

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
Amendment of Section 1.80(b) of the )
Commission's Rules )
)
Adjustment of Civil Monetary Penalties to Reflect )
Inflation )

ORDER

Adopted: December 30, 2016

Released: December 30, 2016

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Order amends Section 1.80(b) of the Commission's rules (the Rules)1 to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act).2 That Act requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15.3 The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase."4

II. DISCUSSION

2. On November 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015, which included, as Section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. That statute requires annual inflation adjustments for "any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law . . . or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by any agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts."5 This adjustment thus applies only

1 47 CFR 1.80(b).

2 Sec. 701, Pub. L. No. 114-74, 129 Stat. 584, 599. All citations herein to the 2015 Inflation Adjustment Act are to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, codified as further amended by the 2015 Inflation Adjustment Act at 28 U.S.C. § 2461 note (2015 Inflation Adjustment Act).

3 2015 Inflation Adjustment Act. See also Memorandum for the Heads of Executive Departments and Agencies re Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11, Dec. 16, 2016 (OMB Dec. 2016 Guidance) at 1.

4 2015 Inflation Adjustment Act. See also, OMB Dec. 2016 Guidance at 4.

5 2015 Inflation Adjustment Act, § 3(2), quoted in OMB Dec. 2016 Guidance at 2.

to penalties with a dollar amount.<sup>6</sup> The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance.<sup>7</sup>

3. The 2015 Inflation Adjustment Act required agencies to issue an interim final rulemaking and publish interim final rules with initial “catch-up” adjustments by July 1, 2016, which were to take effect by August 1, 2016.<sup>8</sup> On June 9, 2016, the Enforcement Bureau released an interim final rulemaking order to publish interim final rules with the initial “catch-up” adjustments.<sup>9</sup> The new penalty levels took effect on August 1, 2016.<sup>10</sup>

4. On December 16, 2016, the Director of OMB issued guidance on the implementation of the 2017 annual adjustment rate pursuant to the 2015 Inflation Adjustment Act,<sup>11</sup> and this Order follows that guidance. OMB instructs that, in order to complete the 2017 annual adjustment, the Commission must first identify the applicable civil monetary penalties.<sup>12</sup> Then the Commission must apply the OMB supplied 2017 adjustment multiplier, which is 1.01636, to the most recently established or adjusted penalty amount.<sup>13</sup> Then the Commission must round each penalty amount to the nearest dollar.<sup>14</sup>

5. In the interim final rulemaking, we individually evaluated and adjusted each penalty to reflect the “catch up” provisions of the 2015 Inflation Adjustment Act. For 2017, the multiplier is applied to the most recent penalty amount, which includes the “catch-up” adjustment. As such, the penalties do not require individualized adjustments. Rather, the 2017 adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent “catch up” penalty amount effective on August 1, 2016 by the 2017 annual adjustment (1.01636), then rounding the result to the nearest dollar.<sup>15</sup> Attachment A provides a summary comparison of the 2016 adjustments with the 2017 adjustments. Any adjustments in civil monetary penalties that we adopt in this Order will apply only to such penalties assessed on and after the effective date of the amendments to Section 1.80(b).

### III. PROCEDURAL MATTERS

6. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.<sup>16</sup> Further, the Commission delegated to the Chief, Enforcement Bureau authority to perform such rulemaking functions that do not involve “[n]otices of proposed rulemaking and of inquiry and final orders in such proceedings.”<sup>17</sup> In the 2015 Inflation

<sup>6</sup> See OMB Dec. 2016 Guidance at 2.

<sup>7</sup> 2015 Inflation Adjustment Act, § 7.

<sup>8</sup> *Id.* §§ 4(b)(1), 5(b)(2).

<sup>9</sup> See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016) (2016 Forfeiture Adjustment Order).

<sup>10</sup> See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016).

<sup>11</sup> OMB Dec. 2016 Guidance.

<sup>12</sup> OMB Dec. 2016 Guidance at 2.

<sup>13</sup> *Id.* The adjustment is “the percentage (if any)” by which the “(A) Consumer Price Index for the month of October preceding the date of the adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).” *Id.* at 1, n.4 (Oct. 2016 CPI-U (241.729) / Oct. 2015 CPI-U (237.8838) = 1.01636). See also *Federal Civil Penalties 2015 Inflation Adjustment Act of 1990*, § 5(b)(1) (amended 2015).

<sup>14</sup> OMB Dec. 2016 Guidance at 2.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> See 47 CFR § 0.111(a)(22).

<sup>17</sup> 47 CFR § 0.311(a)(1).

Adjustment Act, Congress has mandated the periodic adjustment of the Commission's civil monetary penalties to reflect inflation and specified the formula for calculating such adjustment, and the Commission has no discretion to set alternative levels of adjusted civil monetary penalties. Moreover, that Act expressly provided that the annual adjustments shall be made "notwithstanding" the notice and comment rulemaking procedures that might otherwise apply under Section 553 of the Administrative Procedure Act.<sup>18</sup> Therefore, action on delegated authority is properly taken in this Order amending the Commission's maximum civil monetary penalties, which are a part of the Commission's general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, the regulatory flexibility analyses otherwise required by the Regulatory Flexibility Act do not apply.<sup>19</sup>

7. We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),<sup>20</sup> and we find them to impose no new or modified information collection(s) subject to the PRA. In addition, therefore, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>21</sup> our actions do not impose any new or modified "information collection burden for small business concerns with fewer than 25 employees."<sup>22</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, pursuant to the Bipartisan Budget Act of 2015, 28 U.S.C. § 2461 note, and Sections 0.111(a)(22) and 0.311 of the Commission's rules, 47 CFR §§ 0.111(a)(22), 0.311, IT IS ORDERED that this Order IS **ADOPTED**.

9. **IT IS FURTHER ORDERED** that Section 1.80(b) of the Commission's rules, 47 CFR § 1.80(b), is **AMENDED** as set forth in the Appendix.

10. **IT IS FURTHER ORDERED** that this Order and the foregoing amendments to the Commission's rules **SHALL BE EFFECTIVE** upon publication in the Federal Register.

11. **IT IS FURTHER ORDERED** that the Enforcement Bureau shall coordinate with the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **TO SEND** a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

<sup>18</sup> 2015 Inflation Adjustment Act, § 4(b)(2). *See also* OMB Dec. 2016 Guidance at 3 (noting that the "notice, . . . opportunity for comment, and . . . delay in effective date" generally required by the Administrative Procedure Act are not required for agencies to issue regulations implementing the annual adjustment).

<sup>19</sup> Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. §§ 601-612); *see* 5 U.S.C. §§ 603-604.

<sup>20</sup> Pub. L. No. 104-13, 109 Stat. 163 (codified at 13 U.S.C. § 91, 44 U.S.C. §§ 101 note, and 44 U.S.C. §§ 3501-3520).

<sup>21</sup> Pub. L. No. 107-198, 116 Stat. 729 (codified at 5 U.S.C. § 601 note, 44 U.S.C. §§ 101 note, 3504, 3506, 3520, 3521).

<sup>22</sup> *See* 44 U.S.C. § 3506(c)(4).

APPENDIX

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 1---PRACTICE AND PROCEDURE**

**Subpart A---General Rules of Practice and Procedure**

**Miscellaneous Proceedings**

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq., 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 227, 303(r), and 309.

2. Section 1.80 is amended by revising the table following paragraph (b)(8) “Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors” and revising paragraph (b)(9) to read as follows:

**§1.80 Forfeiture proceedings.**

\* \* \* \* \*

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

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Violation	Statutory Amount (\$)
Sec. 202(c) Common Carrier Discrimination .....	\$11,548, \$577/day
Sec. 203(e) Common Carrier Tariffs .....	\$11,548, \$577/day
Sec. 205(b) Common Carrier Prescriptions .....	\$23,095
Sec. 214(d) Common Carrier Line Extensions .....	\$2,309/day
Sec. 219(b) Common Carrier Reports .....	\$2,309/day
Sec. 220(d) Common Carrier Records & Accounts	\$11,548/day
Sec. 223(b) Dial-a-Porn .....	\$119,668/day
Sec. 227(e) Caller Identification .....	\$11,052/violation
	\$33,156/day for each day of continuing violation, up to \$1,105,241 for any single act or failure to act
Sec. 364(a) Forfeitures (Ships) .....	\$9,623/day (owner)
Sec. 364(b) Forfeitures (Ships) .....	\$1,925 (vessel master)

Sec. 386(a) Forfeitures (Ships) .....	\$9,623/day (owner)
Sec. 386(b) Forfeitures (Ships) .....	\$1,925 (vessel master)
Sec. 634 Cable EEO .....	\$853/day

(9) Inflation adjustments to the maximum forfeiture amount.

(i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74 (129 Stat. 599-600), 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 annually for inflation by order published no later than January 15 each year. Annual inflation adjustments will be based on the percentage (if any) by which the CPI-U for October preceding the date of the adjustment exceeds the prior year’s CPI-U for October. The Office of Management and Budget (OMB) will issue adjustment rate guidance no later than December 15 each year to adjust for inflation in the CPI-U as of the most recent October.

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum Penalty after 2017 Annual Inflation Adjustment
47 U.S.C. 202(c) .....	\$11,548
	\$577
47 U.S.C. 203(e) .....	\$11,548
	\$577
47 U.S.C. 205(b) .....	\$23,095
47 U.S.C. 214(d) .....	\$2,309
47 U.S.C. 219(b) .....	\$2,309
47 U.S.C. 220(d) .....	\$11,548
47 U.S.C. 223(b) .....	\$119,668
47 U.S.C. 227(e) .....	\$11,052
	\$33,156
	\$1,105,241
47 U.S.C. 362(a) .....	\$9,623
47 U.S.C. 362(b) .....	\$1,925
47 U.S.C. 386(a) .....	\$9,623
47 U.S.C. 386(b) .....	\$1,925
47 U.S.C. 503(b)(2)(A) .....	\$48,114
	\$481,147

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47 U.S.C. 503(b)(2)(B) .....	\$192,459
	\$1,924,589
47 U.S.C. 503(b)(2)(C) .....	\$389,305
	\$3,593,585
47 U.S.C. 503(b)(2)(D) .....	\$19,246
	\$144,344
47 U.S.C. 503(b)(2)(F)	\$110,524
	\$1,105,241
47 U.S.C. 507(a) .....	\$1,906
47 U.S.C. 507(b) .....	\$279
47 U.S.C. 554 .....	\$853

\* \* \* \* \*

## ATTACHMENT A

## Section 1.80 Maximum Forfeiture Penalties

U.S. Code Citation	Maximum Forfeiture Penalty as of August 1, 2016	Maximum Forfeiture as of January 15, 2017
47 U.S.C. 202(c)	\$11,362 \$568/day	\$11,548 \$577/day
47 U.S.C. 203(e)	\$11,362 \$568/day	\$11,548 \$577/day
47 U.S.C. 205(b)	\$22,723	\$23,095
47 U.S.C. 214(d)	\$2,272	\$2,309
47 U.S.C. 219(b)	\$2,272	\$2,309
47 U.S.C. 220(d)	\$11,362	\$11,548
47 U.S.C. 223(b)	\$117,742	\$119,668
47 U.S.C. 227(e)	\$10,874/violation \$32,622/day for each day of continuing violation up to \$1,087,450 for any single act or failure to act	\$11,052/violation \$33,156/day for each day of continuing violation up to \$1,105,241 for any single act or failure to act
47 U.S.C. 364(a)	\$9,468	\$9,623
47 U.S.C. 364(b)	\$1,894	\$1,925
47 U.S.C. 386(a)	\$9,468	\$9,623
47 U.S.C. 386(b)	\$1,894	\$1,925
47 U.S.C. 503(b)(2)(A)	\$47,340/violation or each day of a continuing violation up to \$473,402 for any single act or failure to act	\$48,114/violation or each day of a continuing violation up to \$481,147 for any single act or failure to act
47 U.S.C. 503(b)(2)(B)	\$189,361/violation or each day of a continuing violation up to \$1,893,610 for any single act or failure to act	\$192,459/violation or each day of a continuing violation up to \$1,924,589 for any single act or failure to act
47 U.S.C. 503(b)(2)(C)	\$383,038/violation or each day of a continuing violation up to \$3,535,740 for any single act or failure to act	\$389,305/violation or each day of a continuing violation up to \$3,593,585 for any single act or failure to act
47 U.S.C. 503(b)(2)(D)	\$18,936/violation or each day of a continuing violation up to \$142,021 for any single act or failure to act	\$19,246/violation or each day of a continuing violation up to \$144,344 for any single act or failure to act
47 U.S.C. 503(b)(2)(F)	\$108,745/violation or each day of a continuing violation up to \$1,087,450 for any single act or failure to act	\$110,524/violation or each day of a continuing violation up to \$1,105,241 for any single act or failure to act
47 U.S.C. 507(a)	\$1,875	\$1,906
47 U.S.C. 507(b)	\$275	\$279
47 U.S.C. 554	\$839	\$853