

AT&T, Inc. v. Federal Communications Commission

Sophia Winston-Mendoza

NO. 24-60223 (5TH CIR. 2025)

In *AT&T, Inc. v. Federal Communications Commission*, the Fifth Circuit vacated a \$57 million forfeiture order for mishandling customer data, finding the FCC’s forfeiture order and adjudicatory procedure violated AT&T’s right to adjudication in an Article III court and Seventh Amendment right to a jury trial.¹ This decision heavily relies on the recent holding in *United States v. Jarkesy*, 603 U.S. 109 (2024), where the Supreme Court found the SEC violated the Seventh Amendment when it sought civil penalties from an entity for securities fraud violations without a jury trial.²

I. BACKGROUND

Under Section 222 of the Telecommunications Act³, customer proprietary network information (CPNI) must be protected to maintain a customer’s privacy and confidentiality.⁴ Section 222 defines CPNI as “information that relates to⁷ ... location ... of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”⁵ Carriers must take reasonable data protection measures and may only share the data with third parties to provide telecommunication services with customers’ “opt-in approval.”⁶

When violations of Section 222 occur, the FCC has two pathways at its discretion for issuing forfeiture penalties: adjudication by an administrative law judge or through internal FCC processes.⁷ When the FCC chooses to internally investigate and adjudicate violations, the process involves three key steps: first, after learning of a potential violation, the FCC’s enforcement bureau investigates and issues letters of inquiry to the carrier to gather information.⁸ Second, after reviewing their investigative finds, the FCC issues a Notice of Apparent Liability for Forfeiture (NAL) to the carrier, advising

-
1. See *AT&T v. FCC*, No. 24-60223, slip op. at 2 (5th Cir. Apr. 17, 2025).
 2. See *id.* at 10. (citing *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024)).
 3. 47 U.S.C. § 222.
 4. See *AT&T v. FCC*, slip op. at 2 (citing 47 U.S.C. § 222(a)).
 5. *Id.* (citing 47 U.S.C. § 222(h)(1)(A)).
 6. See *id.* at 3 (citing 47 U.S.C. § 222(c)(1); 47 C.F.R. § 64.2010(a); 47 C.F.R. § 64.2007(b)).
 7. See *id.* (citing 47 U.S.C. § 503(b)(3)(A)).
 8. See *id.* at 3 (citing *Enforcement Primer*, FCC, <https://perma.cc/FMQ2-ZH7C>).

the carrier of the violation and proposed penalty.⁹ The carrier has the opportunity to respond to the NAL and assert its opposition to the claim.¹⁰ Third, the FCC reviews the carrier's response and has the option to affirm their NAL findings.¹¹ If affirmed, the FCC issues a forfeiture order.¹² To oppose the forfeiture order, the carrier has two paths: 1) forgo paying the penalty and wait until the Department of Justice opens a collection action to enforce the order, which entitles the carrier to a *de novo* trial under 47 USC § 504 ("Section 504 trial"),¹³ or 2) the carrier can pay the penalty and then seek appellate review.¹⁴

When AT&T customers' phones regularly connect to signal towers, these connections create data that is used to provide location-based services.¹⁵ To provide these services, AT&T contracts with third parties known as "location aggregators" who collect the location data and sell it to additional third parties that provide the location-based services to AT&T's customers.¹⁶ AT&T required these third party providers to document and share "why it needed the location data and how it obtained customers' opt-in consent" for every request.¹⁷

The FCC was alerted to possible problems with AT&T's location-based services in May 2018, after news articles revealed instances of data mishandling and unauthorized data access by the third party providers.¹⁸ In response to the news articles, the FCC issued a notice of inquiry and opened an investigation.¹⁹ AT&T complied with the FCC's investigation and by March 2019, AT&T had terminated all location-based services programs.²⁰ In February 2020, the FCC issued an NAL to AT&T, detailing AT&T's "willful and repeated violations" of Section 222 and attached a proposed penalty of approximately \$57 million.²¹ AT&T responded in opposition, highlighting numerous issues with the FCC's forfeiture order and notably that the FCC's order violated Article III, the Seventh Amendment, and the non-delegation doctrine.²² In April 2024, the FCC rejected AT&T's opposition and affirmed the \$57 million penalty, noting the forfeiture order did not violate Article III and the Seventh Amendment because AT&T was offered a Section 504 trial if they chose to forgo timely payment of the order.²³ Given its two options,

9. See *id.* at 3-4 (citing 47 U.S.C. § 503(b)(4)(A)).

10. See *ATT v. FCC*, slip op. at 4 (citing 47 U.S.C. § 503(b)(4)(C)).

11. See *id.*

12. See *id.* at 4.

13. See *id.* (citing 47 U.S.C. § 504(a)).

14. See *id.* (citing *AT&T Corp. v. FCC*, 323 F.3d 1081, 1084 (D.C. Cir. 2003); 47 U.S.C. § 402(a)).

15. See *id.* at 5.

16. See *ATT v. FCC*, slip op. at 5.

17. See *id.*

18. See *id.* at 5.

19. See *id.*

20. See *id.*

21. See *ATT v. FCC*, slip op. at 5. The FCC determined the penalty of \$57 million by asserting the maximum penalty allowed under the telecom act and multiplying by the 84 "continuing violations" of Section 222. See *id.* at 9 n.3.

22. See *id.* at 9.

23. See *id.* at 8.

AT&T opted to timely pay the penalty and sought appellate review in the Fifth Circuit.²⁴

II. ANALYSIS

Reviewing *de novo*, the Fifth Circuit determined the case could be resolved on one issue: whether the FCC's enforcement regime violated Article III and the Seventh Amendment.²⁵ The Seventh Amendment provides that "in Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved[.]"²⁶ The court found the determinative question at hand was "whether the [FCC's] enforcement proceeding qualifie[d] as a 'suit at common law' [.]"²⁷ In finding the FCC case against AT&T was a suit at common law, the court heavily relied on the recent analysis of a similar issue in *United States v. Jarkesy*, 603 U.S. 109 (2024).²⁸ In *Jarkesy*, "the Supreme Court ruled that the Seventh Amendment prohibited the SEC from requiring respondents to defend themselves before an agency, rather than a jury, against civil penalties for alleged securities fraud" and "the case did not fall within the 'public rights exception,' which would let Congress assign certain matters to an agency instead of an Article III court."²⁹ Similarly here, the Fifth Circuit found that the FCC's enforcement of civil penalties required a jury trial pursuant to Article III and the Seventh Amendment and the case at hand did not fall under the public rights exception.³⁰ Following the *Jarkesy* analysis, a "common law suit is one that is 'legal in nature'" based on its cause of action and the remedy provided.³¹ Upon review, the court determined both factors confirmed this action was a suit at common law.³²

A. *The FCC's action against AT&T is a suit at common law.*

Under the first consideration, the remedy provided in this case was a \$57 million penalty.³³ The court found this civil penalty, to be the "prototypical common law remedy," only enforceable by a court of law.³⁴ The court drew this conclusion due to the FCC's consideration of "the nature, circumstances, extent, and gravity of the violation" and "degree of culpability" to set penalties, showing a clear intent to "punish or deter"

24. *See id.* at 9.

25. *See id.* at 8 (citing *Loper Bright Enterprise v. Raimondo*, 603 U.S. 369, 412–13 (2024)).

26. *Id.* at 10 (citing U.S. CONST. amend. VII).

27. *See ATT v. FCC*, slip op. at 9.

28. *See id.* at 8-9.

29. *See id.* at 8 (citing *Jarkesy*, 603 U.S. at 134).

30. *See id.* at 18-19.

31. *Id.* at 9 (citing *Jarkesy*, 603 U.S. at 122).

32. *See id.* at 9-13.

33. *See supra* at 3.

34. *See AT&T v. FCC*, slip op. at 9 (citing *Granfinanciera, S. A. v. Nordberg*, 492 U.S. 33, 53 (1989)).

Section 222 violators.³⁵ When considering the second factor, if the cause of action is “analogous” to a common law cause of action, the court found Section 222 actions were akin to common-law negligence.³⁶ Both common law negligence and the FCC’s action against AT&T rely on a finding of unreasonableness in the actions taken by AT&T’s handling of its customers’ location-based data.³⁷ The FCC posed the argument that Section 222 does not use similar terminology as common law negligence such as “negligence” or “reasonable care,” however the court reasoned that while this point is correct, the pivotal factor was if Section 222 targeted the “same basic conduct” as common law negligence.³⁸ The court reasoned the causes of action targeted the same basic conduct and had a sufficiently “close relationship.”³⁹

B. The FCC’s Action against AT&T does not fall under the public rights exception.

In the FCC’s briefing, it argued that the FCC’s case against AT&T fell under the “public rights” exception, which would have allowed the FCC to adjudicate the case outside an Article III court because it would “implicate the ‘public interest.’”⁴⁰ However, the court disagreed because AT&T’s role as a common carrier does not implicate the public rights exception.⁴¹ As stated in *Jarkesy*, while agencies do enjoy regulatory authority over common carriers, the public rights exception does not remove every regulatory action addressing a common carrier from Article III jurisdiction.⁴² Common carriers are often subject to negligence claims, placing them firmly within the presumption of Article III jurisdiction.⁴³ The court additionally reasoned that if common carriers were always subject to the public rights exception, it would significantly expand Congress’s power to “bypass Article III adjudication countless matters.”⁴⁴

C. The FCC’s adjudicatory procedures did not satisfy Article III and the Seventh Amendment.

In reviewing, the two options afforded to AT&T after the FCC issued its forfeiture order, paying the fine and seeking appellate review or forgoing payment and waiting for a trial in a collections suit, the court found that the FCC’s procedure did not satisfy Article III and the Seventh Amendment.⁴⁵

35. *See id.* at 9 (citing 47 U.S.C. § 503(b)(2)(E)).

36. *See id.* at 10.

37. *See id.* at 10-11.

38. *Id.* at 12 (citing *Jarkesy*, 603 U.S. at 125).

39. *Id.* at 10.

40. *AT&T v. FCC*, slip op. at 14.

41. *See id.*

42. *See id.* at 16 (citing *Virginian Ry. Co. v. United States*, 272 U.S. 658 (1926); *Jarkesy*, 603 U.S. at 135)).

43. *See id.* at 15.

44. *See id.* at 15 (citing *Jarkesy*, 603 U.S. at 131).

45. *See id.* at 18.

Specifically, the FCC asserted that AT&T's opportunity to be heard in an Article III court comes in the form of the Section 504 trial that is potentially triggered by failing to pay the penalty if the DOJ chose to bring the suit.⁴⁶ The court was not convinced that this sufficiently satisfied Article III and the Seventh Amendment because the FCC would still have independently adjudicated the claims, found AT&T guilty, and created a ripple effect of harms. Some harms noted include reputational harm to the carrier, putting the carrier's opportunity to appeal at the will of the DOJ to bring or not bring the collections action, and if a carrier has been issued a forfeiture order, the FCC can consider the previous offense if faced with penalties in the future.⁴⁷

III. CONCLUSION

The Supreme Court of the United States granted the FCC's petition for certiorari in this case on January 9, 2026.⁴⁸ On the same day, the Supreme Court also granted certiorari in *Verizon Communications, Inc. v. Federal Communications Commission*, regarding the same question on appeal.⁴⁹ These cases were consolidated, and briefing is set to start in late February 2026.⁵⁰

46. See *AT&T v. FCC*, slip op. at 18 (47 U.S.C. § 504(a)).

47. See *id.* at 18-19.

48. See *FCC v. AT&T, Inc.*, Petition for Certiorari, No. 24-506 (U.S. Oct. 6, 2025).

49. See Docket, *FCC v. AT&T, Inc.*, No. 24-506 (Oct. 9, 2025).

50. See *id.*

