

Before the
Federal Communications Commission
Washington, D.C. 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 22, 2021

Released: December 22, 2021

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Order amends section 1.80(b) of the Commission’s rules¹ 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 (2015) (2015 Inflation Adjustment Act). 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 (1990 Inflation Adjustment Act).

³ 1990 Inflation Adjustment Act § 4(a). See also Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-22-07 (Dec. 15, 2021) (OMB Dec. 2021 Guidance).

⁴ 1990 Inflation Adjustment Act § 6. See also OMB Dec. 2021 Guidance at 4.

⁵ 1990 Inflation Adjustment Act § 3(2), quoted in OMB Dec. 2021 Guidance at 2.

⁶ See OMB Dec. 2021 Guidance at 3.

⁷ 1990 Inflation Adjustment Act § 7.

3. On December 15, 2021, the Director of OMB issued guidance on the implementation of the annual adjustment rate for 2022 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 2022, the Commission must first identify the applicable civil monetary penalties.⁹ Then the Commission must apply the OMB-supplied 2022 adjustment multiplier, which is 1.06222, 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 2022, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2022 annual adjustment (1.06222), then rounding the result to the nearest dollar.¹² The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2022.

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, pursuant to the Small Business Paperwork Relief Act of 2002,¹⁸ our actions do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”¹⁹

⁸ See generally OMB Dec. 2021 Guidance.

⁹ OMB Dec. 2021 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 2021 CPI-U (276.589) / October 2020 CPI-U (260.388) = 1.06222.” *Id.* at 1, n.4.

¹¹ OMB Dec. 2021 Guidance at 3.

¹² *Id.*

¹³ See 47 CFR § 0.111(a)(22).

¹⁴ 47 CFR § 0.311(a)(1).

¹⁵ 2015 Inflation Adjustment Act § 4(b)(2). See also OMB Dec. 2021 Guidance at 3.

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).

¹⁹ See 44 U.S.C. § 3506(c)(4)

7. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

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 Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order in a report to be sent 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 Gelb
Deputy Chief
Enforcement Bureau

APPENDIX

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

PART 1---PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

2. Amend § 1.80 by revising paragraphs (b)(1) through (9), Table 4 to paragraph (b)(10), and paragraph (b)(11)(ii) to read as follows:

§1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant.* 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 (b)(1), the forfeiture penalty under this section shall not exceed \$55,052 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 \$550,531 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. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed \$445,445 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 \$4,111,796 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant.* 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 \$220,213 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 \$2,202,123 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider.* If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than \$126,463 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 \$1,264,622 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation.* Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than \$12,646 for each violation or three times that amount for each day of a continuing violation, except that the

amount assessed for any continuing violation shall not exceed a total of \$1,264,622 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation.* Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)-(F) of section 503(b)(2) plus an additional penalty not to exceed \$10,748.

(6) *Forfeiture penalty for pirate radio broadcasting.* (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,149,551; and (ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than \$107,478 for each day during which such offense occurs, in accordance with the limit described in this section.

(7) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation.* If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$118,430 per incident nor more than \$1,184,300 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) *Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation.* If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than \$11,843 per call nor more than \$118,430 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(9) *Maximum forfeiture penalty for any case not previously covered.* In any case not covered in paragraphs (b)(1) through (8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$22,021 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 \$165,159 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

Table 4 to Paragraph (b)(10) - Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

* * * * *

Violation

Statutory

| | Amount |
|---|---|
| | After 2022 Annual Inflation Adjustment |
| Sec. 202(c) Common Carrier Discrimination | \$13,213, \$661/day |
| Sec. 203(e) Common Carrier Tariffs | \$13,213, \$661/day |
| Sec. 205(b) Common Carrier Prescriptions | \$26,425 |
| Sec. 214(d) Common Carrier Line Extensions | \$2,642/day |
| Sec. 219(b) Common Carrier Reports | \$2,642/day |
| Sec. 220(d) Common Carrier Records & Accounts | \$13,213/day |
| Sec. 223(b) Dial-a-Porn | \$136,924/day |
| Sec. 227(e) Caller Identification | \$12,646/violation |
| | \$37,937/day for each day of continuing violation, up to \$1,264,622 for any single act or failure to act |
| Sec. 364(a) Forfeitures (Ships) | \$11,011/day (owner) |
| Sec. 364(b) Forfeitures (Ships) | \$2,203 (vessel master) |
| Sec. 386(a) Forfeitures (Ships) | \$11,011/day (owner) |
| Sec. 386(b) Forfeitures (Ships) | \$2,203 (vessel master) |
| Sec. 511 Pirate Radio Broadcasting | \$2,149,551, \$107,478 /day |
| Sec. 634 Cable EEO | \$976/day |

* * * * *

(11) * * *

(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:

Table 5 to Paragraph (b)(11)(ii)

| U.S. Code citation | Maximum Penalty after 2022 Annual Inflation Adjustment |
|------------------------|---|
| 47 U.S.C. 202(c) | \$13,213 |
| | \$661 |
| 47 U.S.C. 203(e) | \$13,213 |
| | \$661 |
| 47 U.S.C. 205(b) | \$26,425 |
| 47 U.S.C. 214(d) | \$2,642 |
| 47 U.S.C. 219(b) | \$2,642 |
| 47 U.S.C. 220(d) | \$13,213 |
| 47 U.S.C. 223(b) | \$136,924 |

| | |
|------------------------------|-------------|
| 47 U.S.C. 227(e) | \$12,646 |
| | \$37,937 |
| | \$1,264,622 |
| 47 U.S.C. 362(a) | \$11,011 |
| 47 U.S.C. 362(b) | \$2,203 |
| 47 U.S.C. 386(a) | \$11,011 |
| 47 U.S.C. 386(b) | \$2,203 |
| 47 U.S.C. 503(b)(2)(A) | \$55,052 |
| | \$550,531 |
| 47 U.S.C. 503(b)(2)(B) | \$220,213 |
| | \$2,202,123 |
| 47 U.S.C. 503(b)(2)(C) | \$445,445 |
| | \$4,111,796 |
| 47 U.S.C. 503(b)(2)(D) | \$22,021 |
| | \$165,159 |
| 47 U.S.C. 503(b)(2)(F) | \$126,463 |
| | \$1,264,622 |
| 47 U.S.C. 507(a) | \$2,181 |
| 47 U.S.C. 507(b) | \$320 |
| 47 U.S.C. 511 | \$2,149,551 |
| | \$107,478 |
| 47 U.S.C. 554 | \$976 |

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