

Nos. 25-406 & 25-567

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

AT&T, INC.,
Respondent,

—and—

VERIZON COMMUNICATIONS, INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Respondents.

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

**Brief of Amicus Curiae Liberty Justice Center
Supporting AT&T, Inc. and Verizon
Communications Inc., et al.**

February 25, 2026

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Interest of the Amicus Curiae

The Liberty Justice Center (“LJC”) is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.¹ LJC is interested in this case because the protection of an individual’s right to a jury trial is fundamental to the preservation of liberty. LJC previously filed a brief as amicus curiae in *SEC v. Jarkesy*, 603 U.S. 109 (2024).

Summary of Argument

The Court is presented with two contrasting approaches to the Federal Communications Commission adjudications of Section 222 of the Telecommunications Act. The Second Circuit found that carriers do not suffer a Seventh Amendment injury when they are denied a jury trial until after agency adjudication, while the Fifth Circuit applied this Court’s decision in *Jarkesy* and found that the Seventh Amendment guarantees a jury trial.

“The call for the true application of the Seventh Amendment is not to words, but to the spirit of honest desire to see that constitutional right preserved.” *Galloway v. U.S.*, 319 U.S. 372, 407 (1943). The Seventh Amendment’s right to a jury trial in civil cases is a foundational and fundamental right.

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

Because of the penalties the commission imposes, and the similarity of its claims to common law negligence, the Seventh Amendment demands that these adjudications occur before a jury. Instead, the commission subjects carriers to an in-house agency adjudication where it serves as prosecutor, judge, and jury, depriving regulated parties of their right to a jury trial and of their right to due process.

Allowing this regime to continue undermines the protections enshrined in the Constitution. This Court should affirm the Fifth Circuit's decision holding that the commission must enforce telecommunications laws consistent with the Seventh Amendment.

Argument

I. The FCC's enforcement regime violates the Seventh Amendment.

The Seventh Amendment to the United States Constitution requires that: "In suits at common law, . . . the right of trial by jury shall be preserved[.]" U.S. Const. amend. VII. In *SEC v Jarkesy*, 603 U.S. 109 (2024), this Court clarified that regulatory enforcement actions based on statutory claims are included in this rule when they are "legal in nature." *Id.* at 122 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989)).

A suit is legal in nature when the cause of action resembles common law causes of action, and when the remedy is the sort that was traditionally obtained in a court of law. *Jarkesy*, 603 U.S. at 122–23. The nature of the remedy is the weightier factor. *Id.* at 123.

In *Jarkesy*, this meant that the Securities and Exchange Commission’s securities fraud enforcement triggered defendants’ Seventh Amendment rights. The civil penalties the agency assessed were punitive, rather than restorative, and Congress used “fraud” and other common law terms of art in the relevant statutes. *Id.* at 124–26. This “close relationship” between federal securities fraud and common law fraud meant that agency enforcement was legal in nature. *Id.* at 126.

**A. Enforcing Section 222 of the
Telecommunications Act is legal in
nature.**

Section 222 of the Telecommunications Act creates “a duty to protect the confidentiality of proprietary information of, and relating to, . . . customers.” 47 U.S.C. § 222(a).

Like the securities fraud statute in *Jarkesy*, the FCC’s Section 222 enforcement resembles a common law action. In its opinion below, the Fifth Circuit correctly identified that the civil penalties at the heart of this case are “the prototypical common law remedy.” *AT&T, Inc. v. FCC*, 149 F.4th 491, 498 (5th Cir. 2025) (quoting *Jarkesy*, 603 U.S. at 123). The penalties the commission levies are not meant to restore the status quo or compensate customers whose data was compromised, carriers found to violate Section 222 “shall be liable to the United States for a forfeiture penalty.” 47 U.S.C. § 503(b); *see also* 47 U.S.C. § 504(a) (“The forfeitures provided for in this Act shall be payable into the Treasury of the United States[.]”); *AT&T, Inc.*, 149 F.4th at 498.

In addition to the weightier remedy, the Fifth Circuit identified common law negligence as analogous to Section 222 enforcement because the statute punishes carriers for failing to take reasonable precautions to protect customer data. *Id.* The commission’s analysis of whether AT&T acted reasonably “is a staple of the common law.” *Id.* at 498–99.

B. The FCC’s administrative adjudication deprives carriers of their jury trial rights.

When enforcing Section 222 violations, the commission may choose whether to hold a hearing either in-house or before an administrative law judge. 47 U.S.C. § 503(b)(3)(A). In either case, if the carrier fails to pay, the forfeiture is collectible by a civil suit in the United States district courts. 47 U.S.C. § 504(a). Such suit “shall be a trial de novo[.]” *Id.*

Both the commission and the Second Circuit below assert that the requirement for the collection action in court—at which carriers may request a jury trial—preserves the right protected by the Seventh Amendment. *See Verizon Commc’ns Inc. v. FCC*, 156 F.4th 86, 106 (2d Cir. 2025). The Seventh Amendment demands a jury, but not necessarily in the first instance, they argue. By their logic, because carriers can demand a jury trial if the government sues them for failing to pay a forfeiture, the fact that they can be adjudicated as guilty, have a penalty imposed, and are treated in future dealings with the commission as repeat offenders is of no moment. *See* 47 U.S.C. § 503(b)(2)(E) (requiring the commission to consider “any history of prior offenses”).

But that logic is flawed. The right to a jury trial is one that is “so fundamental and sacred to the citizen,” and “should be jealously guarded by the courts.” *Jacob v. New York City*, 315 U.S. 752, 752–53 (1942). Making that right contingent on the imposition of an administrative forfeiture and forcing regulated parties to wait for the government to decide to file a lawsuit to collect is an abrogation of this fundamental principle. Nor is it harmless to those who prevail at trial—who have had to shoulder the costs of an entire second proceeding. Allowing an administrative agency to impose a fine and the attendant reputational harm and consequences that result without the benefit of a jury factfinder defies both the purpose and the spirit of the Seventh Amendment.

II. The FCC’s agency adjudication scheme runs afoul of due process.

“The Seventh Amendment’s jury-trial right does not work alone.” *Jarkesy*, 603 U.S. at 141 (Gorsuch, J., concurring). The right to a jury goes hand-in-hand with the Fifth Amendment right to due process. The basic promise of due process is a “fair trial in a fair tribunal.” *In re Murchison*, 349 U.S. 133, 136 (1955). The commission’s ability to prosecute its own cases before itself undermines this promise in two glaring ways.

First, allowing the commission to prosecute and adjudicate its own cases undermines the prospect of a fair tribunal. This Court acknowledged the issues of in-house adjudication in *Axon Enter v. FTC*, 598 U.S. 175 (2023). “Agencies . . . combine the functions of investigator, prosecutor, and judge under one roof. They employ relaxed rules of procedure and evidence—rules they make for themselves.” *Id.* at 215.

While this consolidation of adjudicatory effort is not proof itself of a due process violation, courts “should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice.” *Withrow v. Larkin*, 421 U.S. 35, 54 (1975). Here, the commission issues its forfeiture orders after only a written response to its Notice of Apparent Liability, with no hearing or trial prior to levying a penalty. See *AT&T, Inc. v. FCC*, 149 F.4th 491, 495 (5th Cir. 2025). The commission’s ability to dodge a hearing flouts due process.

Second, the adjudication scheme here deprives carriers of the opportunity to be heard “in a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Assuming a carrier does not pay the fine issued after a paper hearing, the commission *may* file a Section 504 suit to collect. It has up to five years to choose to do so, during which the carrier must live with the collateral reputational harm and effects on future dealings with the commission. And no suit may be forthcoming, so even while the forfeiture goes unpaid, the consequences remain. Without submitting to the commission’s forfeiture order and then seeking appellate review, a carrier has no meaningful opportunity for a hearing on its liability, which the commission already unilaterally declared.

Because the agency investigates, prosecutes, and adjudicates claims against the carriers, and there is no meaningful opportunity for a carrier to challenge the agency’s determination of liability without submitting to a fine, the commission’s adjudication scheme deprives carriers of their right to due process.

Conclusion

Allowing administrative agencies to internally prosecute and adjudicate claims undermines the Constitutional structure meant to protect individuals from arbitrary and abusive treatment by the government. For this reason, this Court should resolve the split between the Fifth and Second Circuits by affirming the decision of the Fifth Circuit below.

February 25, 2026 Respectfully submitted,

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