Nos. 25-406 & 25-567

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, et al.,
Petitioners,

v.

AT&T, INC.

VERIZON COMMUNICATIONS INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.

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

BRIEF OF TECHFREEDOM AS AMICUS CURIAE IN SUPPORT OF AT&T, INC., AND VERIZON COMMUNICATIONS INC.

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INTEREST OF AMICUS CURIAE*

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C., dedicated to promoting technological progress that improves the human condition. It advocates for public policy that fosters experimentation, entrepreneurship, and investment.

Because technological progress flourishes only in a free and stable society, TechFreedom frequently submits amicus briefs supporting the rule of law, limited government, and an effective legal system. It takes a balanced approach, recognizing that the government should not exceed its lawful authority, but that when the government acts within its proper sphere, it should do so competently and with the assistance of expert agencies. See, e.g., Br. of TechFreedom, *Trump v. Slaughter*, No. 25-332 (U.S., Nov. 14, 2025) (defending the independence of the FTC); Br. of TechFreedom, *FCC v. Consumers Research*, No. 24-354 (U.S., Feb. 18, 2025) (opposing delegation of governmental power to unaccountable private entities); Br. of TechFreedom, *Loper Bright Enter. v. Raimondo*, No. 22-451 (U.S., July 20, 2023) (supporting the narrowing, but not elimination, of *Chevron* deference); Br. of TechFreedom, *AMG Capital Mgmt. v. FTC*, No. 19-508 (U.S., Oct. 2, 2020) (opposing agency abuse of statutory remedial authority).

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* No party's counsel authored any part of this brief. No person or entity, other than TechFreedom and its counsel, helped pay for the brief's preparation or submission.

In this case, the balance cuts against the Federal Communications Commission. TechFreedom has no quarrel with the FCC's authority to monitor and regulate carriers' data-protection practices. But authority to regulate is not authority to punish first and adjudicate later (if at all). The FCC must pursue its enforcement objectives through procedures that respect the constitutional rights of the parties before it—including the right to a timely resolution of the charges the government has seen fit to bring.

SUMMARY OF ARGUMENT

Under the Communications Act, the FCC may order a telecommunications carrier to pay a civil penalty of tens of millions of dollars—or more—based on an in-house administrative proceeding with few guardrails and no jury. The carrier then faces a choice: forgo a jury trial, pay the penalty, and seek cursory appellate review, or await a jury trial that may or may not occur, depending on whether the Justice Department files a collection action, in district court, at some point over the next five years.

As the carriers in these cases explain, both the in-house proceeding and the delayed possibility of a jury trial violate the Seventh Amendment's pledge that "the right of trial by jury shall be preserved."

This brief expands on the harm that accrues when the government delays justice. That harm is addressed explicitly in the Sixth Amendment, which guarantees criminal defendants the right to a speedy trial; but our legal tradition's hostility to governmental delay runs much deeper. From Magna Carta's

promise that the Crown would not "delay right or justice," through Coke's and Blackstone's exposition of the common law, through the Due Process Clause's requirement that hearings occur at a meaningful time, the principle is the same: the state may not level charges and then sit on its hands. Indeed, this Court has already held that a speedy trial framework governs the timeliness of civil forfeiture proceedings. The FCC's civil-penalty regime offends this robust and noble tradition.

A carrier subjected to a penalty order suffers the same injuries as a criminal defendant awaiting trial: reputational damage, financial pressure, uncertainty, and the erosion of evidence over time. The order itself brands the company a lawbreaker and demands payment within thirty days. In practice, no major carrier has ever refused payment to await a jury trial—which tells us that the penalty order, not the collection action, is doing the coercive work. Under the Sixth Amendment, post-accusation delay is presumptively prejudicial as it approaches one year. The government here claims the right to wait five.

Delay of this kind harms not only defendants but the justice system itself. The speedy trial principle protects society's interest in prompt, accountable adjudication. Without it, agencies can wield unresolved accusations as leverage—extracting concessions from regulated entities without having to test the charges in court. Delay becomes enforcement; enforcement becomes extortion.

Once the government declares a party liable for punitive sanctions, it must be prepared to prove that

claim without delay. The FCC's ploy to charge now but adjudicate (maybe) later must be rejected.

ARGUMENT

THE CONSTITUTION'S SPEEDY-TRIAL PRINCIPLE APPLIES WITH FULL FORCE WHEN THE GOVERNMENT LEVELS CHARGES BY CIVIL-PENALTY ORDER.

The principle that the state will not deliberately delay the trial of the accused runs deep in our legal tradition. "To none," King John promised in Magna Carta, "will we delay right or justice." Ch. 40 (1215). This pledge was celebrated—and handed down—in English law by Coke and Blackstone alike. See E. Coke, Second Part of the Institutes of the Laws of England 45 (Brooke, 5th ed. 1797); 1 W. Blackstone, Commentaries on the Laws of England 137–38 (1765). It then moved seamlessly into American law. Pennsylvania's 1776 Constitution pledged that "justice shall be impartially administered" without "unnecessary delay." Pa. Const. of 1776, pt. 2, § 26. Many other early state constitutions contained similar provisions. See Judith Resnik, *Constitutional Entitlements to and in Courts: Remedial Rights in an Age of Egalitarianism*, 56 St. Louis U. L.J. 917 (2012).

In the federal Constitution, this principle comes down to us through the Sixth Amendment's Speedy Trial Clause, which guarantees in "all criminal prosecutions" the "right to a speedy and public trial." U.S. Const. amend. VI. But this was merely the codification of a principle already deeply embedded in the common law. See *Klopfer v. North Carolina*, 386

U.S. 213, 223 (1967) (tracing the speedy-trial right to "the very foundation of our English law heritage"). The guarantee of the speedy trial right in the criminal context was not a sign of indifference to swift adjudication on the civil side. It was simply the most explicit expression of the broader rule that the government must not delay trial.

The Due Process Clause confirms as much. It independently requires that a defendant even in an administrative proceeding receive a hearing "at a meaningful time." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). "At some point," a "delay" in the provision of such a hearing "become[s] a constitutional violation." *Id.* See also *Barry v. Barchi*, 443 U.S. 55, 64 (1979) (absence of a "sufficiently timely" administrative hearing held unconstitutional); 5 U.S.C. § 706(1) (courts may "compel agency action … unreasonably delayed"); *id.* § 555(b) (an agency must "conclude" certain matters "presented to it" "within a reasonable time"). And this Court has already held that the Sixth Amendment speedy-trial framework applies, by analogy, to claims that delay has violated the Due Process Clause in a civil forfeiture proceeding. *United States v. $8,850*, 461 U.S. 555, 564 (1983); *Culley v. Marshall*, 144 S. Ct. 1142, 1163 (2024) (reiterating that "timeliness in civil forfeiture cases must be assessed by analog[y]" to "a defendant's right to a speedy trial"). The principle, in short, is pervasive: the Constitution does not tolerate a government that levels charges—by whatever name—and then drags its feet.

For corporations, moreover, the criminal and the civil context collapse into one. The principal remedy

available against a corporation, in either setting, is a fine. See Charles Doyle, *Corporate Criminal Liability: An Overview of Federal Law*, Cong. Research Serv. (2013). "After all, corporations cannot be imprisoned." V.S. Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109 Harv. L. Rev. 1477, 1478 (1996). In the modern era, corporate civil liability features the same "public enforcement" and "strong prelitigation information-gathering" apparatus as corporate criminal liability. *Id*. at 1532. It is therefore unclear whether "corporate criminal liability serves any [distinct] purpose now." *Id*. Indeed, federal law often treats the two as virtually the same. A "great many (most?) federal statutes today" "bear both civil and criminal applications." *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1156 (10th Cir. 2016) (Gorsuch, J., concurring). A civil penalty is indisputably a "punishment," *Jarkesy v. SEC*, 144 S. Ct. 2117, 2129 (2024), and this alone should suffice, in the corporate context, to trigger speedy trial considerations.

The distinction between criminal and civil prosecutions is muddy for corporations not only as a matter of logic, but also as a matter of fact on the ground. Once charges are brought against a criminal defendant, he is "subject … to public obloquy." *Betterman v. Montana*, 578 U.S. 437, 443 (2016). He must "liv[e] under a cloud of anxiety, suspicion, and often hostility." *Barker v. Wingo*, 407 U.S. 514, 533 (1972). Meanwhile, as time passes, the delay "compromises the reliability of a trial in ways neither party can prove or, for that matter, identify." *Doggett v. United States*, 505 U.S. 647, 655 (1992). It is thus the prime purpose of the speedy trial right that a

defendant "should not languish under an unresolved charge." *Betterman*, 578 U.S. at 444. Every one of these concerns applies to a corporation subject to a penalty order under the Communications Act.

Such corporations, in other words, are not analogous to ordinary civil litigants making their way through routine litigation. They are far more like criminal defendants who have been charged and are awaiting trial. The forfeiture order against AT&T, for example, declares: "IT IS ORDERED [that AT&T] IS LIABLE FOR A MONETARY FORFEITURE." Pet. at 11, No. 25-406. The order demands payment within thirty days—the unmistakable message being that a company that does not pay is a deadbeat, a scofflaw, a bad corporate citizen.

The public is not apt to read a penalty order as a mere suggestion, pending resolution through jury trial (if one ever occurs). And it would be unreasonable to expect otherwise. To the average citizen, the far more natural presumption is that a carrier has committed an offense and refused to take accountability for it. Unlike the ordinary civil defendant, a carrier subject to a penalty order is "under a cloud of … suspicion" and "subject … to public obloquy." *Barker*, 407 U.S. at 533; *Betterman*, 578 U.S. at 443. Just as if charged with a crime, a company hit with a penalty order will suffer the "moral condemnation of the community" for having engaged in "forbidden conduct." *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 731 (6th Cir. 2013) (Sutton, J., concurring).

We know this is how the FCC's penalty orders function in practice because—remarkably—it appears

that no regulated entity has ever held out for a trial over one. Br. of Chamber of Commerce at 16, No. 25-267 (Dec. 12, 2025). That fact alone speaks volumes. If carriers truly regarded penalty orders as the mere first step in a process that would culminate in a fair and speedy trial, some of them, some of the time, would contest the charges. None does—which tells us that the orders themselves are doing the coercive work. In the real world, the penalty order is the punishment.

Given this reality, the five-year limitations period for the Justice Department to bring an enforcement action is intolerable. Under the Sixth Amendment, "postaccusation delay" is "presumptively prejudicial" as "it approaches *one* year." *Doggett*, 505 U.S. at 652 (emphasis added). Here, by contrast, the government asserts the right to wait up to five years, not merely to bring the matter to trial, but simply to initiate a collection action. That disparity is staggering. Five years is long enough to leave any carrier "marked by a scarlet letter." Br. of Chamber of Commerce at 19, No. 25-267.

Even if the public could be expected to see things as the FCC (for purposes of this litigation) wants to depict them—a penalty order hangs over a carrier's head but means little until a jury speaks—that would do the government no good. The problem with gratuitous delay is not merely that it causes private hardship for the defendant. The speedy trial right protects a structural interest, too. "There is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused." *Barker*, 407 U.S. at 519.

Unreasonable delay calls the credibility of the justice system itself into question. A government empowered to level serious charges in a penalty order, and then leave those charges hanging for five years, is a government empowered to manipulate for advantage. It can extract concessions from regulated entities without ever putting its claims to the test—and thus without having to show that it is not acting for arbitrary or political reasons. Delay becomes enforcement. Worse still, enforcement becomes extortion. In such a system, little separates accusation from punishment.

That system is not ours. The speedy trial principle exists because the Framers understood something fundamental: when the government accuses someone of wrongdoing, it ought to be prepared to prove it. Not five years from now. Not when prosecutors get around to it. Now. Promptly. The FCC's civil penalty regime lets the government do the opposite: level charges, then wait, then leverage the waiting. This won't do. The Court should not allow the FCC to govern by accusation—which is to say, not to govern by law at all.

CONCLUSION

The judgment of the Fifth Circuit in *AT&T*, No. 25-406, should be affirmed. The judgment of the Second Circuit in *Verizon*, No. 25-567, should be reversed.

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Respectfully submitted,

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