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February 25, 2026

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court to Strike Down FCC’s Unconstitutional Penalty Regime (*FCC v. AT&T*; *Verizon Communications v. FCC*)

“Administrative agencies cannot serve as prosecutor, judge, and jury to impose punitive penalties without violating the Constitution.”

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to hold that the Federal Communications Commission’s monetary penalties scheme violates the Seventh Amendment. WLF’s amicus brief contends that allowing agencies to impose punitive fines without trial by jury undermines core constitutional protections. WLF’s brief was prepared with generous pro bono assistance from Joshua Wesneski and Adam Mitchell of Weil, Gotshal & Manges LLP.

The cases arise from 2018 news reports revealing that carriers’ location-based services programs mishandled consumer data. The FCC investigated and issued Notices of Apparent Liability, imposing over \$57 million on AT&T and \$46.9 million on Verizon for alleged violations of the Communications Act. Both carriers paid the penalties and sought judicial review. The U.S. Court of Appeals for the Fifth Circuit ruled for AT&T, finding the process unconstitutional under *SEC v. Jarkesy*. The U.S. Court of Appeals for the Second Circuit upheld the FCC’s authority against Verizon, citing the possibility of a back-end trial. The Supreme Court ultimately granted review to resolve the circuit split and decide the question.

In its amicus brief, WLF argues that FCC penalties are punitive, akin to common-law actions requiring jury trials, and that the public-rights exception does not apply. Permitting such in-house adjudications threatens separation of powers and invites agency overreach. WLF urges the Court to affirm the Fifth Circuit and reverse the Second Circuit.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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