Supreme Court Opinion on FCC Penalties Elevates the Importance of DOJ's Enforcement Policies

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***Federal Communications Commission v. AT&T, Inc.*, 608 U.S. ___ (June 4, 2026)**

On June 4, 2026, by an 8-1 vote, the U.S. Supreme Court in *Federal Communications Commission v. AT&T, Inc.*, held that the FCC's issuance of forfeiture penalties through an administrative enforcement process did not violate the Seventh Amendment's right to a jury trial. The Supreme Court's majority opinion concluded that FCC forfeiture orders are not binding because, if the penalized party does not voluntarily pay, the Department of Justice (DOJ) must still prevail in a federal district court enforcement action — which would include the right to a jury trial — to enforce the penalty.

FCC's Forfeiture Penalty and Case Background

Under the Communications Act of 1934, 47 U.S.C. § 503(b), an entity that has "willfully or repeatedly failed to comply" with FCC regulations "shall be liable to the United States for a forfeiture penalty." The FCC may seek to recover such a penalty either in a formal adjudication before an administrative law judge or in a more informal proceeding. In that latter scenario, the FCC notifies the recipient of a notice of an alleged violation, the recipient responds in writing, and then the FCC issues an order determining whether the recipient is liable and any resulting penalty.

If the FCC issues a forfeiture penalty order, the recipient has three options: (1) seek judgement in the court of appeals, which reviews the order on the administrative record; (2) do nothing, which requires the DOJ, in its discretion, to commence a civil enforcement action that is tried de novo, under Section 504 of the statute; or (3) pay the forfeiture voluntarily even if no DOJ enforcement action is filed.

In the case before the Supreme Court, the FCC pursued informal forfeiture proceedings against AT&T and Verizon based on whether these wireless carriers' handling of customer location data violated section 222 of the Communications Act of 1934. After the carriers submitted written responses, the FCC issued orders assessing penalties of about $57 million against AT&T and $47 million against Verizon.

The carriers paid their penalties and then appealed to the U.S. Courts of Appeals for the Fifth and Second Circuits, respectively. AT&T and Verizon argued (among other things) that requiring them to pay the forfeiture penalty without a jury trial violated the Seventh Amendment. In doing so, they relied on the Supreme Court's earlier opinion in *SEC v. Jarkesy, 603 U.S. 109 (2024)*, which held that the SEC could not impose pertinent civil penalties through an informal administrative proceeding process without affording a jury trial.

The Fifth Circuit vacated AT&T's penalty after determining the FCC's procedures violated the Seventh Amendment. The Second Circuit, in contrast, denied Verizon's petition for review and concluded that there had been no Seventh Amendment violation. The Supreme Court granted certiorari review to resolve this conflict.

Supreme Court's Decision

A majority of the Supreme Court sided with the Second Circuit and held that, based on a holistic examination of the FCC forfeiture statutory framework, there was no Seventh Amendment violation. Writing for the majority, Chief Justice Roberts noted the crucial factor that the forfeiture orders were not binding and created no legal obligation on the recipients to pay the forfeiture. Instead, the DOJ would have to bring an enforcement action under Section 504 on the FCC's behalf to extract payment from the target.

This case was unlike *Jarkesy*, the majority asserted, because of certain statutory safeguards surrounding FCC forfeiture orders. In the SEC context (pre-*Jarkesy*), penalties were enforceable immediately, and the SEC had the final word with respect to fact finding.

Justice Thomas, in a dissenting opinion, reasoned that the majority's decision penalized the carriers for voluntarily paying substantial penalties based on their reasonable perception that the orders were binding. In a footnote, the majority opinion acknowledged the carriers' arguments that they were misled into voluntarily paying the penalties and that they might seek refunds on remand — but expressing no view on the merits of these refund claims.

Key Takeaways

- **Elevated DOJ involvement in forfeiture enforcement actions:** The practical result of this opinion is that the DOJ and FCC are jointly involved in deciding how to approach forfeiture orders that are not voluntarily paid. To date, the DOJ has not issued formal enforcement policies in the wake of this opinion. Now, the DOJ will have the burden of proof in a de novo enforcement action, contrasted with simply rubberstamping the FCC's informal administrative "findings."
- **Options for forfeiture order recipients:** This opinion seems to establish a legal response roadmap for recipients of forfeiture orders: (1) pay the penalty and appeal to the relevant court of appeals; or (2) refuse to pay and engage in a de novo enforcement action trial prosecuted by the DOJ (and likely in front of a jury).
- **Implications for other governmental agency enforcement actions:** Many agencies, such as the Department of Energy, U.S. Fish and Wildlife Services, Department of Health and Human Services, and Federal Energy Regulatory Commission, have similar schemes. This opinion will likely provide guidance on both their penalty practices as well as their enforcement protocols and policies.

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