

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
AT&T Corp.	)	NAL / Acct. No. X12000001
	)	
	)	
Apparent Liability for Forfeiture	)	
	)	
	)	

**NOTICE OF APPARENT LIABILITY**

**Adopted: May 1, 2000**

**Released: May 2, 2000**

By the Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we initiate enforcement action against AT&T Corp. (“AT&T”), pursuant to Section 503(b) of the Communications Act, as amended,<sup>1</sup> and Section 1.80 of the Commission’s rules.<sup>2</sup> For the reasons discussed below, we find that AT&T, and its predecessor Tele-Communications, Inc. (“TCI”), apparently willfully and repeatedly violated former Section 76.503(c) of the Commission’s rules.<sup>3</sup> Section 76.503(c), in effect at the time of the conduct at issue here, required cable operators that reach 20% or more of homes passed by cable nationwide to certify, prior to acquiring additional systems, the percentage change in ownership resulting from such acquisition.<sup>4</sup>

AT&T and TCI violated this rule by failing to file certifications prior to acquiring additional systems on three separate occasions. Therefore, based upon a review of the facts and the circumstances surrounding these violations, we find that, for its and its predecessor’s conduct, AT&T is apparently liable for forfeiture in the amount of nine thousand dollars (\$9,000).

---

<sup>1</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>2</sup> 47 C.F.R. § 1.80.

<sup>3</sup> Section 76.503(c), 47 C.F.R. § 76.503(c), was amended effective Feb. 9, 2000. *See* 64 Fed. Reg. 67198 (1999).

<sup>4</sup> *See* former 47 C.F.R. § 76.503(c).

## II. DISCUSSION

2. Before its amendment, Section 76.503(c) provided:

Prior to acquiring additional cable systems any person or entity holding an attributable interest in cable systems reaching 20 percent, or more, of homes passed nationwide must certify to the Commission that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.<sup>5</sup>

3. In light of the Commission's stay of enforcement of the horizontal ownership rules, the Commission relieved cable operators of the Section 76.503(c) requirement that the cable operator certify that no violation of the 30% limit will occur as a result of an acquisition.<sup>6</sup> Until the stay is lifted, the Commission directed that the certification should only specify the incremental change the acquisition makes in terms of the 30%.<sup>7</sup> When the homes-passed standard was used, the certification required the cable operator to specify its percentage ownership in terms of homes passed before and after the acquisition was completed.<sup>8</sup>

4. On October 7, 1999, Consumers Union, Consumer Federation of America and Media Access Project ("CU") requested that the Commission initiate a forfeiture proceeding against AT&T for alleged violations of this certification rule.<sup>9</sup> CU alleges that the rule required certifications to be filed concurrently with applications for approval of license transfers and that nine AT&T and TCI certifications were filed late under this standard.<sup>10</sup> In addition, CU alleges that AT&T has made material misrepresentations to, and failed to be candid with, the Commission regarding AT&T's compliance with the rules and regarding its filing practices.<sup>11</sup> Finally, CU alleges that AT&T's certification letters did not contain sufficient information for the Commission to review the transactions at issue.<sup>12</sup>

---

<sup>5</sup> *Id.*

<sup>6</sup> See *In re Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, MM Docket No. 92-264, Second Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 14462, 14492 ¶ 76 (1998).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Complaint Against AT&T Corp. and Tele-Communications, Inc. for Misrepresentation to the Commission, Willful and Repeated Violations of 47 C.F.R. § 76.503(c) and for Lack of Candor, filed by Consumers Union, Consumer Federation of America and Media Access Project on Oct. 7, 1999 ("CU Forfeiture Request") in NAL Account No. X12000001.

<sup>10</sup> *Id.* at 1-2; see also Motion to Dismiss, CS Docket No. 99-251, filed by Consumers Union, Consumer Federation of America and Media Access Project on Aug. 17, 1999, at 2-3 (arguing that the Commission should dismiss the applications for transfers of licenses from MediaOne Group, Inc. to AT&T because the applications were not accompanied by a certification).

<sup>11</sup> CU Forfeiture Request at 1-2 (CU contends that AT&T attempted to mislead the Commission by contending that it was complying with the rules, by filing certifications late, and by combining acquisitions in a single letter).

<sup>12</sup> *Id.* at 6 (CU contends that "AT&T sought to evade Commission review by reporting aggregate figures for a number of transactions in a single letter").

5. AT&T opposes CU's request and disputes its interpretation of the rule. AT&T contends that the rule required only that AT&T file the certification prior to closing a transaction, not at the time it filed applications for approval of transfers of licenses.<sup>13</sup> While AT&T admits that some of its Section 76.503(c) letters were filed after transactions had closed, AT&T argues that pre-closure filing was not always possible because, in some instances, AT&T and its predecessor TCI were unable to obtain cable homes passed information from the systems they were acquiring prior to closing.<sup>14</sup>

6. In the *Horizontal Ownership Limits Third Report and Order*, we revised the horizontal certification provision to require information based on the number of multichannel video-programming distribution ("MVPD") subscribers served, rather than cable homes passed, and to clarify that certifications must be filed concurrently with applications for transfers of licenses.<sup>15</sup> This new certification requirement went into effect on February 9, 2000.<sup>16</sup> As of that date, applications for transfers of licenses by cable operators serving 20% or more of all MVPD subscribers nationwide must include the new Section 76.503(g) certification.

7. Former Section 76.503(c) did not specify that certifications be filed concurrently with applications for license transfers. Under these circumstances, we do not believe that AT&T's representations to the Commission with regard to its interpretation of the rules and its filing practices warrant the initiation of a forfeiture proceeding.

8. However, our review of AT&T's and TCI's certification letters reveals that AT&T and TCI apparently willfully and repeatedly violated Section 76.503(c) on three different occasions by filing certification letters with the Commission only after AT&T and TCI had closed transactions to acquire cable systems. AT&T and/or TCI filed late certifications on Jan. 19, 2000 stating that AT&T had closed a transaction with Comcast Corp. on Jan. 18, 2000; on Aug. 13, 1999 stating that AT&T had closed a transaction with FHF Cable, Inc. on Aug. 13, 1999; and on May 3, 1999 stating that TCI had closed a transaction with Galaxy Cablevision, Inc. on Apr. 13, 1999.<sup>17</sup> At the time that AT&T and TCI closed

---

<sup>13</sup> See Opposition of AT&T Corp. and MediaOne Group, Inc. to Motion to Dismiss, CS Docket No. 99-251, filed on Aug. 23, 1999 ("Opp. to Motion to Dismiss") at 1-2.

<sup>14</sup> Opposition of AT&T Corp. to CU Forfeiture Request, filed on Oct. 18, 1999, at 4, in NAL Account No. X12000001.

<sup>15</sup> See *In re Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, MM Docket No. 92-264, Third Report and Order ("*Horizontal Third Report and Order*"), 14 FCC Rcd 19098 Attachment B, new Section 76.503(g) (rel. Oct. 20, 1999). New Section 76.503(g) provides:

Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

47 C.F.R. § 76.503(g).

<sup>16</sup> See 64 Fed. Reg. 67198 (1999).

<sup>17</sup> These letters were filed in MM Docket No. 92-264. See also CU Forfeiture Request at Attachment 2; Prepared Testimony of Andrew Jay Schwartzman, President and CEO of the Media Access Project, FCC Cable Services Bureau AT&T-MediaOne Public Forum (Feb. 4, 2000), CS Docket No. 99-251, at Attachments A & B. AT&T

(continued...)

these transactions, they were obviously aware of Section 76.503(c); they admit that this rule required that certifications be made prior to closure.<sup>18</sup>

9. In determining the amount of the forfeiture, we are guided by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>19</sup> which takes into consideration the standards set forth in Section 503(b)(2) of the Communications Act of 1934, as amended.<sup>20</sup> Under these standards, \$3,000 is the forfeiture set forth in Section 1.80(b)(4) (Section I) ("Failure to file required forms or information") for a late filing.<sup>21</sup> We will apply this forfeiture to each of AT&T's three violations, thereby assessing a total forfeiture of \$9,000.

10. With regard to this forfeiture proceeding, AT&T Corp. may take any of the actions set forth in Section 1.80 of the Commission's rules, as presented in the Appendix attached to this Notice.

### III. CONCLUSION AND ORDERING CLAUSES

11. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, **AT&T CORP. IS APPARENTLY LIABLE FOR A FORFEITURE** in the amount of nine thousand dollars (\$9,000) for its willful and repeated violation of former Section 76.503(c) of the Commission's Rules, 47 C.F.R. §76.503(c).

12. **IT IS FURTHER ORDERED**, pursuant to Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. § 1.80(f)(3), that within 30 days of the release of this Notice, **AT&T CORP. SHALL PAY** the full amount of the proposed forfeiture **OR SHALL FILE** a response showing why the proposed forfeiture should not be imposed or should be reduced.

---

(...continued from previous page)

and/or TCI also filed late certifications for certain transactions with Hollis Corp., Jones Intercable, Inc., and Adelpia Communications Corp. in 1998 and 1999. However, under our rules, no forfeiture may be imposed for these violations because they occurred more than one year ago. *See* 47 C.F.R. § 1.80(c)(3).

<sup>18</sup> *See* Opp. to Motion to Dismiss at 1-2.

<sup>19</sup> 12 FCC Rcd 17087 (1997).

<sup>20</sup> 47 U.S.C. § 534(b)(6).

<sup>21</sup> 47 C.F.R. §1.80(b)(4) (Section I). We note that this is the forfeiture that CU argued was appropriate for late filings. *See* CU Forfeiture Complaint at 6.

13. **IT IS FURTHER ORDERED** that a copy of this Notice **SHALL BE SENT TO AT&T CORP.** by Certified Mail, Return Receipt Requested.

14. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen  
Chief, Cable Services Bureau

Appendix  
Attachment

APPENDIX

**47 C.F.R. § 1.80**

47 C.F.R. § 1.80

**CODE OF FEDERAL REGULATIONS  
TITLE 47--TELECOMMUNICATION  
CHAPTER I--FEDERAL  
COMMUNICATIONS COMMISSION  
SUBCHAPTER A--GENERAL  
PART 1--PRACTICE AND PROCEDURE  
SUBPART A--GENERAL RULES OF  
PRACTICE AND PROCEDURE  
MISCELLANEOUS PROCEEDINGS**  
Current through January 1, 2000; 64 FR 73853

§ 1.80 Forfeiture proceedings.

(a) Persons against whom and violations for which a forfeiture may be assessed. A forfeiture penalty may be assessed against any person found to have:

- (1) Willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission;
- (2) Willfully or repeatedly failed to comply with any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the Commission under that Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding on the United States;
- (3) Violated any provision of section 317(c) or 508(a) of the Communications Act; or
- (4) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall not apply to conduct which is subject to a forfeiture penalty under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), 503(b), 506, and 634 of the

Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) Limits on the amount of forfeiture assessed.

(1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed \$27,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$275,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$110,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,100,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$82,500 for any single act or failure to act described in paragraph (a) of this section.

(4) Factors considered in determining the amount of the forfeiture penalty. In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

Note to paragraph (b)(4):

#### Guidelines for Assessing Forfeitures

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are \$25,000 for broadcasters and cable operators or applicants, \$100,000 for common carriers or applicants, and \$10,000 for all others. These base amounts listed are for a single violation or single day of a continuing violation. 47 U.S.C. 503(b)(2); 47 CFR 1.80. For continuing violations involving a single act or failure to act, the statute limits the forfeiture to \$250,000 for broadcasters and cable operators or applicants, \$1,000,000 for common carriers or applicants, and \$75,000 for all others. Id. Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, section 31001, 110 Stat. 1321 (1996), civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts as provided by federal law, must be adjusted for inflation at least every four years based on the formula outlined in the DCIA. Thus, the statutory maxima increased to \$27,500 for broadcasters and cable operators or applicants; \$110,000 for common carriers or applicants, and \$11,000 for others. For continuing violations, the statutory maxima increased to \$275,000 for broadcasters, cable

operators, or applicants; \$1,100,000 for common carriers or applicants; and \$82,500 for others. The increased statutory maxima became effective March 5, 1997. There is an upward adjustment factor for repeated or continuous violations, see Section II, *infra*. That upward adjustment is not necessarily applied on a per violation or per day basis. Id. Unless Commission authorization is required for the behavior involved, a Section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or common carrier can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). A prior citation is not required, however, for non-licensee tower owners who have previously received notice of the obligations imposed by Section 303(q) and part 17 of the Commission's rules from the Commission. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.



-----  
 Section I.--Base Amounts for Section 503 Forfeitures  
 -----

Violation	Amount
Misrepresentation/lack of candor ..... ( [FN1])	
Construction and/or operation without an instrument of authorization for the service .....	\$10,000
Failure to comply with prescribed lighting and/or marking .....	10,000
Violation of public file rules .....	10,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination .....	9,000
Unauthorized substantial transfer of control .....	8,000
Violation of children's television commercialization or programming requirements .....	8,000
Violations of rules relating to distress and safety frequencies .....	8,000
False distress communications .....	8,000
EAS equipment not installed or operational .....	8,000
Alien ownership violation .....	8,000
Failure to permit inspection .....	7,000
Transmission of indecent/obscene materials .....	7,000
Interference .....	7,000
Importation or marketing of unauthorized equipment .....	7,000
Exceeding of authorized antenna height .....	5,000

---

Fraud by wire, radio or television .....	5,000
Unauthorized discontinuance of service .....	5,000
Use of unauthorized equipment .....	5,000
Exceeding power limits .....	4,000
Failure to respond to Commission communications .....	4,000
Violation of sponsorship ID requirements .....	4,000
Unauthorized emissions .....	4,000
Using unauthorized frequency .....	4,000
Failure to engage in required frequency coordination .....	4,000
Construction or operation at unauthorized location .....	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests .....	4,000
Violation of transmitter control and metering requirements .....	3,000
Failure to file required forms or information .....	3,000
Failure to make required measurements or conduct required monitoring .....	2,000
Failure to provide station ID .....	1,000
Unauthorized pro forma transfer of control .....	1,000
Failure to maintain required records .....	1,000

---

FN1 Statutory Maximum for each Service.

Violations Unique to the Service

---

Violation	Services affected	Amount
<hr/>		
Unauthorized conversion of long distance telephone... Service	Common Carrier.....	\$40,000
Violation of operator services requirements .....	Common Carrier .....	7,000
Violation of pay-per-call requirements .....	Common Carrier .....	7,000
Failure to implement rate reduction or refund order .....	Cable .....	7,500
Violation of cable program access rules .....	Cable .....	7,500
Violation of cable leased access rules .....	Cable .....	7,500
Violation of cable cross-ownership rules .....	Cable .....	7,500
Violation of cable broadcast carriage rules .....	Cable .....	7,500
Violation of pole attachment rules .....	Cable .....	7,500
Failure to maintain directional pattern within prescribed parameters .....	Broadcast .....	7,000
Violation of main studio rule .....	Broadcast .....	7,000
Violation of broadcast hoax rule .....	Broadcast .....	7,000
AM tower fencing .....	Broadcast .....	7,000
Broadcasting telephone conversations without authorization .....	Broadcast .....	4,000
Violation of enhanced underwriting requirements .....	Broadcast .....	2,000

---

## Section II. Adjustment Criteria for Section 503 Forfeitures

### Upward Adjustment Criteria

- (1) Egregious misconduct.
- (2) Ability to pay/relative disincentive.
- (3) Intentional violation.
- (4) Substantial harm.
- (5) Prior violations of any FCC requirements.
- (6) Substantial economic gain.
- (7) Repeated or continuous violation.

### Downward Adjustment Criteria

- (1) Minor violation.
- (2) Good faith or voluntary disclosure.
- (3) History of overall compliance.
- (4) Inability to pay.

## Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum of \$50,000 per day. For convenience, the Commission will treat the \$50,000 set forth in Section 223 as if it were a prescribed base amount, subject to downward adjustments. The following amounts were adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA)

Public Law 104-134, section 31001, 110 Stat 1321 (1996). The new amounts became effective on March 5, 1997. These non-Section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for Section 503 forfeitures in Section II of this note.

---

Violation	Statutory amount(\$)
Sec. 202(c) Common Carrier Discrimination .....	6,600 330/day
Sec. 203(e) Common Carrier Tariffs .....	6,600 330/day
Sec. 205(b) Common Carrier Prescriptions .....	13,200
Sec. 214(d) Common Carrier Line Extensions .....	1,200/day
Sec. 219(b) Common Carrier Reports .....	1,200
Sec. 220(d) Common Carrier Records & Accounts .....	6,600/day
Sec. 223(b) Dial-a-Porn .....	55,000 maximum/day
Sec. 364(a) Ship Station Inspection .....	5,500 (owner)
Sec. 364(b) Ship Station Inspection .....	1,100 (vessel master)
Sec. 386(a) Forfeitures .....	5,500/day (owner)
Sec. 386(b) Forfeitures .....	1,100 (vessel master)
Sec. 634 Cable EEO .....	500/day

---

(5) Inflation adjustments to the maximum forfeiture amount.

(i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104- 134 (110 Stat. 1321-358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101-410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the following formula. First, obtain the inflation factor by dividing the CPI for June of the preceding year

by the CPI for June of the year the forfeiture was last set or adjusted. Then, multiply the inflation factor by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

(ii) The rounding rules are as follows:

(A) Round increase to the nearest multiple of \$10 if the penalty is from \$0 to \$100;

(B) Round increase to the nearest multiple of \$100 if the penalty is from \$101 to \$1,000;

(C) Round increase to the nearest multiple of \$1,000 if the penalty is from \$1,001 to \$10,000;

(D) Round increase to the nearest multiple of \$5,000 if the penalty is from \$10,001 to \$100,000;

(E) Round increase to the nearest multiple of \$10,000 if the penalty is from \$100,001 to \$200,000; or

(F) Round increase to the nearest multiple of \$25,000 if the penalty is over \$200,001.

(iii) The first application of the inflation adjustments required by Public Law 104-134 results in the following adjustments to the statutory forfeitures currently authorized by the Communications Act:

---

U.S. Code citation	Current statutory maximum penalty	Maximum penalty after Public Law 104-134 Adjustment
47 USC 202(c) .....	\$6,000 .....	\$6,600
.....	300 .....	330
47 USC 203(e) .....	6,000 .....	6,600
.....	300 .....	330
47 USC 205(b) .....	12,000 .....	13,200
47 USC 214(d) .....	1,200 .....	1,200
47 USC 219(b) .....	1,200 .....	1,200
47 USC 220(d) .....	6,000 .....	6,600

47 USC 223(b) .....	50,000 .....	55,000
47 USC 362(a) .....	5,000 .....	5,500
47 USC 362(b) .....	1,000 .....	1,100
47 USC 386(a) .....	5,000 .....	5,500
47 USC 386(b) .....	1,000 .....	1,100
47 USC 503(b)(2)(A) .....	25,000 .....	27,500
.....	250,000 .....	275,000
47 USC 503(b)(2)(B) .....	100,000 .....	110,000
.....	1,000,000 .....	1,100,000
47 USC 503(b)(2)(C) .....	10,000 .....	11,000
.....	75,000 .....	82,500
47 USC 506(a) .....	500 .....	550
47 USC 506(b) .....	100.....	110
47 USC 554 .....	500 .....	500

-----  
 Note: Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

(c) Limits on the time when a proceeding may be initiated.

(1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, "date of commencement of the current license term" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(2) In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.

(3) In all other cases, no penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.

(d) Preliminary procedure in some cases; citations. No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless; prior to the issuance of the appropriate notice, such person: (1) Is sent a citation reciting the violation charged; (2) is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and (3) subsequently engages in conduct of the type described in the citation. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required, or if such person is a cable television system operator. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

(e) Alternative procedures. In the discretion of the Commission, a forfeiture proceeding may be initiated either: (1) By issuing a notice of apparent liability, in accordance with paragraph (f) of this section, or (2) a notice of opportunity for hearing, in accordance with paragraph (g).

(f) Notice of apparent liability. Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission or its designee will issue a written notice of apparent liability.

(1) Content of notice. The notice of apparent liability will:

(i) Identify each specific provision, term, or condition of any act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, or instrument of authorization which the respondent has apparently violated or with which he has failed to comply,

(ii) Set forth the nature of the act or omission charged against the respondent and the facts upon which such charge is based,

(iii) State the date(s) on which such conduct occurred, and

(iv) Specify the amount of the apparent forfeiture penalty.

(2) Delivery. The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see § 1.5).

(3) Response. The respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.

(4) Forfeiture order. If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an



order canceling or reducing the proposed forfeiture or requiring that it be paid in full and stating the date by which the forfeiture must be paid.

(5) Judicial enforcement of forfeiture order. If the forfeiture is not paid, the case will be referred to the Department of Justice for collection under section 504(a) of the Communications Act.

(g) Notice of opportunity for hearing. The procedures set out in this paragraph will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture (such as, to determine whether a renewal application should be granted) and a forfeiture is to be considered as an alternative or in addition to any other Commission action. However, these procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice.

(1) Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission will issue a notice of opportunity for hearing. The hearing will be a full evidentiary hearing before an administrative law judge, conducted under procedures set out in subpart B of this part, including procedures for appeal and review of initial decisions. A final Commission order assessing a forfeiture under the provisions of this paragraph is subject to judicial review under section 402(a) of the Communications Act.

(2) If, after a forfeiture penalty is imposed and not appealed or after a court enters final judgment in favor of the Commission, the forfeiture is not paid, the Commission will refer the matter to the Department of Justice for collection. In an action to recover the forfeiture, the validity and appropriateness of the order imposing the forfeiture are not subject to review.

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by § 1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

(h) Payment. The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

(i) Remission and mitigation. In its discretion, the Commission, or its designee, may remit or reduce any forfeiture imposed under this section. After issuance of a forfeiture order, any request that it do so shall be submitted as a petition for reconsideration pursuant to § 1.106.

(j) Effective date. Amendments to paragraph (b) of this section implementing Pub. L. No. 101-239 are effective December 19, 1989.

[43 FR 49308, Oct. 23, 1978; 48 FR 15631, April 12, 1983; 50 FR 40855, Oct. 7, 1985; 52 FR 5288, Feb. 20, 1987; 55 FR 25605, June 22, 1990; 56 FR 25638, June 5, 1991; 57 FR 23161, June 2, 1992; 57 FR 47006, Oct. 14, 1992; 57 FR 48333, Oct. 23, 1992; 58 FR 6896, Feb. 3, 1993; 58 FR 27473, May 10, 1993; 62 FR 4918, Feb. 3, 1997; 62 FR 43475.]

## ATTACHMENT

IMPORTANT - READ INSTRUCTIONS AND RETURN ATTACHED FORM

The document you have received is a Notice of Apparent Liability (NAL). You may take any of the following actions under Section 1.80 of the Commission's Rules:

You may pay the full amount of the forfeiture within 30 days of the date of the NAL. In this case, you should complete the appropriate sections of the attached form and send it along with a check or similar instrument for the amount specified, made payable to the Federal Communications Commission. To assure that your payment is properly recorded, please enter on your check the control number appearing in the upper right hand corner of the attached form and return the extra copy of the NAL that is enclosed, together with the check, to:

Federal Communications Commission  
Post Office Box 73482  
Chicago, IL 60673-7482

Within 30 days of the date of the NAL you may file a statement, in duplicate, as to why the proposed forfeiture should be reduced. The statement must be signed by the licensee or registrant; a partner, if the licensee or registrant is a partnership; by an officer, if the licensee or registrant is a corporation; or by a duly elected or appointed official, if an unincorporated association, and the statement must be supported by pertinent documents and affidavits. The statement may include any justification or any information that you desire to have considered. If you elect to follow this course, you should complete the appropriate section of the attached form and send it along with your statement. Upon such consideration, it will be determined whether any forfeiture should be imposed, and if so, whether any forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued. Address your statement to:

Federal Communications Commission  
Cable Services Bureau  
Washington, D.C. 20554

You may take no action. In this case a Forfeiture Order will be issued after expiration of the 30-day period ordering that you pay the forfeiture in full. If you decide to take no action, you need not return the attached form.

If, in response to this NAL, you claim a financial inability to pay the full amount of the forfeiture, you should furnish data to support your claim. The data submitted should include, but need not be limited to, a profit and loss statement that has been prepared under generally accepted accounting principles. The statement that you furnish should contain no data older than one year from the date of your response.

Items in the statement should include income from cable operations, expenses from cable operations (including noncash expenses, such as amortization and depreciation) and payments to principals (including salaries, commissions, management fees, interest, rents, etc.) If you are an individual or company with multiple cable holdings, you should furnish separate profit and loss statements for each

entity you own or control, or a consolidated profit and loss statement. You are advised that all financial data furnished with your response will be routinely available for public inspection absent a request for nondisclosure setting forth the reasons therefor pursuant to Section 0.457(d)(2)(i) of the Commission's Rules.

If you have any questions concerning this forfeiture proceeding please communicate them in writing to:

Federal Communications Commission  
Cable Services Bureau  
Washington, D.C. 20554

or contact Commission staff personnel by telephone at (202) 418-1055 or by facsimile at (202) 418-1069.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

NOTICE OF APPARENT LIABILITY

CONTROL NO: X12000001

In response to a Notice of Apparent Liability for a monetary forfeiture under the provisions of Section 503(b) of the Communication Act of 1934, as amended:

(CHECK APPROPRIATE BOX)

| | I am returning a copy of the Notice of Apparent Liability and enclosing a check or similar instrument, drawn to the order of the Federal Communications commission, in full payment of the forfeiture amount as indicated in the Notice of Apparent Liability. I have entered the control number appearing in the upper right hand corner of this page on my check and am submitting it to:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

| | I am submitting a detailed statement of facts and reasons why I believe the forfeiture as assessed in the Notice of apparent Liability is not warranted and should be reduced or rescinded to:

Federal Communications Commission
Cable Services Bureau
Washington, D.C. 20554

Licensee or Registrant

Call sign or CUID, City, State

Signature of authorized official

Date

Amount of forfeiture as indicated by the NAL

**NOTICE TO INDIVIDUAL REQUIRED BY THE PRIVACY ACT**

Section 308(b) and 503(b) of the Communications Act of 1934, as amended, authorize the Commission to request this information, the purpose of which is to determine your liability for forfeiture.

The staff will use all relevant and material information before it, including the information disclosed in your statement to determine whether the forfeiture should be cancelled, reduced or paid in full. Notices of Apparent Liability are a matter of public record.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-570, DECEMBER 31, 1974, 5 U.S.C. 532a(e)(3).