

- Substantial economic gain; and
- Repeated or continuous violation.

The downward adjustment criteria are:

- Minor violation;
- Good faith or voluntary disclosure;
- History of overall compliance; and
- Inability to pay.

The Commission rules provide discretion to decide forfeiture amounts in light of specific circumstances (including deciding not to issue any forfeiture), or to apply alternative or additional sanctions as permitted by the statute.⁸ Discretion allows the Commission to ensure that a forfeiture appropriately punishes past violations and deters future ones, while also considering the individual circumstances, such as whether the violation was unintentional or non-recurring, and the financial circumstances of the violator.

In addition, the Commission recently released a policy statement regarding Section 503(b) penalties assessed against telecommunications service providers that fail to make their required payments to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, or to the cost recovery mechanisms for local number portability (LNP) and the North American Numbering Plan (NANP). Within the maximum forfeiture caps established by statute for common carriers (as listed in the table above), the Commission announced that its base forfeiture amount for these violations would be three times a delinquent carrier's debts to the USF, TRS, LNP, or NANP.⁹ A copy of this Policy Statement is attached.

The FCC's Enforcement Bureau. The FCC has designated the Enforcement Bureau as "the primary Commission entity responsible for the enforcement of the Communications Act and other communications statutes, the Commission's rules, Commission orders and Commission authorizations," other than licensing matters.¹⁰ EB has authority to investigate complaints and resolve potential violations of the Communications Act and the FCC's rules, regulations, and orders. It also has the authority to conduct investigations by, for example, issuing Letters of Inquiry and subpoenas (with the approval of the Office of General Counsel), conduct audits, conduct site visits, and collect information.¹¹ EB is also responsible for serving as trial counsel in formal hearings, mediating and settling disputes, and coordinating with other federal, state and local government agencies on enforcement matters.¹²

⁸ 47 C.F.R. § 1.80(b)(8), note (2014).

⁹ *Forfeiture Methodology for Violations of Rules Governing Payments to Certain Federal Programs*, Policy Statement, 30 FCC Rcd 1622 (2015).

¹⁰ 47 CFR § 0.111(a); 47 CFR § 0.311 (delegation of authority). While the majority of the FCC's enforcement actions originate in EB, the Commission's Media Bureau (MB) has authority to administer and enforce the Commission's rules regarding equal employment, political programming, and licensing requirements for broadcasters, cable and satellite operators. 47 C.F.R. § 0.61(d)-(f).

¹¹ 47 CFR § 0.111 (a)(17), (h).

¹² 47 CFR § 0.111(a)(20), (24).

Pursuant to the standards set forth in applicable statutory and regulatory provisions, the enforcement process requires collection of information and includes opportunities for the target of the investigation to explain its activities or dispel concerns about alleged violations. EB may learn of a potential violation in myriad ways, including from a consumer complaint, a competitor, another Commission Bureau or Office, another government entity (including a member of Congress), or press accounts. Among the most important of these is consumer complaints, which the Commission takes very seriously. As explained more fully in response to Question 2, below, many enforcement actions originate as a result of consumer complaints.

Once EB learns of a potential violation, it reviews the complaint, referral, and supporting information to determine whether to investigate the alleged violation. Like other law enforcement agencies, EB has a variety of tools it may use to conduct an investigation, including issuing a Letter of Inquiry or subpoena; conducting interviews of victims, complainants, and whistleblowers; making site visits; contacting the target of the investigation; and deposing relevant witnesses. After collecting fact-specific information, EB thoroughly analyzes it to determine whether there is an apparent violation of the Communications Act or the Commission's rules, regulations, and orders. If the Bureau determines that the matter should be prosecuted, the Bureau may issue a citation or admonishment, engage the target for settlement discussions, designate the matter for hearing, and/or determine whether to prosecute the enforcement action at the Bureau level or recommend that the Commission take action by issuing a Notice of Apparent Liability (NAL). EB consults with the relevant Bureau and with the Office of General Counsel before issuing an NAL at the Bureau level or recommending an NAL to the Commission.

Pursuant to the Communications Act, a target of an enforcement action is entitled to receive an NAL before any monetary forfeiture may be imposed.¹³ An NAL is the Commission's charging document, akin to the filing of a complaint in a civil action. An NAL is not a final Commission action. It is the first formal step in the FCC's adjudicatory process for enforcement matters. An NAL is not a determination of wrongdoing or liability. It reflects *apparent* or alleged violations. The NAL provides the target with notice of the alleged violations, the maximum penalty that could be imposed, and an opportunity to respond to or contest the proposed liability. In some instances, following the target's response, the Commission or EB (if the NAL was issued at the Bureau level) decides not to impose a penalty or to reduce the proposed penalty amount. Unless the target of the investigation demonstrates that no penalty should be imposed, or it pays the fine proposed in the NAL, the Commission may issue a Forfeiture Order (FO).

It is also worth noting that the Communications Act also contains additional notice requirements for non-Commission regulatees. Under the Act, the Commission may not issue a monetary forfeiture to any person who does not hold a Commission license, permit, certificate, or other Commission authorization unless the Commission first issues a citation, provides a

¹³ 47 U.S.C. § 503(b)(4) (providing that the Commission must issue a notice of apparent liability and provide an opportunity to show why no penalty should be imposed before the Commission may impose a forfeiture penalty)

reasonable opportunity for a personal interview, and the party subsequently engages in conduct of the type described in the citation.¹⁴

The FCC has delegated to EB the authority to assess forfeiture penalties of up to \$100,000 for common carriers and \$25,000 for other entities.¹⁵ Forfeiture penalties larger than these amounts must be approved by the Commission. Any target of an enforcement action taken by EB under delegated authority has several opportunities to challenge a forfeiture. The party may seek reconsideration by EB, or file an application for review (an appeal) with the full Commission.¹⁶ And ultimately the party may pay the forfeiture and appeal the Commission's decision to a court, or defend itself in the face of an action to collect the forfeiture.¹⁷

If the forfeiture is not paid 30 days after a demand for payment, the Commission will refer the case to the Department of Justice.¹⁸ The Department of Justice may decide to file a civil action for non-payment. In addition, the subject of the forfeiture may pay the penalty but challenge the decision in court.

The Commission has also delegated to EB the authority to enter into Consent Decrees.¹⁹ EB enters into settlement discussions at any stage of the enforcement process. If the target agrees to pursue settlement, EB enters into discussions to reach a mutually agreeable resolution. Where appropriate, EB also coordinates with the relevant Bureaus and the Office of General Counsel before entering into a Consent Decree. Consent Decrees generally provide a description of the alleged misconduct and a statement of the measures the party will take to address the alleged misconduct. The measures may include a plan for improving future compliance, reporting to EB on compliance, and a payment to the U.S. Treasury or to parties affected by the conduct at issue.

2) Describe your strategy for carrying out the FCC's enforcement responsibilities, as well as the FCC's enforcement actions in response to consumer complaints, and explain how the FCC is working to implement this strategy.

The FCC is committed to the strong enforcement of the laws and Commission's regulations. EB's enforcement strategy is based on four guiding principles: protect consumers, safeguard competition, secure communications networks, and police the integrity of Commission funds, programs, and services. With limited staff and funds, we strive to use our resources effectively and regularly reassess our priorities based on emerging enforcement issues. A variety of factors go into decisions about where to focus enforcement resources, and enforcement actions

¹⁴ 47 U.S.C. § 503(b)(5).

¹⁵ 47 C.F.R. § 0.311(a)(4).

¹⁶ 47 C.F.R. § 1.115.

¹⁷ 47 U.S.C. § 402(a).

¹⁸ 47 U.S.C. § 503(b)(3)(B).

¹⁹ 47 C.F.R. § 0.111(a)(18).

follow careful analysis and deliberation of the facts and applicable legal authority in the case. For example, in 2014-2015, EB's decision to work jointly with the Federal Trade Commission, the Consumer Financial Protection Bureau, and the 51 states' attorney general, resulted in settlements that required the four largest wireless carriers to pay a total of \$353 million for billing their customers for unauthorized third party charges, a practice known as "cramming." Of the total paid by the carriers, \$267.5 million is directed for consumer refunds to redress their harm. While the FCC regularly communicates with the public and regulated entities about our enforcement priorities (see the response to Question 5 below), we, like other law enforcement agencies, avoid discussing the specific triggers we use because we do not want to provide potential violators a "road map" for evading enforcement.

Initial information about a possible violation can come from a number of sources. Chief among those are consumer complaints submitted to the FCC's Consumer Help Center (consumercomplaints.fcc.org), which is operated by the FCC's Consumer and Governmental Affairs Bureau (CGB). In the broadcast area, most of EB's investigations stem from complaints from listeners, viewers, or other licensees. EB may also learn of a potential violation from referrals from other FCC Bureau's and Offices, Congress, or other government entities. Other possible violations may be identified through the receipt of informal information, written or oral, from an interested party, or from EB's own review of media reports or staff research. Many investigations and inspections conducted by EB's Field Offices stem from complaints from federal, state, and local governmental agencies, including public safety agencies and the Federal Aviation Administration, as well as other FCC licensees. While acting on consumer complaints is a critical element of EB's functions, EB also must act, when appropriate, in response to other complaints and information.

To determine whether enforcement action is warranted, EB collects evidence regarding an entity's or individual's conduct using a variety of tools, including inspections, oral information requests or Letters of Inquiry (LOIs), site visits, consultation with other government entities, and other investigative techniques. Importantly, EB may determine that the evidence is inconclusive or insufficient to determine if a violation occurred. In that circumstance, EB routinely informs the target that the investigation will be closed. If the evidence during the investigation indicates that the subject appears to have violated the Act or an FCC rule, EB may proceed with an enforcement action. EB exercises prosecutorial discretion to decide whether to pursue a potential violation because it lacks resources to take action in all instances. In general, if the problem appears to be pervasive, represents a trend, involves a Commission priority, affects many consumers, reflects particularly egregious abuse, or presents a security or safety concern, EB is more likely to pursue enforcement action.

The Role of Consumer Complaints in EB's Enforcement Process Consumer protection is fundamental to the Commission's mission. Consumer complaints play a critical role in the Commission's enforcement process, particularly on matters such as cramming and slamming, the Do-Not-Call List, robocalls, loud commercials, unsolicited marketing communications and similar issues covered by the Telephone Consumer Protection Act (TCPA). For example, about 85 percent of NALs that the Commission issued in 2015 were initiated by consumer complaints. CGB shares complaint data with EB as well as other FCC Bureaus and Offices, as appropriate. EB also has access to the Federal Trade Commission's Consumer Sentinel

Network, which provides law enforcement agencies access to millions of consumer complaints. The collective data help inform EB on what consumers are experiencing, which may lead to investigations or other actions to address the complained-about activity. Many of EB's recent enforcement actions stemmed from consumer complaints. A few recent actions initiated by consumer complaints are:

- \$1.35 million in settlements with hotel operator Marriott and convention center telecommunications provider Smart City to protect consumers' right to access the Internet via Wi-Fi hotspots;
- Resolved investigation of international electronics provider ASUSTek for \$240,000 stemming from a consumer complaint that company violated the Commission's equipment marketing rules in its sales of tablets, routers, and other wireless devices;
- Issued an NAL for \$85,000 to T-Mobile and a Sprint subsidiary for apparently failing to prevent public access to areas exceeding radiofrequency exposure limits;
- Issued an NAL to AT&T Mobility proposing a \$100 million penalty for apparently violating the Commission's Transparency Rule after receiving thousands of consumer complaints stemming from AT&T's unlimited data plan in which customers alleged that they have had their speeds intentionally reduced;
- Proposed a \$2.4 million fine against Long Distance Consolidated Billing Company for apparently misleading customers in order to get them to switch service providers;
- Proposed a \$5.9 million fine against Roman LD, Inc. for apparently misleading customers so that they would switch service providers, and falsifying consumer authorizations;
- Proposed a \$7.62 million fine against Optic Internet Protocol, Inc. by apparently falsifying consumer authorizations to switch service providers.

EB reviews consumer complaints in a wide variety of subject matters to identify trends so that the Commission can best apply its limited enforcement resources to take action against entities that have a pattern of violating the Communications Act and the FCC's rules, regulations, and orders. For example, TCPA complaints received in EB are reviewed by subject matter experts to determine if they contain allegations of wrongdoing. Many complaints understandably convey frustration or dissatisfaction with a person or entity, or discuss a subject, without actually alleging legal wrongdoing on which the Commission may act; others represent isolated incidents that do not form a trend that would allow judicious use of limited FCC resources. In addition, the statute of limitations prevents the Commission on imposing a forfeiture penalty for violations that occurred more than one year earlier.²⁰ While the number of complaints filed at the Commission will exceed the number of enforcement actions that exist at any given time, consumer complaints form the basis for a substantial portion of the enforcement actions taken by the Commission.

3) Please provide copies of any directions, instructions, or guidance that both your office and the EB has provided, either externally or internally, concerning enforcement actions, investigations, and plans for responding to consumer complaints.

²⁰ 47 U.S.C. § 503(b)(6)(A)(1), (B).

As discussed above, attached to this response are copies of Section 1.80 of the FCC's rules, which describe the procedures EB follows when assessing forfeiture penalties against parties. Among other items, Section 1.80 lists base forfeiture amounts for a number of different specific violations, as well as the adjustment criteria the Commission and EB may use to increase or reduce forfeiture amounts. As with other governmental agencies, and other Commission Bureaus and Offices, EB has internal operating procedures and training materials for staff. Also, as noted above, we use the Commission's 1997 Policy Statement that originally adopted the Section 1.80's Forfeiture Guidelines and the Commission's 2015 Policy Statement concerning Forfeiture Guidelines for telecommunications service providers that fail to make their required payments to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, or to the cost recovery mechanisms for local number portability (LNP) and the North American Numbering Plan (NANP).

In addition to these published forfeiture guidelines, EB regularly issues "Enforcement Advisories," which are short and clearly-written notices designed to educate stakeholders about the requirements of the FCC's rules, the purpose of those rules, as well as the consequences of failures to comply. Since the first Enforcement Advisory was issued in 2010, these documents have become a familiar tool for industry and their counsel as they conduct periodic compliance reviews and increase their internal, self-policing efforts. Attached to this response are copies of the 38 Enforcement Advisories that have been issued since 2010. NALs, Forfeiture Orders, and Consent Decrees are regularly published on the Commission's website and/or in the Federal Register. For example, links to specific Forfeiture Orders are provided in Table A, which responds to Question 5 below.

As mentioned above, consumer complaints are managed through the FCC's new, modernized "Consumer Help Center" (consumercomplaints.fcc.gov), which launched in December 2014. The CHC replaced the Commission's previous complaint system with an easier-to-use, more consumer-friendly portal for filing and monitoring complaints. For example, the CHC replaced 18 different complaint forms with one web portal that educates consumers about "Common Issues" and helps them select the most appropriate complaint option. This electronic intake also makes it easier to share the complaints with the service providers, who can act more quickly to respond to the complaints.²¹ In addition to being easier to use for consumers, the CHC has allowed the FCC to compile complaint data into a "dashboard" and specific "views" that allow EB and other FCC Bureaus to track complaint trends, resulting in better results for consumers and better information for the agency.

4) Explain how EB actions are communicated to the other FCC Commissioners prior to their release. How much notice is each FCC Commissioner afforded on items that do not require a vote by the full Commission?

²¹ See, e.g., Kris Monteith, Gigi B. Sohn, and Diane Cornell, *New Consumer Help Center Is Designed to Empower Consumers, Streamline Complaint System*, FCC Blog (Jan. 5, 2015), <https://www.fcc.gov/blog/new-consumer-help-center-designed-empower-consumers-streamline-complaint-system>.

The Enforcement Bureau regularly communicates with the Chairman and Commissioners and their staff. EB communicates through regularly scheduled meetings as well as on an *ad hoc* basis at the request of any Commissioner. Commissioners have at least three weeks to review any enforcement matter requiring Commission action. At the time an Enforcement Bureau item is circulated for the Commissioners' votes, Bureau legal advisors provide to the Commissioners' offices the proposed item and an explanatory memo from the Bureau Chief. Commissioners or their staff often respond with questions about the item, obtain investigatory materials related to the item, or meet directly with Bureau representatives to discuss the item. Also, Bureau staff meet biweekly with Commissioners' staff to brief all recently circulated items and answer any other questions that the Commissioners' staff have and the Bureau Chief has regularly scheduled standing meetings with all Commissioners. In addition to these standing regularly scheduled meetings with Commissioners and their staff, the Bureau regularly responds to *ad hoc* requests for information or meetings from all of the Commissioners' offices. The Bureau is available to meet with Commissioners on any matter, and frequently does so.

5) Identify every FCC enforcement action (e.g., consent decree, forfeiture order, notice of apparent liability, etc.) resulting in a monetary penalty of \$1 million or more over the last ten years. For each such action, provide the date, the penalty amount, and an explanation of how the FCC calculated the monetary penalty.

A table (Table A) with the requested information is attached to this response. The table contains links to the underlying orders, which explain how the penalty was calculated. Consent Decrees are negotiated settlements and reflect the penalty amount and other corrective actions that both parties agreed upon. The settlements reflect each party's view of the case and the factors identified in Section 503(b) of the Act and the Forfeiture Policy Statement.

The table shows that the Commission has taken a number of major consumer-protection enforcement actions over the past several years. Fines and settlements resulting from practices such as slamming, cramming, deceptive billing, and Wi Fi blocking tend to be large because they involve multiple violations against hundreds, thousands, or even millions, of consumers. Some of the Consent Decrees listed in the table recovered significant sums of money for affected consumers. For example, the cramming settlements reached with the four largest wireless carriers in 2014-15 earmarked more than \$250 million for consumer refunds. The settlements also included almost \$50 million in payments to the States that partnered with the FCC in these investigations.

In addition, please find a description of the process the Commission follows to impose forfeiture penalties. As described in the response to Question 2) above, EB will undertake investigations into possible violations using a variety of tools. If the conclusion of an inquiry is that violations of the Act or the Commission's rules have occurred, the Commission or EB will issue a Notice of Apparent Liability for Forfeiture (NAL). As stated above, the NAL is the first formal step in the prosecution process. The NAL proposes, but does not establish, a forfeiture amount that is appropriate for the conduct at issue. Other than in broadcast cases, the Commission may not issue a forfeiture penalty if the violation occurred more than one year prior

to the issuance of the NAL.²² The recipient of an NAL may, but is not required to, pay the proposed forfeiture amount. That is not the normal course of action. Instead, the NAL recipient is informed of the right to file a written statement seeking reduction or cancellation of the proposed forfeiture.²³ The target often does so, providing the Bureau with legal and/or factual analysis and additional information that may be pertinent to challenging the NAL.

If the party declines to pay or contests the penalty proposed in the NAL, and does not persuade the Commission or EB that forfeiture is unwarranted, the Commission or EB will issue a Forfeiture Order (FO).²⁴ At this point, the party is liable to the United States for the penalty amount contained in the FO. Pursuant to Section 504 of the Act, all forfeiture penalties paid to the FCC are payable into the Treasury of the United States.²⁵

If the recipient of the FO does not pay the forfeiture within the allotted time period, the Commission generally refers the matter to the Department of Justice (DOJ) for recovery.²⁶ DOJ may accept or decline to pursue the case, and DOJ may decide to settle a case for the full amount or less than the full amount of the forfeiture, taking into account the nature of the violation, the ability of the violator to satisfy the full judgment, and the litigation risk (pursuant to Section 504(a) of the Act, a suit to recover a forfeiture penalty is a trial *de novo*), among other factors. DOJ will coordinate settlement negotiations with the Commission, but it has the ultimate settlement authority. Any civil penalties that DOJ recovers are assessed a 3% DOJ Litigation Collection fee.²⁷ If the forfeiture is partially paid, the remainder becomes a legally enforceable debt that the Commission can refer to the Department of the Treasury when it becomes delinquent, pursuant to the Debt Collection Improvement Act.²⁸

At any time before the Commission or Bureau refers the case to DOJ, the Commission and the party under investigation may resolve the matter through a Consent Decree. Consent Decrees are fully negotiated and represent a mutually agreed-to resolution of an enforcement matter. Consent Decrees usually include penalty payments to the U.S. Treasury as part of the settlement terminating the FCC's investigation. Consent Decrees often contain other settlement provisions as well, such as commitments to compliance plans to ensure future compliance with Commission rules, reporting requirements, and monetary redress for consumers.

6) As underscored in a recent *Politico* article, the EB does not consistently follow through with collection of fines. Please identify every NAL proposing a forfeiture of more than \$100,000 issued since 2005. Of such NALs, please identify those that led to a forfeiture

²² 47 USC § 503(b)(6)(B).

²³ 47 C.F.R. § 1.80(f)(3).

²⁴ 47 C.F.R. § 1.80(f)(4).

²⁵ 47 U.S.C. § 504.

²⁶ 47 U.S.C. 504(a).

²⁷ 28 U.S.C. 527 note (2014) (Debt Collection Improvement).

²⁸ 37 U.S.C. § 3711(g).

order. Of such forfeiture orders, please identify the recovery status for each. Please identify every civil suit brought to-date to recover forfeitures.

Attached to this letter please find a Table (Table B) of the status of forfeiture penalties that Commission has issued since October 2010. Please note that Table B contains information about the status of certain FCC enforcement actions. This information is sensitive because it may reveal the Commission's current non-public assessment of active cases. I ask that you consult with the Commission before releasing this document or its contents to third parties or the public. We believe that the data are complete but will alert you if we determine that the table needs to be supplemented.

The data show that the Commission has a strong track record of pursuing actions and collecting fines. For example, the Commission has collected approximately 85 percent of the fines it has issued (whether through settlements or Forfeiture Orders) in the past two years. Where the Commission issued an NAL but did not issue a Forfeiture Order or a Consent Decree, there are several possible reasons. For example, particularly for older cases, a decision not to pursue the case after issuing an NAL often reflects the Commission's determination that the target would be insolvent; for example, it went out of business or filed for bankruptcy. For more recent cases, most of the cases are in process; the parties may be engaged in settlement discussions, the Commission may be awaiting or reviewing a response to the NAL, or the Commission may be in the process of drafting or considering a Forfeiture Order, but it has not yet been released. In some instances, the Commission is coordinating with other agencies or has referred the matter to the Commission's Office of Inspector General. The lack of an immediate collection action is not evidence of a failure to prosecute.

The November 23, 2015 Politico article referenced in the question above is premised on a misunderstanding of the forfeiture penalty process. The article conflates the Commission's *proposed* fine in an NAL with the imposition of a forfeiture penalty. As described above, these two actions represent two different stages in the enforcement process. No entity is required to pay a *proposed* fine. The Act instructs the FCC as to what steps it must follow to impose and collect penalties

As set forth in Section 503(b)(4) of the Act, the NAL provides notice to the subject of an investigation that the FCC has found an *apparent* violation, and it gives the subject a chance to show that the proposed forfeiture should be reduced or not imposed. An NAL does not impose a fine. To the contrary, an NAL provides the target with an opportunity to respond to the *apparent* violation. EB carefully reviews NAL responses, conducts additional investigation if necessary, and makes any adjustments to the case as appropriate – including reducing or even cancelling a fine if warranted. The NAL response-and-review process can sometimes take many months, but EB has been working diligently to conclude cases in a timely manner.

If a settlement is not achieved during the NAL response-and-review process, the FCC may vote to assess a fine and issue a Forfeiture Order. After exhausting all rights to challenge the Forfeiture Order, the subject must pay the penalty. If the subject refuses to pay the penalty at this point, Section 504 of the Act requires the FCC to refer the penalty to the Department of Justice to initiate a civil suit. As described in the response to Question 5) above, at this point in

the process, DOJ may decline to accept the referral, or may settle the penalties for amounts equal to or smaller than the amounts imposed in the Forfeiture Order.

7) Please provide the legal justification for imposing a penalty on a company in the absence of specific FCC rules governing such conduct.

Section 503(b)(1) of the Communications Act authorizes the Commission to impose a penalty on anyone who “willfully or repeatedly fail[s] to comply with any provisions of this Act or of any rule, regulation, or order issued by the Commission.” Thus the Commission may pursue violations of the Act, regulations, or Commission orders. By distinguishing between violations of the Act and violations of Commission rules, the Act anticipates that penalties may be issued where there is no rule because the language of the Act demonstrates Congress’s intent that conduct be prohibited and that, therefore, execution of the law established by Congress does not require the additional creation of an agency rule.

The Administrative Procedure Act gives agencies the ability to carry out their authorized activities through rulemaking or through adjudication. In rulemaking, the agency promulgates general, “quasi-legislative” rules to govern future conduct. On the other hand, when an agency conducts an individualized, fact-specific examination of past conduct to determine past and present rights and liabilities, it is acting through adjudication. Case-by-case adjudication sometimes requires an agency to interpret and apply statutes Congress has directed it to enforce. The choice to proceed through rulemaking or adjudication is “one that lies primarily in the informed decision of the administrative agency.”²⁹

²⁹ SEC v. Chenery Corp., 332 U.S. 194, 202 (1947).