

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

In the Matter of)
)
Amendment of Section 1.80(b) of the) EB File No. EB-06-SE-132
Commission's Rules)
)
Adjustment of Forfeiture Maxima to Reflect)
Inflation)
)
)

ORDER

Adopted: June 13, 2008

Released: June 13, 2008

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 forfeiture penalties established in that section to account for inflation since the last adjustment to these penalties. The adjustment procedure is set forth in detail in Section 1.80(b)(5) of the Rules, 47 C.F.R. § 1.80(b)(5). That 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. This Order adjusts the maximum penalties to account for the increase in the Consumer Price Index (CPI) between June of the year the forfeiture amount was last set or adjusted, and June

1 See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation, Order, 19 FCC Rcd 10945 (2004).

2 Under the rounding rules set forth in Section 1.80(b)(5)(ii), 47 C.F.R. § 1.80(b)(5)(ii), the inflationary adjustment for a statutory forfeiture amount must reach a specific threshold before we may increase the maximum forfeiture amount. That adjustment is based on the difference between the CPI of "June of the preceding year" (here, June 2007) and that of June of the year a particular forfeiture was "last set or adjusted." 47 C.F.R. § 1.80(b)(5)(i). Thus, the June 1995 CPI is used to calculate the inflation factors for the statutory forfeiture amounts in 47 U.S.C. §§ 362(b), 386(b), 503(b)(2)(D) (the amount for a single violation or single day of a violation), and 507(b). The June 1999 CPI is used to calculate the inflation factor for the statutory forfeiture amount in 47 U.S.C. § 223(b). The June 2003 CPI is used to calculate the inflation factors for the remaining statutory forfeiture amounts, except for 47 U.S.C. § 503(b)(2)(C). The Broadcast Decency Enforcement Act of 2005, which was signed into law on June 15, 2006, implemented by the Commission on June 1, 2007, and codified at 47 U.S.C. § 503(b)(2)(C), increased the maximum forfeiture penalties for obscene, indecent, and profane broadcasts. The date on which the Commission implemented the Broadcast Decency Enforcement Act constitutes the date on which the maximum forfeiture amount was "last set or adjusted." Therefore, the June 2007 CPI is the relevant measure for purposes of calculating the inflation factor for the maximum statutory forfeiture amount pursuant to 47 U.S.C. § 503(b)(2)(C). Given that this measure is the same as the CPI for "June of the preceding year," the forfeiture maxima under 47 U.S.C. § 503(b)(2)(C) remains unchanged.

2007. We then have rounded the increase in the CPI for each forfeiture amount using the statutorily prescribed rules to produce the adjusted penalties.³

3. The amendment of Section 1.80(b) implements the requirements of the Debt Collection Improvement Act of 1986, 28 U.S.C. § 2461, as incorporated in Section 1.80(b)(5) of our rules. Since Congress has mandated these periodic rule changes and the Commission has no discretion but to make them, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary.⁴

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

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. In addition, our actions do not impose any new or modified information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Reduction Act of 2002, Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4).

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.

7. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³ We note that the maximum statutory forfeiture penalty for violation of Section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 223(b), was inadvertently omitted from Section 1.80(b) of the Rules when the penalties in that section were adjusted to account for inflation in 2004. This Order corrects that omission by reinserting the adjusted penalty for violation of Section 223(b) in Section 1.80(b).

⁴ *See* 5 U.S.C. § 553(b)(B).

⁵ *See* 5 U.S.C. §§ 603-604.

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 \$37,500 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 \$375,000 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 \$150,000 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 \$1,500,000 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 \$16,000 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 \$112,500 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 after publication in the Federal Register**. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this Note.

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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	\$9,600 530/day.
Sec. 203(e) Common Carrier Tariffs	9,600 530/day.
Sec. 205(b) Common Carrier Prescriptions	18,200.
Sec. 214(d) Common Carrier Line Extensions	1,320/day.
Sec. 219(b) Common Carrier Reports	1,320.
Sec. 220(d) Common Carrier Records & Accounts	9,600/day.
Sec. 223(b) Dial-a-Porn	75,000/day.
Sec. 364(a) Forfeitures (Ships)	7,500 (owner).

Sec. 364(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 386(a) Forfeitures (Ships)	7,500/day (owner).
Sec. 386(b) Forfeitures (Ships)	1,100 (vessel master).
Sec. 634 Cable EEO	650/day.

(5) *Inflation adjustments to the maximum forfeiture amount.* (i) ***

(ii)***

(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 U.S.C. 202(c).....	\$9,600
	530
47 U.S.C. 203(e).....	9,600
	530
47 U.S.C. 205(b).....	18,200
47 U.S.C. 214(d).....	1,320
47 U.S.C. 219(b).....	1,320
47 U.S.C. 220(d).....	9,600
47 U.S.C. 223(b).....	75,000
47 U.S.C. 362(a).....	7,500
47 U.S.C. 362(b).....	1,100
47 U.S.C. 386(a).....	7,500
47 U.S.C. 386(b).....	1,100
47 U.S.C. 503(b)(2)(A).....	37,500
	375,000
47 U.S.C. 503(b)(2)(B).....	150,000
	1,500,000
47 U.S.C. 503(b)(2)(C).....	325,000
	3,000,000
47 U.S.C. 503(b)(2)(D).....	16,000
	112,500
47 U.S.C. 507(a).....	750
47 U.S.C. 507(b).....	110
47 U.S.C. 554.....	650

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