

Nos. 25-406 and 25-567

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In the Supreme Court of the United States

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FEDERAL COMMUNICATIONS COMMISSION, ET AL.,  
*Petitioners,*

*v.*

AT&T, INC.,  
*Respondent*

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VERIZON COMMUNICATIONS INC.  
*Petitioner,*

*v.*

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,  
*Respondents*

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

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**BRIEF OF TELNYX LLC AS *AMICUS CURIAE* SUPPORTING  
RESPONDENT IN NO. 25-406 AND PETITIONER IN NO. 25-567**

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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

The Federal Communications Commission exercises immense power. The Commission regulates not only the parties to this case—Verizon and AT&T (the Carriers)—but also thousands of businesses of varying sizes that offer communications services throughout the Nation. The Commission’s claimed power to level massive punitive judgments through agency proceedings—unchecked by a jury—can present existential threats to service providers across the country.

The recent experience of amicus Telnyx LLC with the Commission can aid this Court’s understanding of the stakes of the constitutional questions presented here. Telnyx is a leading provider of a variety of voice and data services for businesses and consumers. It develops and sells access to cutting-edge technologies enabling internet-based communications across the globe, including voice over internet protocol (VoIP) communications, conversational artificial intelligence tools, internet-of-things capabilities, and private networking for cloud services.

Telnyx deploys industry-leading tools to combat misuse of its services. Nevertheless, Telnyx has wrongly been subjected to the Commission’s unconstitutional efforts to impose punishment without a hearing or a jury. In February 2025, the Commission issued a “Notice of Apparent Liability” (also known as an “NAL”) to Telnyx for purported small-scale violations of a regulation governing “robocalls.” Notice of Apparent Liability, *In re Telnyx*

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<sup>1</sup> No counsel for any party authored this brief in whole or in part. No entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

*LLC*, FCC 25-10 (Feb. 4, 2025); see 47 U.S.C. § 503.<sup>2</sup> The Commission proposed a penalty of nearly 4.5 million and provided Telnyx with just two options: pay in full, or respond to the agency’s allegations in writing and without a hearing within 30 days. Having responded, Telnyx must now hope that its written submission will persuade the agency to disagree with its own allegations rather than levy a multi-million dollar “forfeiture penalty” paid to the U.S. Treasury. 47 U.S.C. § 503(b)(4).

Telnyx’s case spotlights the risks of permitting a politically unaccountable agency to consolidate investigatory, prosecutorial, and judicial powers into an in-house proceeding without jury oversight. The Commission even alleged that it was the *victim* of Telnyx’s putative regulatory violation because a third-party user of Telnyx’s services had targeted the Commission’s members, former members, and employees with robocalls. In Telnyx’s case, then, the Commission was directly adverse to the party it was regulating. Those circumstances reflected an egregious denial of the “neutral adjudicator” that the Framers guaranteed in the Seventh Amendment and Article III. *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024).

The financial and reputational harms that Telnyx has suffered (and continues to suffer) while the NAL hangs over its head—before any neutral adjudicator has considered Telnyx’s arguments that it used best practices and complied with all applicable legal requirements—reinforce why the Carriers are correct in this case. Allowing the Commission to pursue NAL penalties unconstrained by juries risks permitting unelected and unaccountable administrators to further erode the Constitution’s foundational protections against administrative agency overreach.

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<sup>2</sup> <https://docs.fcc.gov/public/attachments/FCC-25-10A1.pdf>.

### SUMMARY OF ARGUMENT

A. The Commission’s NAL process is unconstitutional and profoundly unfair. Under its own regulations, the Commission can—and does—assume the role of victim, investigator, prosecutor, judge, and fact-finder. The agency also flexes regulatory power by assessing and enforcing monetary penalties at its sole discretion.

Those liberty-threatening circumstances describe Telnyx’s recent experience under the Commission’s NAL scheme. In February 2024, a sophisticated and unscrupulous actor briefly evaded Telnyx’s robust, industry standard controls and placed a relatively small number of robocalls over a short period. Those calls, Telnyx later discovered, targeted the Commission itself. Telnyx caught the problem within hours, blocked the infiltrator’s accounts, and voluntarily reported the incident to the Commission. But the Commission responded by seeking nearly 4.5 million in forfeiture penalties against Telnyx for calls that Telnyx did not make and worked diligently to prevent and stop. Those proceedings are pending. Under current regulations, it is the Commission that will determine whether its own allegations—alleging harm to its own members—are true and warrant a punitive forfeiture order. In the interim, the Commission has publicly labeled Telnyx a “bad actor” in multiple forums. And Telnyx has suffered significant financial and reputation harm with no way to clear its name in court. Making matters worse, Telnyx could remain in this purgatory state indefinitely. The Commission has no obligation to ever render a decision; the NAL can loom over Telnyx forever.

The Commission’s jury-less procedures also present regulated entities with a dilemma. When the Commission issues an NAL, the recipient has two options: pay immediately, or respond in writing within 30 days and—without

a hearing—hope that the same agency pulling all the levers in the investigation and adjudication will resolve the dispute fairly. Not surprisingly, the Commission nearly always adjudges the regulated entity liable and issues a final forfeiture order. At that point, the regulated entity faces a second dilemma: pay the penalty and appeal directly to a federal court of appeals, losing the right to a (potential) jury in the process, or else defy the order and wait for the federal government (potentially) to sue it in federal district court—suffering various adverse consequences along the way.

**B.** The Commission’s NAL procedures are irreconcilable with the Seventh Amendment and Article III. This Court’s decision in *Jarkesy* resolves this case: The Commission’s ability to assess a forfeiture penalty through the NAL process is the kind of proceeding that triggers the jury trial right. The Commission’s allegations in an NAL action sound in common-law claims of negligence, nuisance, and unjust and unreasonable practices. The threatened monetary penalties are calibrated to the “culpability” and “history of prior offenses” of the regulated entity and serve as deterrence and punishment. And any judgment is paid to the U.S. Treasury, not to any victim.

The Commission does not seriously dispute those points. Instead, it insists that any constitutional violation in obtaining a final order of liability might be cured if (1) the regulated entity defied a final forfeiture order and (2) the government exercised its sole discretion to initiate a collection suit, where a jury *could* be available. That does not follow. Whether the government complies with the Seventh Amendment in some hypothetical second lawsuit does not permit it to violate the Constitution in the first proceeding. And even under the Commission’s framing, the accused must defy a binding order and hope the

government elects to initiate costly litigation to finally get before a jury. The Constitution demands more.

### **ARGUMENT**

The FCC presently employs an administrative scheme that allows it to levy final orders imposing massive penalties without any jury oversight. Telnyx’s experience makes clear that the Commission has arrogated the powers to charge, adjudicate, and penalize claimed violations of agency regulations through an in-house process—even when the victims are the agency members themselves. That scheme is incompatible with the Seventh Amendment and Article III.

**A. The FCC’s disregard of the Seventh Amendment and Article III can have disastrous real-world consequences on regulated entities.**

The Commission’s regulatory enforcement power has immense consequences for the entire telecommunications industry—from large companies like Verizon and AT&T to the thousands of smaller companies that are also subject to the Commission’s oversight. The Commission’s actions can spell the destruction of a company based on nothing more than the agency’s say-so with no meaningful right to agency process, let alone a neutral jury trial in a court of law.

**1. When the Commission issues a Notice of “Apparent” Liability to regulated entities, it treats liability as a foregone conclusion.**

a. In February 2025, the Commission issued an NAL against Telnyx, accusing the company of violating a regulation requiring voice-service providers to “[t]ake affirmative, effective measures” to mitigate “illegal calls” and “illegal traffic.” 47 C.F.R. § 64.1200(n)(4). That regulation seeks, among other things, to reduce the tens of billions of

automated “robocalls” that are placed to U.S. mobile phones every year. See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 35 FCC Rcd. 15221, 15222 & nn.3-5 (2020).<sup>3</sup> The Commission requires that regulated providers employ “reasonable analytics” to prevent unlawful calls. *Id.* at 15234. Telnyx employs systems that are *more than* reasonable: it uses industry leading systems to detect and block robocalls.

But no provider’s system is perfect. The Commission’s allegations against Telnyx arose from an approximately 17-hour incident in February 2024 when malicious actors using the name “MarioCop” briefly evaded Telnyx’s customer-screening controls to establish telephone-service accounts. See Telnyx NAL 3, *In the Matter of Telnyx LLC*, FCC 25-10 (Feb. 4, 2025).<sup>4</sup> During the night of February 6 and the morning of February 7, “over a dozen FCC staff and some of their family members” received calls from the MarioCop accounts from a caller claiming to be from the Commission’s “Fraud Prevention Team.” *Id.* at 4. The Commission concluded that MarioCop’s “purpose of the calls appears to have been to threaten, intimidate and defraud” Commissioners, Commission staff, and their families. *Ibid.* Telnyx acted immediately: Within 17 hours of MarioCop’s first call, Telnyx blocked the two offending accounts. *Id.* at 5. Telnyx then voluntarily reported the evasion of its controls to the Commission and cooperated with the Commission’s subsequent subpoenas issued to investigate the incident. *Ibid.* But even with all of the Commission’s resources, expertise, and Telnyx’s cooperation, the Commission “was unable to identify the person who opened either account.” *Ibid.*

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<sup>3</sup> <https://docs.fcc.gov/public/attachments/FCC-20-187A1.pdf>.

<sup>4</sup> <https://docs.fcc.gov/public/attachments/FCC-25-10A1.pdf>.

The Commission alleges that Telnyx “fail[ed]” to implement “effective measures” to prevent robocalls, 47 C.F.R. § 64.1200(n)(4), simply because MarioCop successfully evaded Telnyx’s reasonable controls, Telnyx NAL 9. For what the Commission deemed Telnyx’s “apparent” and “willful[.]” violations, it proposed a “forfeiture” of \$4,492,500. *Ibid.*

Per the FCC’s existing regulations, the Notice of Apparent Liability gave Telnyx two options. Telnyx could pay “the full amount of the proposed forfeiture,” or it could file a written statement seeking reduction or cancellation within 30 days, after which the Commission would issue a final decision. Telnyx NAL 13. One Commissioner dissented from the issuance of the NAL, writing that he believed that “the Supreme Court’s decision in *Jarkesy*” barred the Commission from acting on “any item purporting to impose a fine.” *Id.* at 17 (Simington, dissenting).

b. Though nominally a notice of Telnyx’s “apparent” violations, the Commission’s release of the NAL inflicted immediate and existential risks to Telnyx and its business.

*First*, the Commission almost immediately began identifying Telnyx as a violator of agency regulations. The Commission’s Chairman stated in a press release that the NAL was part of “the FCC’s longstanding work to stop bad actors.” FCC, Press Release, *First Commission-Level Vote Under Chairman Carr Proposes A Nearly \$4.5 Million Fine Stemming From Apparently Illegal Robocall Scheme* (Feb. 4, 2025).<sup>5</sup> That press release further suggested that Telnyx had “fail[ed] to meet its obligations,” leading to the “scheme” perpetrated using Telnyx’s network, *ibid.*, even though the Commission had

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<sup>5</sup> <https://docs.fcc.gov/public/attachments/DOC-409354A1.pdf>.

not yet adjudicated Telnyx’s case or considered Telnyx’s explanation that its full compliance with all legal requirements was not enough to prevent the MarioCop scam.

The Commission even named Telnyx a “bad actor” in a notice of proposed rulemaking. In November 2025, the Commission issued a draft notice concerning know-your-customer requirements for internet-based voice providers. Third Report and Order and Third Further Notice of Proposed Rulemaking, *Numbering Policies for Modern Communications*, WC Dkt. Nos. 13-97, 07-243, 20-67, FCC-CIRC2512-01 (Nov. 25, 2025).<sup>6</sup> The Commission listed Telnyx among the “bad actors” against whom the agency had recently brought enforcement actions. *Id.* at 4 & n.11. The Commission also referred to the Notice of *Apparent Liability* against Telnyx as a “finding” that Telnyx had “insufficient know-your-customer practices.” *Ibid.* When Telnyx issued a public comment requesting that the Commission delete from a final notice of proposed rulemaking the incorrect references to a “finding” that Telnyx is a “bad actor,”<sup>7</sup> the Commission refused to do so. See *id.*, FCC 25-86 at 4 & n.11 (Dec. 19, 2025).<sup>8</sup> The Commission has therefore made clear that it considers Telnyx to be liable—even without an adjudication—and will continue subjecting the company to scrutiny on the bases of mere allegations of wrongdoing.

*Second*, the NAL stained Telnyx’s reputation with its customers and other service providers. After the Commission branded it a bad actor, Telnyx lost a significant number of customers and substantial revenue. See Telnyx

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<sup>6</sup> <https://docs.fcc.gov/public/attachments/DOC-415568A1.pdf>.

<sup>7</sup> <https://www.fcc.gov/ecfs/document/120358664186/1>.

<sup>8</sup> <https://docs.fcc.gov/public/attachments/FCC-25-86A1.pdf>.

Response to Notice of Apparent Liability (Feb. 27, 2025), Ex. A ¶ 7.<sup>9</sup> Those financial and reputational injuries continue to grow because the Commission still has not resolved the NAL. Nor has the agency signaled when it will issue a formal final order, which simply compounds the harms to Telnyx as it continues operating its business. Indeed, the Commission has no obligation to ever render a decision on Telnyx’s written response; the NAL can loom over Telnyx forever.

*Third*, after the Commission issued the NAL, Telnyx was “immediately” suspended from an industry group known as the Industry Traceback Group (ITG). Telnyx NAL Response, Ex. A ¶ 7. Membership in the ITG is crucial to the industry: The ITG works closely with the Commission and is the sole “registered consortium” designated by the Commission to regulate robocalling by “trac[ing] ... the origin of suspected unlawful robocalls.” *In re Implementing Section 13(d) of the Pallone-Thune Tel. Robocall Abuse Crim. Enft & Deterrence Act (Traced Act)*, 38 FCC Rcd. 7561, 7562 (2023). Although the ITG reinstated Telnyx about a year later, Telnyx lost standing with the industry.<sup>10</sup> And in the interim, Telnyx could not participate in the industry’s leading efforts to guide and support policies to mitigate unlawful robocalls. Telnyx’s membership in another industry association, i3Forum, has likewise been suspended pending that organization’s review of the Commission’s allegations.

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<sup>9</sup> <https://telnyx.com/nal-response-press-release.pdf>.

<sup>10</sup> See *Following Telnyx’s NAL response, FCC supports reinstating Telnyx to the industry traceback group*, <https://telnyx.com/resources/fcc-supports-telnyx-itg-reinstatement> (last updated Jan. 28, 2026).

*Fourth*, the Commission recently adopted new rules requiring that existing VoIP number holders (such as Telnyx) certify that they have never “been subject to a Commission, law enforcement, or any regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission’s rules applicable to unlawful robocalls or unlawful spoofing.” FCC 25-86 at 7-8. The Commission apparently intends to withhold or even revoke resources from companies like Telnyx based on unresolved allegations, regardless of whether the agency’s investigation ever amounts to a final determination of liability—in direct conflict with the safeguards established by Congress. See 47 U.S.C. § 504(c) (“In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued[.]”).

c. The Commission’s public accusations against Telnyx are particularly unfortunate because they lack merit.

The Commission’s own rules do not demand a 100% success rate in preventing or mitigating robocalls; the rules instead require “effective” ex ante controls to mitigate unlawful calling. 47 C.F.R. § 64.1200(n)(4); see 35 FCC Rcd. at 15232 (declining to require a “voice service provider to block *all* calls from a particular source” (emphasis added)). The standard is “reasonableness”—and it recognizes that providers have “limited visibility into the actual source of the traffic,” which makes it impossible to “expect perfection in mitigat[ing]” robocalls. *Ibid.*

Precisely because Telnyx agrees that robocalls are a serious problem, it works hard to prevent them. Long before the Commission issued the NAL, Telnyx had instituted industry-leading safeguards and mitigation con-

trols. For example, Telnyx has implemented customer controls, validation measures, and robust record-keeping; it has installed continuous network-level analytics and internal checks to rapidly identify and block any suspicious activity; and it has entered into third-party contracts with industry-leading providers to further prevent and mitigate fraudulent traffic on Telnyx's network. See Telnyx NAL Response, Ex. A ¶¶ 8-13, 21. Telnyx is constantly updating and adapting its measures to stay ahead of the ever-evolving tactics of inevitable bad actors in this space. Its efforts have led to a remarkably successful track record in preventing and mitigating robocalling: 99.8% of Telnyx's customers have never been implicated in any form of robocall investigation by either the Commission or the Industry Traceback Group. *Id.* ¶ 21.

In Telnyx's case, it is clear that the true "bad actor" was the entity or person that evaded Telnyx's controls and placed the unlawful calls, before Telnyx promptly blocked them. Indeed, as Telnyx explained to the Commission, the most likely explanation for the robocalls targeting the Commission was not a fraud scheme, but rather an effort to "swat[]" (*i.e.*, harass) a company like Telnyx. Telnyx NAL Response, Ex. A ¶ 16. That is, "these calls were designed to trigger a reaction by the Commission" against Telnyx, "and it worked." *Ibid.*

But none of that stopped this Commission, which continues to label Telnyx as a "bad actor" even before adjudicating the allegations. FCC 25-86 at 4 & n.11. In short, the Commission has exposed Telnyx to severe and ongoing consequences based only on nominally tentative conclusions. And the Commission believes it should not be required to present its (unfounded) charges against Telnyx before a neutral jury.

**2. A Notice of Apparent Liability prevents the accused from clearing its name before a neutral adjudicator.**

The FCC's delay and public accusations are not the only harms that await the recipient of an NAL like Telnix. Once the Commission issues its final forfeiture order, it foists on Telnix an impossible choice: either pay the penalty, appeal, and forgo any possible chance of a jury trial; or else defy the final order and suffer the consequences.

Ordinarily, when unfounded allegations are brought in a neutral court, the defendant has a clear path toward clearing its name. Parties accused of violations may "defend themselves," including before a jury where the Seventh Amendment requires it. *Jarkesy*, 603 U.S. at 115. This Court has long recognized that submitting contested matters before a jury in court is the "normal and preferable mode of disposing of issues of fact." *Dimick v. Schiedt*, 293 U.S. 474, 485-486 (1935). "These elemental procedural safeguards" form the "most vital barriers to governmental arbitrariness." *Reid v. Covert*, 354 U.S. 1, 10 (1957).

Unfortunately, that is not how FCC forfeiture proceedings work. A party that receives a final forfeiture order from the Commission must choose to either (a) pay the penalty and appeal directly to a federal court of appeals, affirmatively extinguishing any possibility of obtaining a jury trial, or (b) refuse to pay the penalty and wait for the federal government to (maybe) sue the regulated entity for collection. That is neither a fair nor a constitutional choice.

*Appeal, without a jury.* To appeal the Commission's in-house forfeiture order, the regulated entity must pay the penalty in full and, within 60 days, petition for review in a federal court of appeals under the Hobbs Act. 47 U.S.C. § 402(a); 28 U.S.C. §§ 2342(1), 2344. The appellate court then reviews the Commission's forfeiture order un-

der the Administrative Procedure Act, deferring to the record and findings developed by the agency. 28 U.S.C. § 2347(a); 5 U.S.C. § 706(2)(A). No jury is, or ever will be, empaneled under that process. See 28 U.S.C. § 2347. The price of appealing is thus to lose a jury right for good.

*Defy and Languish.* The alternatives are not any better. To preserve the mere *possibility* of a jury trial, the regulated entity must defy a binding order issued by the federal government and endure the various repercussions that ensue. That is, the regulated entity must refuse to pay the forfeiture penalty, allow the window for appellate review to lapse, and await the Department of Justice’s discretionary decision whether to file an enforcement action in federal district court. 47 U.S.C. §§ 503(b)(3)(B), 504(a).

That waiting game is protracted. The government has five years to decide whether to initiate proceedings to enforce the Commission’s binding forfeiture order. See 47 U.S.C. § 504(a); 28 U.S.C. § 2462. In the meantime, the regulated entity hoping to exercise its jury-trial right must conduct its business in limbo, toiling for up to a half decade under the persistent threat of being hauled into court and all the while being branded as a bad actor by the federal government.

Holding out hope for a jury imposes serious costs on entities subject to a final forfeiture order. The Commission claims the power to use prior violations “against” a regulated entity in “a subsequent renewal, forfeiture, transfer, or other proceeding.” *Commission’s Forfeiture Policy Statement & Amend. of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd. 17087, 17103 (1997). Under the Commission’s recidivism approach, a regulated entity faces exposure to higher fines in subsequent forfeiture proceedings. See 47 U.S.C. § 503(b)(2)(E). And the Commission may even declare

that it does not serve the “public interest” to allow an adjudged violator of the Communications Act to renew its license, or to acquire another entity’s license in a merger. See 47 U.S.C. § 309(a); see, *e.g.*, *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-596 (1981). The Commission may take all those actions solely on the strength of its final forfeiture order, without ever presenting its case to a jury.

**B. The Commission’s NAL scheme is unconstitutional.**

The Commission no longer argues that its forfeiture proceedings comport with the Seventh Amendment. Nor could it after *Jarkesy*. Instead, the Commission attempts to recast (25-406 Pet. 7-15) *subsequent*—and discretionary—debt-collection suits as constitutional cure-alls. But that does not solve the constitutional defect: The theoretical possibility that the government would pursue additional litigation in court—after the agency has already entered a binding judgment in its own forum—offers far too little, and comes far too late, to vindicate the Seventh Amendment’s essential protections.

**1. The Commission’s in-house adjudication scheme violates the Seventh Amendment’s guarantee.**

The Seventh Amendment preserves “the right of trial by jury” in “Suits at common law.” The Commission’s forfeiture proceedings flout that constitutional guarantee: The agency-adjudication scheme (1) “implicates” the jury trial right and (2) does not concern a “public right.” *Jarkesy*, 603 U.S. at 120. “The Seventh Amendment therefore applies and a jury is required.” *Id.* at 120-121.

The Commission’s forfeiture proceedings implicate the Seventh Amendment because their nature is punitive and legal—not equitable. *Jarkesy*, 603 U.S. at 123. The “remedy” itself “is all but dispositive” on that question. *Ibid.* The “forfeiture penalty” at issue here, 47 U.S.C. § 503(b)(1), is a “penalty” that is “designed to punish or

deter the wrongdoer,” *Jarkesy*, 603 U.S. at 123. Much like the civil penalties that implicated the jury-trial right in *Jarkesy*, the Commission’s forfeiture orders turn on “the nature, circumstances, extent, and gravity of the violation,” and on the carrier’s “degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 U.S.C. § 503(b)(2)(E). As in *Jarkesy*, those punitive standards are divorced from any equitable or restitutionary principles: they are “payable into the Treasury of the United States,” not to any individuals or putative victims. 5 U.S.C. § 504(a); see *Jarkesy*, 603 U.S. at 124 (“The final proof that this remedy is punitive is that the [agency] is not obligated to return any money to victims.”).

The Commission’s forfeiture proceedings, moreover, implicate the Seventh Amendment because they share a “close relationship” with common-law actions, not suits in equity. See *Jarkesy*, 603 U.S. at 125-126. Forfeiture proceedings under Section 503 resemble common-law actions for negligence, private nuisance, and unjust and unreasonable practices. For example, the Commission initiated forfeiture proceedings against Telnix for its alleged failure to “exercis[e] due diligence” to prevent customers “from using its network to originate illegal calls.” See 47 C.F.R. § 64.1200(n)(4). That charge sounds in the common law’s imposition of negligence liability on those who “permit a third person to use a thing or engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.” Restatement (Second) of Torts § 308 (2025). Those common roots in the common law “confirm[.]” that the Commission’s forfeiture proceedings are “legal in nature” and thus implicate the right to a jury. *Jarkesy*,

603 U.S. at 126 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989)).

Because forfeiture proceedings “implicate[] the Seventh Amendment,” they fail constitutional muster unless they involve “public rights.” *Jarkesy*, 603 U.S. at 120 (outlining “public rights” exception to the jury-trial right). Public rights are a narrow category of matters that “historically could have been determined exclusively by the executive and legislative branches.” *Id.* at 128 (quoting *Stern v. Marshall*, 564 U.S. 462, 493 (2011)). And because that exception “has no textual basis in the Constitution,” this Court requires convincing evidence of its applicability—for example, a “centuries-old” practice—before setting the Seventh Amendment aside. *Id.* at 131. Forfeiture proceedings can claim no such “serious and unbroken historical pedigree.” *Id.* at 153 (Gorsuch, J., concurring). Thus, the Commission must make its case to a jury before levying millions of dollars in punitive fines.

In the proceedings below, the Commission argued (25-406 Pet. App. 123a-128a) that its forfeiture penalties satisfy the public rights exception under *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442 (1977). That is incorrect. *Atlas Roofing* extended the public-rights exception only to claims that were “unknown to the common law.” 430 U.S. at 461; see *Jarkesy*, 603 U.S. at 138 (same). Forfeiture actions, by contrast, resemble common-law suits for nuisance and negligence, among others. See p. 15, *supra*.

**2. Discretionary post-judgment collection actions do not cure the Seventh Amendment violation.**

The Commission does not seriously defend its forfeiture proceedings under the Seventh Amendment and this Court’s precedent. Instead, the Commission contends (25-406 Pet. 7-15) that the hypothetical possibility of a

jury trial in a *subsequent* recovery suit cures any prior Seventh Amendment violation. That is wrong.

The Seventh Amendment applies to *all* “Suits at common law.” That necessarily includes the Commission’s forfeiture proceedings—regardless of whether the agency elects to enforce its judgments in a subsequent action. As discussed above, a forfeiture proceeding is itself a suit at common law that results in a final “order of the Commission.” 47 U.S.C. § 402(a); see 28 U.S.C. § 2342(1). Precisely because those proceedings produce a standalone and enforceable judgment, the “right of trial by jury” attaches. U.S. Const. amend. VII; see *Jarkesy*, 603 U.S. at 119 (examining agency proceedings that resulted in a “final order” against the petitioner).

The Commission insists (25-406 Pet. 7) that its NAL scheme comports with the Seventh Amendment because Section 504 permits the government to pursue an additional “civil suit” to enforce its forfeiture orders. 47 U.S.C. § 504. That does not follow. Whether the government complied with the Seventh Amendment in a *second* lawsuit is orthogonal to whether it violated the jury-trial right in the first proceeding. See *AT&T, Inc. v. FCC*, 149 F.4th 491, 503 (5th Cir. 2025), *cert. granted*, 2026 WL 73092 (2026). That is especially plain here: If the government elects to pursue a Section 504 enforcement suit, then the regulated entity’s liability and punishment have already been determined—without a jury.

Even under the Commission’s framing, a regulated entity is still subject to an impermissibly “stealthy encroachment[ ]” on the jury-trial right. *Boyd v. United States*, 116 U.S. 616, 635 (1886). Under this administrative scheme, a carrier is entitled to a jury *only* if (1) the carrier disobeys a forfeiture order *and* (2) the Commission elects in its discretion to file an enforcement action.

That is untenable. It is also impractical: Precisely because regulated entities face potentially calamitous consequences by defying a forfeiture order, see pp. 11-13, *supra*, they consistently make the reasonable decision to obey those orders—obviating the need for a government collection action. See, *e.g.*, No. 25-567 Chamber of Commerce Cert. Amicus Br. 12 (Dec. 12, 2025). The Commission’s proposal, moreover, creates perverse incentives. It encourages regulated entities to ignore their regulator, invite an enforcement action demanding payment of an outstanding government debt, and incur additional expenses to litigate that follow-on suit.

The Commission’s arguments also lack precedent. The Commission has invoked (25-406 Pet. 8-10) *Capital Traction Co. v. Hof*, 174 U.S. 1 (1899), and *Meeker v. Lehigh Valley Railroad Co.*, 236 U.S. 412 (1915), but neither case supports the assertion that complying with the Seventh Amendment in a second lawsuit backfills a violation that has already occurred in a first (primary) proceeding that determined the regulated party’s liability.

*Hof* is inapposite because it involved a materially different adjudicatory scheme from the one at issue here. While the suit in *Hof* began before a non-Article III justice of the peace, “either party” could request a jury on direct review to an Article III court. 174 U.S. at 4, 17. Thus, the “right of trial by jury” was “preserved” within the same “Suit.” *Id.* at 23; see *Gulf Refin. Co. of La. v. United States*, 269 U.S. 125, 137 (1925) (“An appeal is not a new suit in the appellate court, but a continuation of the suit in the court below.”). By contrast, there is no right to a trial by jury in an appeal from a forfeiture order issued by the Commission. See 28 U.S.C. § 2342(1). Instead, any jury trial takes place in a separate suit, and *only if* the

government elects to initiate additional litigation. See 47 U.S.C. § 504.

*Meeker* is similarly inapt because it addressed an entirely different question from the one implicated here. This Court rejected the argument that using agency reports as prima facie evidence in subsequent collection suits infringed a regulated entity's jury trial rights in the collection action. 236 U.S. at 430. Here, by sharp contrast, the Carriers do not allege that their Seventh Amendment rights would be infringed in a Section 504 collection proceeding. Rather, the question is whether an agency-housed forfeiture proceeding—which does not allow a jury trial at any point—is consistent with the Seventh Amendment. It is not.

**CONCLUSION**

The judgment of the Fifth Circuit in No. 25-406 should be affirmed, and the judgment of the Second Circuit in No. 25-567 should be reversed.

Respectfully submitted,

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