

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 Forfeiture Maxima to Reflect)
Inflation)
)
)

ORDER

Adopted: September 14, 2000

Released: September 19, 2000

By the Commission:

1. This Order amends Section 1.80(b) of the Commission's Rules ("Rules"), 47 C.F.R. § 1.80(b), to increase the maximum penalties defined in that section to account for inflation since the last adjustment to these penalties. The adjustment procedure is defined in detail in Section 1.80(b)(5) of the Rules. This section implements the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, which requires federal agencies to adjust maximum statutory civil monetary penalties at least once every four years.

2. The Order adjusts the maximum penalties to account for the increase in the Consumer Price Index (CPI) between June 1995, the base period of the last adjustment, and June 1999. The increases were then rounded using the statutorily defined rules to produce the adjusted penalties. The Order also deletes some obsolete or duplicative material.

3. The amendment of Section 1.80(b) simply implements the requirements of Section 1.80(b)(5) and updates the associated text. Therefore, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. § 553(b)(B).

4. Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, does not apply.

5. The actions taken herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record keeping requirements or burdens on the public.

6. Accordingly, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and the Debt Collection and Improvement Act of 1996, 28 U.S.C. § 2461, IT IS ORDERED that 47 C.F.R. § 1.80(b) is AMENDED as set forth in the Appendix, EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Sales
Secretary

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: 47 U.S.C. 151, 154(i) and (j), 155, 225, 303(r), and 309.

2. Section. 1.80 is amended by revising paragraph (b) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(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 \$300,000 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 \$120,000 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 \$1,200,000 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 \$87,500 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 described in Section 1.80(b)(5)(iii). These statutory maxima became effective **30 days from publication in the Federal Register**. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

* * * * *

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 forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The following amounts are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. § 2461. 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	7,600 330/day
Sec. 203(e) Common Carrier Tariffs.....	7,600 330/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	7,600/day
Sec. 223(b) Dial-a-Porn.....	60,000 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) ***

(iii) The application of the inflation adjustments required by the DCIA, 28 U.S.C. § 2461, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum Penalty After DCIA adjustment
47 USC 202(c).....	\$7,600 330
47 USC 203(e).....	7,600 330
47 USC 205(b).....	13,200
47 USC 214(d).....	1,200
47 USC 219(b).....	1,200
47 USC 220(d).....	7,600
47 USC 223(b).....	60,000
47 USC 362(a).....	5,500
47 USC 362(b).....	1,100
47 USC 386(a).....	5,500
47 USC 386(b).....	1,100
47 USC 503(b)(2)(A).....	27,500 300,000
47 USC 503(b)(2)(B).....	120,000 1,200,000
47 USC 503(b)(2)(C).....	11,000 87,500
47 USC 507(a).....	550
47 USC 507(b).....	110
47 USC 554.....	500

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