

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 19, 2018

Released: December 19, 2018

By the Deputy 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 (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. The Bipartisan Budget Act of 2015 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 to penalties with a dollar amount.⁶ The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance.⁷

¹ 47 CFR § 1.80(b).

² Pub. L. No. 114-74, § 701, 129 Stat. 584, 599. The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (Inflation Adjustment Act).

³ Inflation Adjustment Act § 4(a). See also Memorandum for the Heads of Executive Departments and Agencies re Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-19-04, rel. Dec. 14, 2018 (OMB Dec. 2018 Guidance).

⁴ Inflation Adjustment Act § 6. See also OMB Dec. 2018 Guidance at 4.

⁵ Inflation Adjustment Act § 3(2), quoted in OMB Dec. 2018 Guidance at 2.

⁶ See OMB Dec. 2018 Guidance at 3.

3. On December 14, 2018, the Director of OMB issued guidance on the implementation of the annual adjustment rate for 2019 pursuant to the 2015 Inflation Adjustment Act,⁸ and this Order follows that guidance. OMB instructs that, in order to complete the annual adjustment for 2019, the Commission must first identify the applicable civil monetary penalties.⁹ Then the Commission must apply the OMB supplied 2019 adjustment multiplier, which is 1.02522, to the most recently established or adjusted penalty amount.¹⁰ Then the Commission must round each penalty amount to the nearest dollar.¹¹

4. For 2019, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2019 annual adjustment (1.02522), then rounding the result to the nearest dollar.¹² Attachment A provides a summary comparison of the 2018 adjustments with the 2019 adjustments. The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2019.

III. PROCEDURAL MATTERS

5. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.¹³ 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.”¹⁴ In the 2015 Inflation 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.¹⁵ 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, no regulatory flexibility analysis is required.¹⁶

6. We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),¹⁷ 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 2002,¹⁸ our actions

(Continued from previous page) _____

⁷ Inflation Adjustment Act § 7.

⁸ OMB Dec. 2018 Guidance.

⁹ OMB Dec. 2018 Guidance at 2.

¹⁰ *Id.* at 3. The adjustment is “based on the percent change between each published October’s CPI-U. In this case, October 2018 CPI-U (252.885) / October 2017 CPI-U (246.663) = 1.02522.” *Id.* at 1, n.4.

¹¹ OMB Dec. 2018 Guidance at 3.

¹² *Id.*

¹³ See 47 CFR § 0.111(a)(22).

¹⁴ 47 CFR § 0.311(a)(1).

¹⁵ Inflation Adjustment Act § 4(b)(2). See also OMB Dec. 2018 Guidance at 4.

¹⁶ 5 U.S.C. § 604(a).

¹⁷ 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).

¹⁸ 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).

do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”¹⁹

IV. ORDERING CLAUSES

7. 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**.

8. **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.

9. **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.

10. **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

Lisa S. Gelb
Deputy Chief
Enforcement Bureau

¹⁹ 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 is revised to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115-141, 132 Stat. 1084; 28 U.S.C. 2461 note, unless otherwise noted.

2. Section 1.80 is amended by revising the table in Section III of the note to paragraph (b)(8) 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

| Violation | Statutory Amount After 2019 Annual Inflation Adjustment |
|--|---|
| Sec. 202(c) Common Carrier Discrimination | \$12,081, \$604/day |
| Sec. 203(e) Common Carrier Tariffs | \$12,081, \$604/day |
| Sec. 205(b) Common Carrier Prescriptions | \$24,160 |
| Sec. 214(d) Common Carrier Line Extensions | \$2,415/day |
| Sec. 219(b) Common Carrier Reports | \$2,415/day |
| Sec. 220(d) Common Carrier Records & Accounts | \$12,081/day |
| Sec. 223(b) Dial-a-Porn | \$125,190/day |
| Sec. 227(e) Caller Identification | \$11,562/violation |
| | \$34,686/day for each day of continuing violation, up to \$1,156,242 for any single act or failure to act |
| Sec. 364(a) Forfeitures (Ships) | \$10,067/day (owner) |
| Sec. 364(b) Forfeitures (Ships) | \$2,014 (vessel master) |
| Sec. 386(a) Forfeitures (Ships) | \$10,067/day (owner) |

| | |
|---------------------------------------|-------------------------|
| Sec. 386(b) Forfeitures (Ships) | \$2,014 (vessel master) |
| Sec. 634 Cable EEO | \$892/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 2019 Annual Inflation Adjustment |
|------------------------------|---|
| 47 U.S.C. 202(c) | \$12,081 |
| | \$604 |
| 47 U.S.C. 203(e) | \$12,081 |
| | \$604 |
| 47 U.S.C. 205(b) | \$24,160 |
| 47 U.S.C. 214(d) | \$2,415 |
| 47 U.S.C. 219(b) | \$2,415 |
| 47 U.S.C. 220(d) | \$12,081 |
| 47 U.S.C. 223(b) | \$125,190 |
| 47 U.S.C. 227(e) | \$11,562 |
| | \$34,686 |
| | \$1,156,242 |
| 47 U.S.C. 362(a) | \$10,067 |
| 47 U.S.C. 362(b) | \$2,014 |
| 47 U.S.C. 386(a) | \$10,067 |
| 47 U.S.C. 386(b) | \$2,014 |
| 47 U.S.C. 503(b)(2)(A) | \$50,334 |
| | \$503,349 |
| 47 U.S.C. 503(b)(2)(B) | \$201,340 |

| | |
|------------------------------|-------------|
| | \$2,013,399 |
| 47 U.S.C. 503(b)(2)(C) | \$407,270 |
| | \$3,759,410 |
| 47 U.S.C. 503(b)(2)(D) | \$20,134 |
| | \$151,005 |
| 47 U.S.C. 503(b)(2)(F) | \$115,624 |
| | \$1,156,242 |
| 47 U.S.C. 507(a) | \$1,994 |
| 47 U.S.C. 507(b) | \$292 |
| 47 U.S.C. 554 | \$892 |

* * * * *

ATTACHMENT A

Section 1.80 Maximum Forfeiture Penalties

| U.S. Code Citation | 2018 Maximum Forfeiture Penalty (effective January 15, 2018) | 2019 Maximum Forfeiture Penalty (effective January 15, 2019) |
|------------------------|--|--|
| 47 U.S.C. 202(c) | \$11,784 \$589/day | \$12,081 \$604/day |
| 47 U.S.C. 203(e) | \$11,784 \$589/day | \$12,081 \$604/day |
| 47 U.S.C. 205(b) | \$23,566 | \$24,160 |
| 47 U.S.C. 214(d) | \$2,356 | \$2,415 |
| 47 U.S.C. 219(b) | \$2,356 | \$2,415 |
| 47 U.S.C. 220(d) | \$11,784 | \$12,081 |
| 47 U.S.C. 223(b) | \$122,110 | \$125,190 |
| 47 U.S.C. 227(e) | \$11,278/violation \$33,833/day for each day of continuing violation up to \$1,127,799 for any single act or failure to act | \$11,562/violation \$34,686/day for each day of continuing violation up to \$1,156,242 for any single act or failure to act |
| 47 U.S.C. 364(a) | \$9,819 | \$10,067 |
| 47 U.S.C. 364(b) | \$1,964 | \$2,014 |
| 47 U.S.C. 386(a) | \$9,819 | \$10,067 |
| 47 U.S.C. 386(b) | \$1,964 | \$2,014 |
| 47 U.S.C. 503(b)(2)(A) | \$49,096/violation or each day of a continuing violation up to \$490,967 for any single act or failure to act | \$50,334/violation or each day of a continuing violation up to \$503,349 for any single act or failure to act |
| 47 U.S.C. 503(b)(2)(B) | \$196,387/violation or each day of a continuing violation up to \$1,963,870 for any single act or failure to act | \$201,340/violation or each day of a continuing violation up to \$2,013,399 for any single act or failure to act |
| 47 U.S.C. 503(b)(2)(C) | \$397,251/violation or each day of a continuing violation up to \$3,666,930 for any single act or failure to act | \$407,270/violation or each day of a continuing violation up to \$3,759,410 for any single act or failure to act |
| 47 U.S.C. 503(b)(2)(D) | \$19,639/violation or each day of a continuing violation up to \$147,290 for any single act or failure to act | \$20,134/violation or each day of a continuing violation up to \$151,005 for any single act or failure to act |
| 47 U.S.C. 503(b)(2)(F) | \$112,780/violation or each day of a continuing violation up to \$1,127,799 for any single act or failure to act | \$115,624/violation or each day of a continuing violation up to \$1,156,242 for any single act or failure to act |
| 47 U.S.C. 507(a) | \$1,945 | \$1,994 |
| 47 U.S.C. 507(b) | \$285 | \$292 |
| 47 U.S.C. 554 | \$870 | \$892 |