that "structural protections against abuse of power [are] critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). And key among those structural protections was the right to trial by jury. At the time of the Founding, that "most excellent method of

decision" had long been hailed as "the glory of the English law." 3 William Blackstone, *Commentaries on the Laws of England* 391 (1768). It was therefore "prized by the American colonists" in both criminal and civil cases alike. *Jarkesy*, 603 U.S. at 121.

But "as tensions grew between the British Empire and its American Colonies, imperial authorities responded by stripping away th[e] ancient [jury trial] right" on this side of the Atlantic. *Erlinger v. United States*, 602 U.S. 821, 829 (2024). Parliament expanded the jurisdiction of the juryless admiralty courts—most notably through the Stamp Act—to a range of cases traditionally tried in common law courts. *See* Carl Ubbelohde, *The Vice-Admiralty Courts and the American Revolution* 12–13, 63, 145–46, 206–08 (1960). These proceedings deprived colonists of jury trials in cases where Crown prosecutors sought significant penalties, including monetary fines. *See* Eric Grant, *A Revolutionary View of the Seventh Amendment and the Just Compensation Clause*, 91 Nw. U. L. Rev. 144, 151 n.28 (1996). And just as authorities envisioned, this "tactic proved 'most effective' at securing the verdicts they wished." *Erlinger*, 602 U.S. at 829 (citation omitted).

In response, the voters of Boston ranked "the Jurisdiction of the Admiralty"—next to taxation without representation—as their "greatest Grievance." 1 John Phillip Reid, *Constitutional History of the American Revolution: The Authority of Rights* 177 (1986) (citation omitted). John Adams similarly declared that "the most cruel" and "unjust Innovation" of the Stamp Act was "the alarming Extension of the Powers of Courts of Admiralty . . . .

In these Courts, one Judge alone, presides. No Juries, have any Concern there." *Letter from John Adams to Ebenezer Thayer* (Sept. 24, 1765), bit.ly/3zl0Ezn (last visited Feb. 25, 2026).

Other colonial leaders harbored similar feelings toward the juryless tribunals. Pennsylvania's Assembly protested that "the vesting and Authority in the Courts of Admiralty to decide in Suits relating to the Stamp Duty, and other Matters, foreign to their proper Jurisdiction, is highly dangerous to the Liberties of his Majesty['s] American Subjects" and "destructive of one of their most darling and acknowledged Rights, that of Trials by Juries." *Resolves of the Pennsylvania Assembly on the Stamp Act* (Sept. 21, 1765), bit.ly/3ZJrjAp (last visited Feb. 25, 2026). Maryland's legislature echoed that view, declaring that the expansion of admiralty jurisdiction "render[ed] the Subject insecure in his Liberty and Property." Reid, *supra*, at 48–49 (quoting *Maryland Resolves*, Sept. 28, 1765). The legislatures of New York and Virginia issued similar resolutions. *See id.* at 49. And in the first collective action against British policy, nine colonies formed the Stamp Act Congress of 1765 in protest. That Congress objected to the juryless admiralty courts, resolving that "trial by jury is the inherent and invaluable right of every British subject in these colonies," and that the Stamp Act and similar acts "have a manifest tendency to subvert the rights and liberties of the colonists." *Resolutions of the Continental Congress* (Oct. 19, 1765), bit.ly/4qRuDqU (last visited Feb. 25, 2026).

As the unrest in the colonies persisted, the Crown's continued reliance on admiralty courts pushed the

colonists toward declaring independence. The First Continental Congress raised formal objections to juryless tribunals. *See* 1 *Journals of the Continental Congress 1774–1789*, at 69 (Oct. 14, 1774). The Second Continental Congress did the same, complaining that colonists were deprived "of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property." *Declaration of the Causes and Necessity of Taking Up Arms* (July 6, 1775), reprinted in *Select Charters and Other Documents Illustrative of American History 1606–1775*, at 374, 376 (William MacDonald ed., 1906). Then, in 1776, the Declaration of Independence identified "depriving [the colonists] in many cases, of the benefits of Trial by Jury," among its list of grievances against the King. *The Declaration of Independence* para. 20 (U.S. 1776). Early Americans thus understood the vital importance of the jury, and the Crown's decision to channel enforcement actions away from them served as a major catalyst for the Revolutionary War. *See* Ubbelohde, *supra*, at 209.

2. At the Founding, the People Insisted on the Civil Jury Right's Inclusion in the Bill of Rights.

Despite this history, the civil jury right was not initially included in the Constitution. While attempts were made to include such a provision at the Constitutional Convention, the effort failed because "proponents of a civil jury guarantee found too difficult the task of fashioning words appropriate to cover the different state practices." *Colgrove v. Battin*, 413 U.S. 149, 153 (1973).

The Constitution's omission of a civil jury right was a stumbling block to ratification. As Alexander

Hamilton admitted, "[t]he objection to the plan of the convention, which has met with most success in [New York], and perhaps in several of the other States, is that relative to the want of a constitutional provision for the trial by jury in civil cases." The Federalist No. 83, at 494 (Alexander Hamilton) (emphasis omitted). The people recalled the Crown's circumvention of civil juries and feared that, without an express constitutional constraint, the new federal government might follow suit.

This concern over the lack of civil jury protections rang loud in the Anti-Federalist charge. For instance, before the Maryland House of Delegates, Luther Martin explained that jury trials had "long been considered the surest barrier against arbitrary power, and the palladium of liberty." Luther Martin, *Genuine Information* (1787), reprinted in 3 *The Records of the Federal Convention of 1787*, at 172, 221 (Max Farrand ed., 1911) (italics omitted). Martin was most concerned about civil disputes "between government and its officers on the one part, and the subject or citizen on the other," as these were the "very cases where, of all others, [the jury trial] was most essential for [the people's] liberty." *Id*. at 222 (italics omitted).

The pleas of Martin and other Anti-Federalists were persuasive. They "struck a responsive chord in the populace, and the price exacted in many States for approval of the Constitution was the appending of a list of recommended amendments, chief among them a clause securing the right of jury trial in civil cases." *Parklane Hosiery*, 439 U.S. at 342 (Rehnquist, J., dissenting).

James Madison heeded those calls when he introduced the Bill of Rights in the House. Indeed, he described the "[t]rial by jury" as equally "essential to secur[ing] the liberty of the people as any one of the preexistent rights of nature." 1 *Annals of Congress* 454 (1789) (Joseph Gales ed., 1834). Soon after, the First Congress proposed the Seventh Amendment and submitted it to the States without debate. *See Heritage Guide to the Constitution* 464 (David F. Forte & Matthew Spalding eds., 2d ed. 2014).

The States then ratified the Seventh Amendment to "preserve[]" the civil jury right in "Suits at common law." U.S. Const. amend. VII. And the people understood this language to "embrace[] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Jarkesy*, 603 U.S. at 122 (citation omitted).

B. The Seventh Amendment Gives AT&T and Verizon a Right to a Jury Trial.

Because the Seventh Amendment was ratified chiefly to protect citizens against government actions, the FCC's effort to impose penalties on AT&T and Verizon falls within the heart of that right.

This Court made that clear in *Jarkesy*, where it vindicated a similar challenge to the SEC's imposition of civil penalties in its in-house administrative tribunals. *See* 603 U.S. at 140. Along the way, this Court stressed that "whether [a] claim is statutory is immaterial" to the Seventh Amendment analysis. *Id.* at 122. Rather, "[t]he Seventh Amendment extends to a particular statutory claim if the claim is 'legal in nature.'" *Id.* (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989)). And "[t]o determine

whether a suit is legal in nature," the Court "consider[ed] the cause of action and the remedy it provides," noting that the remedy was the "'more important' consideration." *Id.* at 122–23 (citation omitted). The "civil penalties in [that] case [were] designed to punish and deter, not to compensate," and they were accordingly "'a type of remedy at common law that could only be enforced in courts of law.'" *Id.* at 125 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)).

So too here. As in *Jarkesy*, the "remedy is all but dispositive" of AT&T and Verizon's Seventh Amendment rights to a jury trial. *Id.* at 123. The FCC, like the SEC, "seeks civil penalties" that are "designed to punish or deter the wrongdoer." *Id.* These remedies implicate the jury right and can "only be enforced in courts of law." *Id.* (citation omitted).

The government itself has observed as much, stating that an FCC forfeiture "is a civil penalty" that is "plainly punitive in nature." United States Br. 12, *United States v. Rhodes*, No. 9:21-cv-0110-DLC (D. Mont. Mar. 1, 2024), ECF No. 108. It involves a "per-violation maximum penalty," and it "is designed to punish culpable individuals, rather than to extract compensation or restore the status quo." *Id.* (cleaned up); *see* 47 U.S.C. § 503(b). All this shows that the "civil penalties in [these] case[s] are designed to punish and deter," and that "effectively decides that [these] suit[s] implicate[] the Seventh Amendment right" to a jury trial. *Jarkesy*, 603 U.S. at 125.

Jarkesy "confirm[ed] that conclusion" by identifying a "close relationship" between the securities fraud claim at issue there and common-law

fraud. *Id.* That same type of "close relationship" exists here. As the Fifth Circuit explained below, the claim asserted in the FCC's forfeiture order is analogous to common-law negligence. *See AT&T*, 149 F.4th at 498–99. Section 222 imposes a statutory "duty to protect the confidentiality" of customer proprietary network information. 47 U.S.C. § 222(a). And that duty requires carriers to "take reasonable measures to discover and protect against attempts to gain unauthorized access." 47 C.F.R. § 64.2010(a). That sort of "reasonableness" analysis is "a staple of the common law" tort of negligence. *AT&T*, 149 F.4th at 499. Accordingly, the "substance" of the claim here "is closely analogous to a negligence action." *Id.*

The FCC also cannot find safe harbor within the Seventh Amendment's "public rights" exception. Indeed, "[i]f a suit is in the nature of an action at common law"—as these two unquestionably are—"then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." *Jarkesy*, 603 U.S. at 128. The government can rebut that presumption only by pointing to firmly rooted "background legal principles" that justify a departure from the text of Article III and the Seventh Amendment. *Id.* at 131; *see also id.* at 153 (Gorsuch, J., concurring) ("[T]raditionally recognized public rights have at least one feature in common: a serious and unbroken historical pedigree."). That is true "[e]ven when [the] action 'originates in a newly fashioned regulatory scheme.'" *Id.* at 134 (majority op.) (citation and brackets omitted).

These cases do not involve any traditionally recognized public right, like the collection and

disbursement of tax revenues from a customs agent, the granting of land patents, or immigration matters. *See id*. at 128–30; *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 281–85 (1856). Nor is there any reason to expand the doctrine to this new telecommunications context. "The public rights exception is, after all, an *exception*" that "has no textual basis in the Constitution." *Jarkesy*, 603 U.S. at 131. It thus must be applied "with care" and "close attention" to Founding-era history; otherwise, "the exception would swallow the rule." *Id*. The FCC did not (and cannot) identify any such history on its side. *See* Verizon.Pet.App.132a; AT&T.Pet.App.124a–25a. Its proceedings thus contravene AT&T and Verizon's Seventh Amendment rights to trial by jury.

C. The FCC's Peculiar Statutory Scheme Does Not Save It from Violating *Jarkesy*.

Nothing about the FCC's back-end judicial review scheme changes this conclusion. The Communications Act vests the FCC with the power to conduct an agency adjudication and to issue a final order. *See* 47 U.S.C. § 503(b)(1); 28 U.S.C. § 2342(1). It then provides that, if a carrier timely pays the penalty, the carrier may petition for review in the appropriate court of appeals. *See* 47 U.S.C. § 402(a); 28 U.S.C. §§ 2342(1), 2344. But seeking judicial review of the forfeiture in the court of appeals under the statute forces the carrier to forgo any chance at a jury trial. *See AT&T*, 149 F.4th at 495.

The Second Circuit held that Verizon's jury trial right was preserved based on a theoretical second path to court. *See Verizon*, 156 F.4th at 105. Namely, Congress provided that if the carrier fails to pay the penalty, the DOJ may choose to bring a separate

collection action in federal district court, at which point the carrier could invoke the right to a jury for the first time. *See* 47 U.S.C. §§ 503(b)(4), 504(a). According to the court, "the government['s] need[] to initiate a collection action" in federal district court to enforce the FCC forfeiture order thus "create[s] no Seventh Amendment injury." *Verizon*, 156 F.4th at 106. That conclusion is wrong several times over.

1. The FCC's Order Is a Binding Legal Determination.

To start, the Second Circuit proceeded from a false premise. It reasoned that "[t]he FCC's forfeiture order . . . does not, by itself, compel payment." *Verizon*, 156 F.4th at 106. But nothing in the Communications Act suggests that a forfeiture order is anything other than mandatory.

Section 503 of the Communications Act could not be clearer. It states that, "[a]ny person who is *determined by the Commission*, in accordance" with agency adjudication procedures, to have violated the Communications Act, "*shall be liable* to the United States for a forfeiture penalty." 47 U.S.C. § 503(b)(1) (emphases added). This shows that the agency adjudication is the process by which the carrier is "determined" to be "liable" for the forfeiture penalty. That is when the penalty is "imposed." *Id.* § 503(b)(4).

Consistent with the statute, the forfeiture orders here do not suggest the liability findings against AT&T and Verizon are preliminary or render payment optional. Each declares in bold, capital letters that Verizon or AT&T "***IS LIABLE* FOR A MONETARY FORFEITURE**." Verizon.Pet.App.138a (italics added); AT&T.Pet.App.131a (same). The orders also

mandate that "[p]ayment of the forfeiture *shall be made* . . . within thirty (30) calendar days." Verizon.Pet.App.139a (emphasis added); AT&T.Pet.App.131a (same); *see also Murphy v. Smith*, 583 U.S. 220, 223 (2018) ("the word 'shall' usually creates a mandate, not a liberty"). The forfeiture orders' plain language leaves no doubt that the FCC viewed the orders as imposing mandatory obligations for payment.

There is likewise nothing in the statutory provisions for judicial review that suggests the forfeiture order is anything but final and binding. Section 402(a) provides that judicial review "shall be brought" under chapter 158 of title 28. 47 U.S.C. § 402(a). And that chapter, in turn, authorizes petitions to review the legality of "final order[s]" before the courts of appeals. 28 U.S.C. §§ 2342(1), 2344. In that way, the statute provides that regulated carriers like AT&T and Verizon do not receive any right to a jury trial before a final determination of liability. They are instead channeled to seek judicial review only in the court of appeals, where no juries preside.

2. Section 504 Does Not Remedy the Seventh Amendment Violation.

The Second Circuit evidently concluded that Verizon should have refused to pay the forfeiture and forced the government to bring a collection action. But the prospect of that second suit does not remedy the Seventh Amendment violation in the first one.

Carriers cannot initiate those collection actions themselves. Instead, Section 504(a) empowers the DOJ alone to "prosecute for the recovery of forfeitures" through "a civil suit in the name of the United States

brought in [federal district court]." 47 U.S.C. § 504(a). And that is an entirely separate action from the FCC's prior suit resulting in the imposition of civil penalties. *See, e.g.*, *Davis v. Packard*, 32 U.S. (7 Pet.) 276, 285 (1833) (explaining that "an action of debt on a judgment is an original suit," not a "continuation" of the suit resulting in judgment). This means that in the FCC's suit itself, a carrier cannot demand a jury trial—at any point—for common law claims. In that "Suit[] at common law," the "right of trial by jury" is not "preserved." U.S. Const. amend. VII.

The Second Circuit thought that a potential collection action down the road might cure this constitutional violation, because then there could be a "trial de novo." 47 U.S.C. § 504(a). Yet that theoretical right to a jury trial in a possible separate suit hardly vindicates the right "in the initial adjudication." *Jarkesy*, 603 U.S. at 128. Again, the law gives *the carrier* no right to judicial review (or a jury) before the imposition of any penalty. Its only right is to petition for juryless review in the court of appeals after making payment. *See* 47 U.S.C. § 402(a); 28 U.S.C. §§ 2342(1), 2344.

The FCC's reliance on *Capital Traction Co. v. Hof*, 174 U.S. 1 (1899), is thus misplaced. That case upheld a law providing for jury review on appeal precisely because Congress "authorized *either party* to appeal," and "either party" could "demand" a jury in that action. *Id.* at 45–46 (emphasis added); *see also id.* at 13 ("[E]ither party to an action at law . . . has the right to trial by jury"); *id.* at 37 (similar). The FCC's regime lacks that critical feature. Carriers have no right to a jury during the FCC's penalty action—not before the

FCC, not before the Court of Appeals, and not before this Court. They can ask for a jury only if the DOJ unilaterally decides to bring a separate collection suit.

The FCC also cites *Meeker v. Lehigh Valley Railroad Co.*, 236 U.S. 412 (1915). But that case stands even further afield. The law challenged there directed that an agency's findings "be prima facie evidence of the facts therein stated." *Id.* at 430 (citation omitted). This Court upheld this provision as "merely a rule of evidence" that "establishe[d] a rebuttable presumption" in favor of the agency's findings, which a jury could accept or reject. *Id.* Unlike the statutory scheme here, then, nothing in that rule of evidence prevented enforcement targets from having their cases heard by a jury. The law "interpose[d] no obstacle to a full contestation of all the issues," and it took "no question of fact from either court or jury." *Id.*

Taking a different tack, the Second Circuit treated Verizon's act of paying its debt (so it could seek judicial review) as a waiver of its Seventh Amendment right. *Verizon*, 156 F.4th at 107. In its view, Verizon could only exercise its jury right by shirking payment to the federal government and being left to defend itself, if and when the DOJ chose to bring a collection suit. Yet law-abiding, regulated parties are not in the habit of defaulting upon mandatory obligations to their regulator.

Nor can they reasonably do so. After all, the "FCC's regulatory authority is broad," *McConnell v. FEC*, 540 U.S. 93, 239 (2003); *accord FCC v. Prometheus Radio Project*, 592 U.S. 414, 416, (2021), and carriers appear regularly before the agency, including to obtain and

transfer their licenses to do business. These licensing decisions are existential to carriers. *See* 47 U.S.C. § 301 (requiring a license to operate). And the FCC has significant discretion when making them. *See id.* §§ 307(a), 309(a) (permitting the FCC to consider the "public interest, convenience, [and] necessity" when evaluating license applications). With so much at stake before the FCC, no carrier is likely to ignore the agency's order that requires paying the government millions of dollars.

Indeed, it appears that no carrier ever has. Section 504(a)'s alleged saving grace—the collections trial de novo—has not occurred in at least fifty years. The FCC has cited only one 1974 case in which the court noted a jury trial "was available" but was waived. Verizon.Pet.App.125a & n.268. The agency fails to point to a single Section 504(a) jury trial ever, and it is not clear that there has ever been one. Thus, any semblance of a jury trial right emanating from Section 504(a) appears theoretical at best.

Even if a Section 504(a) jury trial ever did occur, a defendant may not actually receive a de novo review of the law or facts. While the Second Circuit read Section 504(a) to permit redetermination of all legal and factual issues, several courts have reviewed the FCC's factfinding deferentially, looking only for whether its determinations were reasonable. *See, e.g.*, *United States v. Sutton*, 2024 WL 2926594, at *12 (W.D. Ark. Mar. 27, 2024) ("[C]ourts have held that an FCC forfeiture penalty should be upheld where the amount is reasonable and consistent with the relevant FCC guidelines."). And several jurisdictions have held that challenges to the FCC's legal determinations are

not available under Section 504(a). *See United States v. Stevens*, 691 F.3d 620, 622 (5th Cir. 2012) (affirming district court's "refus[al] to consider the Stevenses' legal arguments" because "its jurisdiction was limited to considering the factual basis for the agency action"); *United States v. Any & All Radio Station Transmission Equip.*, 207 F.3d 458, 463 (8th Cir. 2000) (similar); *United States v. Dunifer*, 219 F.3d 1004, 1006–08 (9th Cir. 2000) (similar).

These lower court decisions, if correct, would only compound the constitutional violation arising from a loss of the jury trial right in the first instance. But even if they are erroneous, that would not save the statutory scheme. The Second Circuit's effort to read Section 504(a) as preserving some belated version of the jury right requires contortions and defaults that result in no safeguard at all.

3. A Post-Order Collection Action Cannot Cure AT&T and Verizon's Immediate Harm.

The Second Circuit next suggested that if the "government decline[s] to pursue [a] collection action within five years, [a carrier] would be under no obligation to pay and would suffer no Seventh Amendment injury." *Verizon*, 156 F.4th at 106. But that ignores the immediate legal, economic, and reputational harms caused by the FCC's forfeiture orders.

Start with the legal consequences. Under FCC policy, the agency may "us[e] the underlying facts of a prior violation that shows a pattern of non-compliant behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding."

Commission's Forfeiture Pol'y Statement & Amend. of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd. 17087, 17103 (1997) ("FCC Policy Statement"). The FCC thus could use the facts supporting an unpaid forfeiture "as a basis for higher forfeiture" in future cases. *Id.*; *see also FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 255 (2012) (noting the FCC's authority to take a "history of prior offenses" into account when setting a future forfeiture penalty, even where agency declines to impose forfeiture initially (citation omitted)). Indeed, the FCC's policy is that such facts could justify the denial of requests to renew licenses for broadcast, mobile, broadband, or satellite services; could prevent the consummation of mergers that involve the transfer of FCC licenses; and could inform the FCC's determination whether a company possesses the requisite character to hold licenses at all. *See* FCC Policy Statement, *supra*, at 17102–03.

Section 504 accords with the FCC's policy of using prior violations in subsequent proceedings. The law expressly authorizes the FCC to rely on "any history of prior offenses" when determining penalties. 47 U.S.C. § 503(b)(2)(E). And even though Congress barred the FCC from using the "fact" that the agency has "issue[d] a *notice of apparent liability* looking toward the imposition of a forfeiture" "in any other proceeding before the [FCC]," that is irrelevant here. 47 U.S.C. § 504(c) (emphasis added). Section 504(c) does not prohibit the FCC from using a *final forfeiture order*—like the ones AT&T and Verizon received—against them in future proceedings. *See id.* Nor does Section 504(c) prevent the FCC from using the facts underlying forfeiture orders against carriers.

Simply put, after the FCC issues a forfeiture order, a carrier is marked by a scarlet letter that imposes vast legal uncertainty over its ongoing operations. And by willfully defying such a binding order from the FCC, a carrier would put itself in the agency's crosshairs and potentially jeopardize its existence. A carrier thus finds little consolation that the facts adjudicated by the FCC might someday be the subject of a jury trial *if* the carrier violates the FCC forfeiture order by refusing to pay, and *if* the DOJ then elects to bring a collection action under Section 504(a).

In addition to these "legal consequence[s]," the FCC's forfeiture orders impose significant "reputational injury." *Fox Television Stations*, 567 U.S. at 255. The agency's "findings of wrongdoing can result in harm to a broadcaster's reputation with viewers and advertisers," particularly given the "strongly disapproving terms" that "are contained in the permanent Commission record" and the fact that such findings are "widely publicized." *Id.* at 255–56 (quotation marks omitted).

Meanwhile, enforcement targets are obliged to consider whether the forfeiture order and its findings must be further disclosed in SEC filings; or in applications for new government contracts, grants, or similar programs or benefits; or in applications for loans or new lines of credit. These reputational and economic harms exist regardless of whether the carrier defaults on payment and regardless of whether the DOJ decides to collect in federal court. And if the DOJ chooses not to file suit to collect from the enforcement target, then the FCC's impugning determinations go unchallenged.

For these reasons, the cost of even getting to the DOJ's hypothetical back-end review can be enormous for the FCC's enforcement targets. And that is to say nothing of the costs of the suit itself. Unlike in federal court, where an impartial Article III judge manages the time and scope of the litigation, the FCC has no similar safeguards. The law vests "the same officials who authoriz[e] the suit" against a regulated party with the "power to preside over [the] case themselves and issue judgment." *Jarkesy*, 603 U.S. at 142 (Gorsuch, J., concurring); *see* 47 U.S.C. § 154(i). That dynamic creates enormous settlement pressures, particularly because the FCC's enforcement actions often drag on for years without resolution.

And should an enforcement target get to federal court, it must start the process all over again, incurring duplicative costs in a process that may again draw out for years. After all, if a carrier shirks the FCC's forfeiture order requiring payment, the DOJ has up to five years to bring an enforcement suit. *See* 28 U.S.C. § 2462. And once in federal court, the median time from the filing of a civil action to a completed jury trial is more than three years. *See* U.S. Courts, *Table T-3—U.S. District Courts–Trials Statistical Tables for the Federal Judiciary* (June 30, 2025), bit.ly/4kGBtOs. All the while, the enforcement target will be branded as a defendant in a "collection" action for a forfeiture already imposed and, as noted above, can be saddled with diminished procedural safeguards.

Because of these significant legal and real-world consequences, nonpayment is not a realistic option. These consequences further demonstrate that the

FCC's imposition of a forfeiture order without the protections of an Article III court and jury violate the Seventh Amendment.

II. The FCC's Claimed Sweeping Authority to Determine Massive Civil Penalties Makes Trial by Jury All the More Necessary.

The FCC's strained interpretation of its statutory-penalty authority renders the need for a jury even more pressing. This case is a prime example. The FCC imposed massive penalties of $46,901,250 and $57,265,625 on Verizon and AT&T, respectively. Verizon.Pet.App.43a; AT&T.Pet.App.48a. But these amounts are not prescribed by statute nor calculated according to some set formula. Instead, noting that the "Commission's forfeiture guidelines" do "not establish a base forfeiture for violations of" Section 222, the FCC concocted an arbitrary "base forfeiture" amount of $40,000 for the first day of the violations and $2,500 for each successive day the violations persisted—based on little more than previous cases that it admitted were not "directly on point." *In re Verizon Commc'ns*, 35 FCC Rcd. 1698, 1725–26 (2020). The FCC then applied a "substantial upward adjustment" of 50% to further punish Verizon. Verizon.Pet.App.122a–24a; *see* AT&T.Pet.App.101a (25% upward adjustment). And it multiplied the resulting liability even further by transmuting "a single, systemic failure to follow the Commission's rules" into "many separate and continuing violations." Verizon.Pet.App.150a (Dissenting Statement of Commissioner Simington); *see* Verizon.Pet.App.113a–14a, 120a (multiplying penalty by 63); AT&T.Pet.App.114a (multiplying penalty by 84).

Yet the FCC sees the over $104 million in penalties that it imposed against AT&T and Verizon as "eminently *conservative*." Verizon.Pet.App.116a; AT&T.Pet.App.105a (same). Apparently pleased by its magnanimity, the FCC claims that, under a dubious reading of the statute, "the Commission could well have chosen to look to the total number of Verizon subscribers when determining the number of violations." Verizon.Pet.App.116a; *see also* AT&T.Pet.App.108a (similar for AT&T). If that were right, in Verizon's case, the FCC "could have ordered a final penalty of up to $236 *trillion*, or seven times the current GDP of the United States." Verizon.Pet.32.

But that is not the law. Section 503(b) provides that a person may be liable for forfeiture for "willfully or repeatedly fail[ing] to comply with any of the provisions of" the Communications Act or rules promulgated by the FCC. 47 U.S.C. § 503(b)(1)(B). The Act then caps the total per-violation amount at approximately $200,000 for "each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed" approximately $2 million, adjusted for inflation, "for any single act or failure to act." *Id.* § 503(b)(2)(B); *see* 47 C.F.R. § 1.80(b)(2), (b)(12). The import of this provision is clear: while a "continuing violation" of FCC rules based on a "single act or failure to act" may increase a violator's penalties beyond a single forfeiture, the penalties for a single "continuing violation" may not in the aggregate exceed that roughly $2 million cap.

In short, the law "subjects to separate liability the recurring daily episodes of a delictual pattern that

might otherwise be treated in the aggregate"—such as operating a broadcast station each day for 14 consecutive days without a license. *WIYN Radio*, 614 F.2d at 497. It does not penalize, by mere passage of time, the "fail[ure] to fulfill . . . a single, pointed duty, admitting of only a single dereliction," even if "the effect of [the] failure to act within the prescribed period persists." *Id*. Nor, by extension, does it permit the agency to identify tens, hundreds, or even millions of separate continuing violations based on a carrier's single failure to perform a legal duty. *See* Verizon.Pet.App.149a–50a (Dissenting Statement of Commissioner Simington).[2]

But that is what the FCC claims the power to do, maintaining that it may impose penalties of up to $236 trillion, more than double the world's GDP, even though Congress placed a statutory *cap* on such penalties. The FCC claims this power by attempting to turn statutory ambiguity into authority. And the FCC could get away with regulating in such a "draconian fashion" because there was no impartial judge and jury in its enforcement proceedings to check

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[2] This reading also comports with this Court's precedents in other areas relating to what constitutes a "single act" when the proscribed behavior is continuing in nature. *See, e.g.*, *Blockburger v. United States*, 284 U.S. 299, 302 (1932) ("[W]hen the impulse is single, but one indictment lies, no matter how long the action may continue." (citation omitted)); *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 224 (1952) (holding that the Fair Labor Standards Act should "treat[] as one offense all violations that arise from that singleness of thought, purpose or action, which may be deemed a single impulse" (quotation marks omitted)).

its arbitrary exercises of power. *See WIYN Radio*, 614 F.2d at 498.

* * *

Checking arbitrary exercises of government power, like the FCC's here, was precisely why the Founding generation felt it necessary to enshrine the Seventh Amendment. Through an in-house proceeding, the FCC played the "roles of prosecutor, judge, and jury" to find AT&T and Verizon liable. *Jarkesy*, 603 U.S. at 140. And it subjected AT&T and Verizon to collective penalties of over $100 million, without affording them an opportunity to plead their case before a civil jury. This Court should make clear that the Constitution does not permit that concentration of power.

CONCLUSION

The Court should affirm the Fifth Circuit's judgment and reverse the Second Circuit's judgment.

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