No. 14-552

In the Supreme Court of the United States

ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

JONATHAN B. SALLET
General Counsel
DAVID M. GOSSETT
Deputy General Counsel
JACOB M. LEWIS
Associate General Counsel
SARAH E. CITRIN
Counsel
Federal Communications Commission
Washington, D.C. 20554

QUESTIONS PRESENTED

Section 276(a) of the Communications Act of 1934 prohibits Bell Operating Companies from exploiting their control over local phone lines to subsidize their own payphone services or to charge discriminatory rates to competing independent payphone providers. See 47 U.S.C. 276(a). To implement the statute, the Federal Communications Commission (FCC) required Bell Operating Companies to file compliant tariffs with state regulators. The FCC also allowed state regulators to determine whether independent payphone providers should receive refunds in cases where tariffs did not comply with Section 276(a).

The Act further directs the FCC to ensure that "all payphone service providers" are "fairly compensated for" coinless long-distance calls placed from their payphones. 47 U.S.C. 276(b)(1)(A). The FCC accordingly requires long-distance carriers to provide so-called "dial-around" compensation to payphone providers for those calls. The questions presented are as follows:

1. Whether it was arbitrary and capricious for the FCC to allow state authorities to resolve refund disputes between independent payphone providers and Bell Operating Companies, including determining whether the filed-rate doctrine precludes a refund based on the facts and procedural history of the particular case.

2. Whether petitioner has standing to challenge the FCC's refusal to declare that Bell Operating Companies whose tariffs did not comply with Section 276(a) were not entitled to collect dial-around compensation from long-distance carriers and should forfeit that compensation to the government.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-21) is reported at 752 F.3d 1018. The order of the Federal Communications Commission (Pet. App. 22-106) is reported at 28 FCC Rcd. 2615.

JURISDICTION

The judgment of the court of appeals was entered on June 13, 2014. A petition for rehearing was denied on August 12, 2014 (Pet. App. 214-215). The petition for a writ of certiorari was filed on November 10, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. In the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 106, Congress

sought to "promote competition among payphone service providers and promote the widespread deployment of payphone services." 47 U.S.C. 276(b)(1). At that time, some payphones were owned by independent payphone providers, while others were owned by local subsidiaries of AT&T's Bell System, known as Bell Operating Companies. Bell Operating Companies also owned the local phone lines. That ownership gave Bell Operating Companies a competitive advantage because they could charge their own payphones less for the use of those lines than they charged independent payphone providers.

Congress responded to that problem by enacting what became Section 276 of the Communications Act of 1934, 47 U.S.C. 151 *et seq*. Section 276 prohibits Bell Operating Companies from "subsidiz[ing] [their] payphone service directly or indirectly" or "prefer[ring] or discriminat[ing] in favor of [their] payphone service." 47 U.S.C. 276(a)(1) and (2). Congress directed the Federal Communications Commission (FCC or Commission) to "prescribe a set of nonstructural safeguards" to ensure that Bell Operating Companies ceased discriminating against independent payphone providers. 47 U.S.C. 276(b)(1)(C). Congress further specified that the FCC's rules implementing Section 276 would preempt "any State requirements [that] are inconsistent with the Commission's regulations." 47 U.S.C. 276(c).

Section 276 also directed the FCC to ensure that all payphone providers, including both Bell Operating Companies and independent providers, would be "fairly compensated for each and every completed intrastate and interstate call" from their payphones. 47 U.S.C. 276(b)(1)(A). That provision addressed the

"dial-around" problem, where payphone providers were not compensated when a caller used an access code instead of depositing money into the payphone or using the long-distance carrier selected by the provider to service its payphones. See Pet. App. 15-16; *NetworkIP, LLC* v. *FCC*, 548 F.3d 116, 118 (D.C. Cir. 2008).

b. In 1996, the FCC issued a series of orders that required Bell Operating Companies to file tariffs with state regulators "demonstrating that the rates they charged to independent payphone providers complied with" Section 276(a)'s non-discrimination and non-subsidization provisions. Pet. App. 5. The Commission specified that the tariffs must take effect by April 15, 1997, and it instructed state regulators to review the tariffs using a cost-based pricing standard called the "new services test." *Ibid.*; see *id.* at 288 & n.492.

The FCC also established a plan to ensure that long-distance carriers would compensate payphone providers for dial-around calls. See *Illinois Pub. Telecomms. Ass'n* v. *FCC*, 117 F.3d 555, 559-560 (D.C. Cir.) (per curiam), supplemented by 123 F.3d 693 (D.C. Cir. 1997), cert. denied, 523 U.S. 1046 (1998). Before Bell Operating Companies would be eligible to receive compensation under that plan, however, the FCC required them to "be able to certify" that their tariffs complied with Section 276. Pet. App. 267-268. By imposing that requirement, the FCC sought to ensure Bell Operating Companies' prospective compliance with the non-discrimination mandate.

c. In 2002, the FCC issued additional guidance regarding the new services test. Pet. App. 5; see *id.* at 417-465. That clarifying guidance led a number of States, including Illinois, to conclude that Bell Operat-

ing Companies' tariffed rates were too high. See *id.* at 6. Bell Operating Companies accordingly were required to lower their rates in those States. *Ibid.* In addition to that prospective relief, independent payphone providers asked state regulatory commissions to order refunds of excess charges "dating back to 1997." *Ibid.* Some state authorities granted refunds, but others declined to award refunds or awarded them for only a limited period of time, taking into account the facts and procedural history of the particular case. See *ibid.*

2. Petitioner is a trade association that represents independent payphone providers in Illinois. See Pet. 2 n.2. In 1995, petitioner negotiated with AT&T[1] to receive discounts from the usage rates that AT&T was then legally entitled to charge. See Pet. App. 134. The Illinois regulatory commission approved those rates as lawful. *Ibid.* After Section 276 was enacted, AT&T filed cost data with the Illinois commission in an effort to show that its existing rates complied with that provision. See *id.* at 134-135.

In November 2003, however, the Illinois commission determined that some of AT&T's rates did not comply with the new services test as clarified by the FCC's 2002 guidance. See Pet. App. 189-192. The Illinois commission directed AT&T to file reduced tariffs that would apply going forward, but the commission declined to order AT&T to pay refunds for past charges. See *id.* at 111, 206. The commission explained that petitioner "ha[d] enjoyed deep discounts on * * * rates" pursuant to its agreement

[1] The Bell Operating Company in Illinois has changed names several times during the period relevant to this suit. For ease of reference, this brief uses "AT&T" throughout.

with AT&T, which "severely undercuts [its] refund argument." *Id.* at 204. The commission also emphasized that petitioner had not filed a "complaint to formally challenge the rates," an omission that the commission characterized as a "lack of direct action * * * consistent with [AT&T's] observations that [petitioner] ha[d] benefited from the" discounted rates. *Id.* at 203-204. The commission further concluded that an order directing the payment of refunds in these circumstances would violate the filed-rate doctrine under Illinois and federal law. See *id.* at 205.

The Appellate Court of Illinois affirmed the state commission's denial of refunds. Pet. App. 107-120; see *id.* at 113-116. Petitioner sought review in this Court, which denied the petition for a writ of certiorari. 549 U.S. 1205 (No. 06-543).

3. Petitioner also sought relief from the FCC. Pet. App. 7. Petitioner asked the FCC to declare, *inter alia*, that petitioner's members were entitled to refunds and that AT&T had not been entitled to collect dial-around compensation from long-distance carriers while its rates were not compliant with Section 276(a). *Id.* at 37-38. The FCC consolidated the petition with similar petitions filed by trade associations in other States in which refunds had been denied in whole or in part. *Id.* at 26 & n.2.

a. The FCC denied the consolidated petitions. Pet. App. 22-106. As relevant here, the Commission concluded that "the issue of refunds," "[l]ike other tariff and rate-setting procedures, * * * was properly administered by the states." *Id.* at 65. The Commission explained that neither Section 276 nor the agency's implementing rules and orders established an "absolute right" to refunds. *Id.* at 68-70; see *id.* at

72 n.178. The Commission observed that, "[a]lthough section 276 establishes [pricing] requirements for payphone rates, it does not dictate whether refunds are due under any given set of circumstances." *Id.* at 68. The Commission thus "confirm[ed] that, consistent with section 276" and the FCC's orders, "states may, but are not required to, order refunds for any period after April 15, 1997" during which a Bell Operating Company is found to have charged independent payphone providers a non-compliant rate. *Id.* at 79. The FCC further concluded that the Illinois commission had "properly looked to applicable state and federal law and regulations" by denying refunds based "on the Illinois filed tariff doctrine and [petitioner's] failure to file a formal complaint." *Id.* at 68-69.

The FCC also rejected the suggestion that Section 276 required the Commission, rather than state regulators, to "be the arbiter of specific refund disputes." Pet. App. 68. Emphasizing the case-specific nature of refund decisions and the FCC's decision to assign primary responsibility for reviewing tariffs to state regulators, the FCC observed that state commissions "are well-positioned to resolve refund disputes arising from the tariffs they review." *Id.* at 71. The FCC explained that state commissions are actually "better positioned" than the FCC to make refund determinations because they "are more familiar with the specific details of each case." *Id.* at 71-72. Because the FCC had "conclude[d] that the refund issue may properly be adjudicated by the states," it "d[id] not reach other issues raised by the parties," such as the application of the filed-rate doctrine, which the FCC left to "be

considered by the states in their proceedings." *Id.* at 82 & n.204.

Finally, the FCC rejected petitioner's request for a declaratory ruling that Bell Operating Companies "were not entitled to begin collecting dial-around compensation as of April 15, 1997," because their rates did not comply with Section 276(a). Pet. App. 65 n.161. The FCC found no evidence that Bell Operating Companies' self-certifications of compliance with the agency's rules and orders implementing Section 276 "were defective or fraudulent," or that the companies knew that their rates did not meet the Commission's pricing standard when they submitted the certifications. *Ibid.*

b. Commissioner Clyburn dissented. Pet. App. 95-106. In her view, Bell Operating Companies that charged rates in violation of Section 276 should be required to provide refunds. *Id.* at 105.

4. The court of appeals denied three consolidated petitions for review of the FCC's order filed by petitioner and by similar trade associations located in New York and Ohio. Pet. App. 1-21.

a. The court of appeals rejected petitioner's contention that "the FCC's approach is arbitrary and capricious because it leads to refund determinations that vary from state to state." Pet. App. 13.[2] The court explained that it "must uphold [the Commission's enforcement regime] as long as it is a reasonable means of implementing the statutory requirements." *Id.* at 12-13 (quoting *Global Crossing Tele-*

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[2] The court of appeals also rejected petitioner's argument that Section 276(a) and (c) create an absolute entitlement to refunds. Pet. App. 8-12. Petitioner has not renewed that claim in this Court.

comms., Inc. v. *FCC*, 259 F.3d 740, 745 (D.C. Cir. 2001)). The court found that the FCC had "readily satisfied that deferential standard." *Id.* at 13. The court explained in particular that the Commission had "reasonably concluded that states, as part of their tariff review responsibilities, are well-positioned to resolve refund disputes arising from the tariffs they review." *Ibid.* (citation and internal quotation marks omitted). The court found "nothing arbitrary or capricious about the FCC's decision not to * * * dictate a uniform national answer to the refund question, especially given the backdrop of state involvement in the ratemaking process." *Id.* at 14.

The court of appeals noted that "[t]he independent payphone providers object in particular to states' invocation of the filed-rate doctrine." Pet. App. 14. Emphasizing that "[t]he filed-rate doctrine has long been 'a central tenet of telecommunications law,'" the court stated that "it hardly seems unreasonable or arbitrary for the FCC to allow states to invoke that doctrine." *Ibid.* (quoting *TON Servs., Inc.* v. *Qwest Corp.*, 493 F.3d 1225, 1236 (10th Cir. 2007)). The court further observed that, under the Commission's order, the filed-rate doctrine "does not present an insuperable barrier to refunds or otherwise negate the FCC's position that refunds are permitted in individual cases. Indeed, the FCC expressly recognized that several states have granted refunds notwithstanding the filed-rate doctrine." *Id.* at 15. The court therefore "s[aw] nothing unreasonable about how the FCC filled the statutory gap and exercised its discretion" by permitting state regulators to adjudicate refund disputes and determine the appropriate remedy for noncompliant tariffs. *Ibid.*

b. The court of appeals further held that petitioner lacked standing to press the claim that the FCC should have "order[ed] Bell Operating Companies to disgorge [dial-around compensation] payments * * * received from long-distance carriers" during the periods when the companies' tariffs violated Section 276(a). Pet. App. 15. The court explained that, even if the FCC had issued a disgorgement order, "independent payphone providers would not receive any of that money," which petitioner argued should be "forfeit[ed] * * * to the Government." *Id.* at 17. The court therefore concluded that petitioner had not shown that the requested relief would "redress the injury suffered by the independent payphone providers as a result of the allegedly excessive rates charged to them by Bell Operating Companies." *Ibid.*

The court of appeals acknowledged petitioner's "creative theory of redressability" that, if Bell Operating Companies were forced to make the choice, they would pay refunds to independent payphone providers rather "than disgorge the supposedly larger amount of dial-around compensation collected from long-distance carriers." Pet. App. 17-18. The court rejected that theory because "[t]he independent payphone providers [had] offer[ed] nothing beyond sheer speculation to support" it. *Id.* at 18. Relying in part on this Court's decision in *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555 (1992), the court found it to be "well-established that a merely speculative theory of redressability does not suffice to create Article III standing." Pet. App. 18 (citation and internal quotation marks omitted).

ARGUMENT

The court of appeals correctly held that the FCC did not act arbitrarily or capriciously in permitting state regulators to decide whether to grant refunds of excessive tariffs previously charged to independent payphone providers. The D.C. Circuit's decision does not conflict with any decision of this Court or another court of appeals. The court's fact-bound standing analysis is also correct and consistent with this Court's precedents. Finally, the dispute in this case is of limited and diminishing public significance. Further review is not warranted.

1. Petitioner contends that "the D.C. Circuit found the [filed-rate] doctrine could bar refunds," which petitioner argues "is irreconcilable with the decisions of this Court and other circuits." Pet. 24-25. Petitioner misreads the court of appeals' decision and the prior case law.

a. Contrary to petitioner's suggestion (Pet. 2, 24, 27-28), the court of appeals did not directly confront or decide the question whether the filed-rate doctrine bars refunds for violations of 47 U.S.C. 276(a). In the underlying administrative order that was the subject of the court's review, the FCC expressly declined to consider that issue, instead "leav[ing] to the states the responsibility for deciding whether refunds are appropriate" in light of each case's "unique set of facts, procedural posture[], and relevant state and federal statutes." Pet. App. 82; see *id.* at 82 & n.204 (stating that "defenses such as * * * [the] filed rate doctrine" "may be considered by the states in their proceedings"). Thus, the only issue on appeal concerning the filed-rate doctrine was whether it was "unreason-

able or arbitrary for the FCC to allow states to invoke that doctrine." *Id.* at 14.[3]

The court of appeals correctly upheld the FCC's determination that state authorities were better positioned than the federal agency to decide the applicability of the filed-rate doctrine in individual refund disputes. Pet. App. 13. "[E]specially given the backdrop of state involvement in the ratemaking process"—most notably the state commissions' responsibility for assessing whether Bell Operating Companies' tariffs complied with Section 276—the FCC could reasonably permit state tribunals to determine whether the filed-rate doctrine barred relief on the facts of each case. *Id.* at 14. The court also observed that "an independent payphone provider can opt for a federal decisionmaker by suing a Bell Operating Company for a Section 276 violation in federal court." *Id.* at 13 (citing 47 U.S.C. 207, which provides that a party alleging a violation of Section 276 "may either make complaint to the Commission * * * or may bring suit * * * in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies"). The court further explained that "a party who believes that a state court has misapplied federal law"—including filed-rate principles—"can ultimately seek

[3] In declining to overturn the Illinois commission's denial of refunds, the FCC recognized that the denial was based not only on "the Illinois filed tariff doctrine," but also on petitioner's "failure to file a formal complaint." Pet. App. 68-69. Although petitioner disputes the Illinois commission's finding that no formal complaint had been filed, Pet. 19 n.5, that case-specific state-law issue does not warrant this Court's review. Petitioner therefore cannot show that its members would be entitled to refunds if the filed-rate doctrine did not apply.

review of the state court judgment in the U.S. Supreme Court," as petitioner "unsuccessfully sought to do" after the Illinois commission declined to order refunds. *Ibid.* Because there was "nothing unreasonable about how the FCC filled the statutory gap and exercised its discretion," the court of appeals correctly rejected petitioner's argument that the FCC had acted arbitrarily or capriciously by allowing state regulatory bodies to apply the filed-rate doctrine in refund disputes. *Id.* at 15.

b. Petitioner asserts (Pet. 2) that the court below "reached the opposite conclusion on precisely the same question" that was addressed by other circuits in *Davel Communications, Inc.* v. *Qwest Corp.*, 460 F.3d 1075 (9th Cir. 2006) (*Davel*), and *TON Services, Inc.* v. *Qwest Corp.*, 493 F.3d 1225 (10th Cir. 2007) (*TON*). That is incorrect.

In *Davel* and *TON*, payphone providers filed suit in federal court under 47 U.S.C. 207, alleging that Qwest, a Bell Operating Company, had violated Section 276. *TON*, 493 F.3d at 1234; see *Davel*, 460 F.3d at 1083. In each case, the court of appeals declined to apply the filed-rate doctrine to bar the suit at the motion-to-dismiss stage. The Ninth Circuit in *Davel* concluded that the filed-rate doctrine did not apply because the suit sought "to enforce a command of the very regulatory statute giving rise to the tariff-filing requirement." 460 F.3d at 1085. The court also relied on an FCC order that "expressly provided that Qwest's customers might ultimately pay rates different from those on file during" the relevant time. *Id.* at 1086. The Tenth Circuit in *TON* cited the analysis in *Davel* and also emphasized that Qwest had not filed new tariffs or submitted cost data to support existing

tariffs, thereby disregarding procedural requirements that the FCC had adopted in implementing Section 276. See 493 F.3d at 1234. Because the suit involved "procedural compliance with FCC orders and regulations rather than a challenge to the reasonableness of * * * rates," the court concluded that the filed-rate doctrine did not "categorically preclude [the] claims." *Id.* at 1237.

The decision in this case does not conflict with *Davel* or *TON*. The Ninth and Tenth Circuits held, at the motion-to-dismiss stage, that the filed-rate doctrine did not categorically bar suits filed in federal court seeking damages for Section 276 violations. The courts did not suggest, however, that it would be arbitrary or capricious for the FCC to permit state authorities to assess the applicability of that doctrine based on the particular facts and procedural history of each case. Indeed, because neither *Davel* nor *TON* involved review of any FCC action, the courts had no occasion to apply the deferential standard of review that governs suits brought under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Petitioner's claim of a circuit conflict is further belied by the court of appeals' reliance on *TON* in this case and its observation that "the filed-rate doctrine does not present an insuperable barrier to refunds." Pet. App. 14-15.

In 2006, petitioner sought this Court's review of the decision of the Appellate Court of Illinois, which sustained the state commission's denial of refunds based in part on the filed-rate doctrine. See p. 5, *supra*. Petitioner contended at that time that the state court's decision "stand[s] in direct conflict with the" Ninth Circuit's decision in *Davel*. Pet., No. 06-543, 2006 WL 3016308, at *2 & n.1 (Oct. 18, 2006); see

id. at *25. This Court denied the petition, see 549 U.S. 1205 (No. 06-543), and there is no reason for a different result here.

c. Contrary to petitioner's passing assertions (Pet. 17, 25, 27-28), the decision below likewise does not conflict with this Court's decisions in *Reiter* v. *Cooper*, 507 U.S. 258 (1993), and *Interstate Commerce Commission* v. *Transcon Lines*, 513 U.S. 138 (1995). In *Reiter*, the Court held that the filed-rate doctrine did not bar a cause of action for damages that was "explicitly conferred" by the Interstate Commerce Act (ICA), ch. 104, 24 Stat. 379. 507 U.S. at 266; see *id.* at 262-263 (explaining that "[t]he ICA requires carriers' rates to be reasonable, and gives shippers an express cause of action against carriers for damages * * * in the amount of the difference between the tariff rate and the rate determined to be reasonable by the" Interstate Commerce Commission (ICC)) (citations and internal quotation marks omitted). In *Transcon Lines*, the Court upheld the ICC's authority to "requir[e] departure from a filed rate when necessary to enforce other specific and valid regulations adopted under the [ICA]," which were entitled to deference. 513 U.S. at 147-148. *Reiter* and *Transcon Lines* thus involved a statutory scheme different from the one at issue here, and the Court did not consider in either case whether it would be arbitrary and capricious for a federal agency to permit state authorities to adjudicate filed-rate defenses in individual refund disputes. Petitioner is therefore wrong to suggest that the court of appeals' decision conflicts with this Court's precedents.[4]

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[4] Petitioner appears to rely on *Reiter* and *Transcon Lines* for the more general proposition that the filed-rate doctrine "is inap-

2. Petitioner challenges (Pet. 29-35) the court of appeals' determination that petitioner lacked standing to pursue a claim that AT&T must disgorge to the government the dial-around compensation it received during the period when its rates did not comply with Section 276. Petitioner's argument, which turns on the court's alleged misapplication of a settled legal standard, presents no issue worthy of review.[5]

a. In *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555 (1992), this Court held that, when a "plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.* at 562 (citation and internal quotation marks omitted). "In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction." *Ibid.* Thus, "it becomes the burden of

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plicable where it would prevent the enforcement of the statute" that gives rise to a tariff-filing requirement. Pet. 27-28. But there has been no failure of enforcement here. As the court of appeals explained, the FCC reasonably concluded that prospective compliance with the new services test suffices to enforce Section 276. See Pet. App. 8-10; see also *id.* at 8-9 (recognizing that "Section 276(a) is silent regarding the mechanism the FCC should adopt to ensure that the statute's requirements are carried out") (citation and internal quotation marks omitted).

[5] Even if it had standing to pursue that claim, petitioner could not show that the FCC acted arbitrarily or capriciously in denying its request for a declaratory ruling on the dial-around compensation issue. See Pet. App. 65 n.161 (declining to issue a declaratory ruling that AT&T was not entitled to collect dial-around compensation because there was no evidence that AT&T's certifications of compliance with Section 276 "were defective or fraudulent" or that AT&T knew its rates were not compliant "when the self-certifications were submitted").

the plaintiff to adduce facts showing that" regulation of the third party would induce that party to redress the plaintiff's asserted injury. *Ibid.* Finally, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561 (citation and internal quotation marks omitted).

The court below correctly applied the standard articulated in *Lujan*. The court explained, and petitioner does not dispute, that an order requiring AT&T to disgorge dial-around payments would provide no direct benefit to petitioner or its members because the payments would be forfeited to the government and "the independent payphone providers would not receive any of that money." Pet. App. 17. Petitioner's claim of redressability therefore depends on its ability to show that AT&T would "rather accede to the[] demand for refunds than disgorge the supposedly larger amount of dial-around compensation collected from long-distance carriers." *Ibid.* The court of appeals found that theory of redressability to be unsupported in this case because petitioner had "offer[ed] nothing beyond sheer speculation to support" the assertion that AT&T would provide refunds in that situation. *Id.* at 18. Applying the "well-established" principle "that a merely speculative theory of redressability does not suffice to create Article III standing," the court concluded that petitioner lacked standing to pursue its dial-around compensation claim. *Ibid.* (citation and internal quotation marks omitted).

b. Petitioner contends (Pet. 31) that the court of appeals "failed to apply the Court's standard for redressability, instead determining that if the government's action itself is not the redress of the injury then standing is lacking." See Pet. 35 ("According to

the D.C. Circuit's decision, the government action itself must be the redress of the injury."). Petitioner's argument reflects a misunderstanding of the court of appeals' analysis. The court did not dispute that redressability would have been established if petitioner had demonstrated (rather than simply surmised) that "an FCC disgorgement order would in turn induce [AT&T] to resolve the[] refund dispute." Pet. App. 17. The court simply held that petitioner had "offer[ed] nothing beyond sheer speculation to support" the claim that a disgorgement order would have that effect. *Id.* at 18. The court's decision is thus fully consistent with *Lujan*.

c. Petitioner disputes the court of appeals' finding that redressability was "merely speculative." Pet. App. 18 (citation and internal quotation marks omitted). That challenge does not warrant review because its resolution turns on the application of settled law to the facts of petitioner's case. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law."); see also *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

In any event, the court of appeals correctly held that petitioner's theory of standing was impermissibly speculative. Petitioner did not provide any concrete evidence that AT&T would offer refunds rather than "disgorge the supposedly larger amount of dial-around compensation." Pet. App. 17. Petitioner relies heavily on the FCC's statements that Bell Operating Companies would have incentives to comply with Section 276 by the April 1997 deadline in order to begin

obtaining dial-around compensation. See Pet. 32-34. But those statements—which concerned *prospective* compliance with the FCC's regulatory scheme—have little bearing on whether AT&T would respond to a disgorgement order by electing to award *retrospective* relief in the form of refunds. There is likewise no sound basis for petitioner's suggestion that "AT&T has admitted" that it would rather provide refunds "than lose [dial-around compensation] for" the relevant years. Pet. 34. As the FCC found in the underlying order, the statement to which petitioner refers concerned a narrow set of circumstances, not applicable here, in which several Bell Operating Companies agreed to provide refunds for a one-month period between April 15, 1997, and May 19, 1997, in exchange for obtaining a brief extension of time to file revised tariffs. Pet. App. 74-75.

3. The commercial dispute at issue here is of limited and diminishing public significance. Payphones play a far less significant role in today's society than they previously did. And because initial confusion concerning the application of the FCC's new services test was resolved in 2002, similar refund disputes are unlikely to arise in the future. The questions presented are therefore of slight prospective importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

JONATHAN B. SALLET
General Counsel
DAVID M. GOSSETT
Deputy General Counsel
JACOB M. LEWIS
Associate General Counsel
SARAH E. CITRIN
Counsel
Federal Communications Commission

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