

Court rejects Verizon claim that selling location data without consent is legal

Instead of providing notice to customers and obtaining or verifying customer consent itself, Verizon “largely delegated those functions via contract,” the court said. This system and its shortcomings were revealed in 2018 when “the New York Times published an article reporting security breaches involving Verizon’s (and other major carriers’) location-based services program,” the court said.

Securus Technologies, a provider of communications services to correctional facilities, “was misusing the program to enable law enforcement officers to access location data *without* customers’ knowledge or consent, so long as the officers uploaded a warrant or some other legal authorization,” the ruling said. A Missouri sheriff “was able to access customer data with no legal process at all” because Securus did not review the documents that law enforcement uploaded.

Verizon claimed that Section 222 of the Communications Act covers only call-location data, as opposed to device location data. The court disagreed, pointing to the law’s text stating that customer proprietary network information includes data that is related to the location of a telecommunications service, and which is made available to the carrier “solely by virtue of the carrier-customer relationship.”

“Device-location data comfortably satisfies both conditions,” the court said.

Verizon chose to pay fine, giving up right to jury trial

As for Verizon's claim that the FCC violated its right to a jury trial, the court said that "Verizon could have gotten such a trial" if it had "declined to pay the forfeiture and preserved its opportunity for a *de novo* jury trial if the government sought to collect." Instead, Verizon chose to pay the fine "and seek immediate review in our Court."

By contrast, the 5th Circuit decision in AT&T's favor said the FCC "acted as prosecutor, jury, and judge," violating the right to a jury trial. The 5th Circuit said it was guided by the Supreme Court's June 2024 ruling in *Securities and Exchange Commission v. Jarkesy*, which held that "when the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial."

The 2nd Circuit ruling said there are key differences between US telecom law and the securities laws considered in *Jarkesy*. It's because of those differences that Verizon had the option of declining to pay the penalty and preserving its right to a jury trial, the court said.

In the *Jarkesy* case, the problem "was that the SEC could 'siphon' its securities fraud claims away from Article III courts and compel payment without a jury trial," the 2nd Circuit panel said. "The FCC's forfeiture order, however, does not, by itself, compel payment. The government needs to initiate a collection action to do that. Against this backdrop, the agency's proceedings before a § 504(a) trial create no Seventh Amendment injury."

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