

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Forfeiture Methodology for Violations of Rules
Governing Payment to Certain Federal Programs
EB Docket No. 16-330

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2023

Released: May 30, 2023

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION...1
II. BACKGROUND...3
III. DISCUSSION...6
IV. ORDERING CLAUSES...12

I. INTRODUCTION

1. On February 3, 2015, the Federal Communications Commission (Commission) issued the 2015 Forfeiture Policy Statement, adopting a "treble damages" methodology to determine forfeitures for violations of Commission rules establishing payment requirements for the Universal Service Fund (USF), Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), North American Numbering Plan (NANP), and federal regulatory fees.1 The Commission has not applied the 2015 Forfeiture Policy Statement to an adjudication of USF, TRS Fund, LNP, NANP or federal regulatory fee payment violations. In this Memorandum Opinion and Order, we vacate the 2015 Forfeiture Policy Statement. This will enable the Commission to continue exercising the discretion needed to issue forfeiture penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that specifically address the individualized circumstances of each future adjudication, as required by the Communications Act of 1934, as amended (the Act).

2. On March 6, 2015, CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTTEL (collectively, Petitioners) filed a Petition for Reconsideration and Petition for Stay of the 2015 Forfeiture Policy Statement.2 Because we vacate the 2015 Forfeiture Policy Statement, we dismiss as moot the Petition for

1 See Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs, Policy Statement, 30 FCC Rcd 1622 (2015) (2015 Forfeiture Policy Statement). See also 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 64.604(c)(5)(iii) (establishing payment requirements for USF, TRS Fund, LNP, NANP, and federal regulatory fee cost recovery mechanisms).

2 See Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTTEL for Reconsideration of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015), https://www.fcc.gov/ecfs/file/download/DOC-55f611f51b800000-A.pdf?file\_name=CTIA.pdf (Petition for Reconsideration); Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTTEL for Stay of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015) (Petition for Stay). After filing the Petition for Reconsideration, CTIA – The Wireless

(continued...)

Reconsideration and Petition for Stay filed by the Petitioners. We further find the Petitioners' arguments with respect to treating USF, TRS Fund, LNP, NANP, and federal regulatory fee payment failures as continuing violations are outside the scope of the Commission action for which reconsideration is sought.<sup>3</sup>

## II. BACKGROUND

3. On February 3, 2015, the Commission released the *2015 Forfeiture Policy Statement* to further the goals of reforming our processes in ways that enhance the Commission's efficiency and effectiveness.<sup>4</sup> The Commission observed that the existing methodologies for calculating forfeitures for violations of payment requirements for the USF, TRS Fund, LNP, NANP, and federal regulatory fees were unnecessarily cumbersome, prevented us from resolving investigations quickly and efficiently, and constrained our ability to deter non-compliance with the payment requirements.<sup>5</sup> The Commission therefore adopted a "treble damages" methodology to determine forfeitures in order to enable the Commission to resolve investigations more quickly and efficiently.<sup>6</sup>

4. On March 6, 2015, Petitioners filed the Petition for Reconsideration, claiming that the *2015 Forfeiture Policy Statement* must be vacated because it was a substantive rule, which required notice and comment under the Administrative Procedure Act (APA).<sup>7</sup> The Petitioners also claimed that the "treble damages" methodology adopted in the *2015 Forfeiture Policy Statement* was "an arbitrary and capricious effort by the Commission simply to drive forfeiture amounts for payment and reporting violations in connection with certain federal regulatory programs as high as possible."<sup>8</sup> Although the Commission did not adopt a new policy or alter existing policy concerning continuing violations,<sup>9</sup> the Petitioners also claimed that "treating payment and reporting violations as 'continuing violations' conflicts with the statute of limitations."<sup>10</sup>

---

Association became CTIA, National Cable & Telecommunications Association became NCTA – The Internet & Television Association, and COMPTTEL became INCOMPAS. See CTIA, NCTA – The Internet & Television Association, United States Telecom Association, and INCOMPAS, Reply, at 2 (Nov. 16, 2016), [https://www.fcc.gov/ecfs/file/download/DOC-561bbc1a82000000-A.pdf?file\\_name=USF%20Forfeiture%20Reply%20Comments.pdf](https://www.fcc.gov/ecfs/file/download/DOC-561bbc1a82000000-A.pdf?file_name=USF%20Forfeiture%20Reply%20Comments.pdf) (Petitioners Reply) (indicating that the parties filing reply comments in EB Docket No. 16-330 were the Petitioners).

<sup>3</sup> 47 CFR § 1.106(p)(5).

<sup>4</sup> *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1622, para. 2. See generally *FCC Seeks Comment on Report on Process Reform*, Public Notice, 29 FCC Rcd 1338, 1338 (2014) ("The Report seeks to further the goal of having the agency operate in the most effective, efficient and transparent way possible. It examines the agency's internal operations with the aim of improving the overall functioning of the agency and its service to the public.").

<sup>5</sup> *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 6.

<sup>6</sup> *Id.*

<sup>7</sup> Petition for Reconsideration at 1 (citing 5 U.S.C. § 553(b)).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> The Commission observed that section 503(b)(2) of the Act, 47 U.S.C. § 503(b)(2), limits the Commission's maximum forfeiture authority for each violation or each day of a continuing violation. *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7. The Commission also restated a principle applied in several enforcement items issued between 2006 and 2015, "[a]s the Commission has observed, each single failure to pay a federal program assessment constitutes a separate violation that continues until the assessment is fully paid." *Id.* (citing *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4725 & n.105 (2006) (*Globcom Forfeiture Order*)). See also, e.g., *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6644, para. 15 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016); *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd. 16684, 16694, para. 21 (2011) (*Kajeet NAL*), consent decree adopted, Order, 30 FCC Rcd. 10608 (2015); *NTS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5142, para. 12 (2010) (*NTS NAL*), consent decree adopted, Order, 28 FCC Rcd 16515 (2013).

<sup>10</sup> Petition for Reconsideration at 12.

5. On October 17, 2016, the Commission provided an opportunity for public comment on the Petition for Reconsideration.<sup>11</sup> Comments were due on November 9, 2016, and reply comments were due on November 16, 2016.<sup>12</sup> One party, ITTA – The Voice of Mid-Size Communications Companies (ITTA), filed comments, and the Petitioners filed reply comments.<sup>13</sup> ITTA restated the challenges the Petitioners raised in the Petition for Reconsideration.<sup>14</sup> In reply, Petitioners also reiterated the challenges they raised in the Petition for Reconsideration.<sup>15</sup> The Commission has never applied the *2015 Forfeiture Policy Statement*.

### III. DISCUSSION

6. We vacate the *2015 Forfeiture Policy Statement* because the Commission has decided not to use a “treble damages” methodology to calculate forfeitures for violations of payment requirements for USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments. The Commission has made this decision because we believe it is more appropriate to determine forfeitures, as adjudicated on a case-by-case basis, by applying the factors in section 503(b)(2)(E) of the Act, our *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission’s rules.<sup>16</sup> This will enable the Commission to continue to issue penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that are closely tailored to the specific circumstances of each individual adjudication.

7. In the *Globcom Forfeiture Order*, the Commission observed that when service providers fail to contribute their equitable share to the payment requirements established by the Commission’s rules, they “threaten the integrity and viability” of cost recovery programs implemented by the Commission pursuant to its Congressional mandates.<sup>17</sup> Thus, the “Commission cannot and will not tolerate [the] willful or repeated failure to participate in these programs as required by our rules, and will use its forfeiture authority to penalize violations . . . .”<sup>18</sup> The Commission has repeatedly observed that compliance with its payment requirements is of paramount importance, and the Commission is dedicated to taking the action needed to ensure compliance.<sup>19</sup> The Commission has therefore been committed to

---

<sup>11</sup> See *Petition for Reconsideration of Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs Policy Statement*, Public Notice, EB Docket No. 16-330, 2016 WL 6092519 (Oct. 17, 2016).

<sup>12</sup> See Federal Communications Commission, *Petition for Reconsideration of a Policy Statement*, 81 Fed. Reg. 74431 (Oct. 26, 2016).

<sup>13</sup> See ITTA – The Voice of Mid-Size Communications Companies, Comments (Nov. 9, 2016), [https://www.fcc.gov/ecfs/file/download/DOC-5612c5cc8ec00000-A.pdf?file\\_name=ITTA%20Comments%20Supporting%20PFR%20of%20Forfeiture%20Policy%20Statement%20As%20Filed%20110916.pdf](https://www.fcc.gov/ecfs/file/download/DOC-5612c5cc8ec00000-A.pdf?file_name=ITTA%20Comments%20Supporting%20PFR%20of%20Forfeiture%20Policy%20Statement%20As%20Filed%20110916.pdf) (ITTA Comments); Petitioners Reply.

<sup>14</sup> See ITTA Comments at 2-5.

<sup>15</sup> Petitioners Reply at 1-3.

<sup>16</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *Globcom Forfeiture Order*, 21 FCC Rcd at 4722-23, para. 34 (“the Act instructs the Commission, in establishing a forfeiture, to consider ‘the nature, circumstances, extent, and gravity of the violation 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.’”); *Commission’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*1997 Forfeiture Guidelines Order*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>17</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4711, para. 2.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Conquest Operator Servs.*, Order of Forfeiture, 14 FCC Rcd 12518, 12518-19, para. 1 (1999) (stating that “delinquent carriers deprive the universal service support mechanisms of the funds necessary to carry out the goals of this important statutory program” and because delinquent service providers derive a competitive advantage over those service providers making their payments on time, the Commission will not permit service providers “to shirk their responsibilities in an attempt to gain an advantage over their law-abiding competitors” and thus “with this

(continued...)

increasing forfeitures for violations of the USF and other federal payment requirements implemented under the Act, as necessary to deter violations of the payment requirements.<sup>20</sup>

8. In future adjudications of USF, TRS Fund, LNP, NANP and federal regulatory fee payment violations, by applying the factors in section 503(b)(2)(E) of the Act, the *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules, the Commission could conclude that individual circumstances warrant forfeitures that are higher than forfeitures calculated using the "treble damages" methodology adopted in the *2015 Forfeiture Policy Statement*.<sup>21</sup> Likewise, individual circumstances in other adjudications could warrant forfeitures that are lower than forfeitures calculated using the *2015 Forfeiture Policy Statement*. By vacating the *2015 Forfeiture Policy Statement*, the Commission will continue to exercise the discretion needed to issue penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that specifically address the unique circumstances of each individual adjudication. The benefits of individualized, closely-tailored adjudications outweigh the desire expressed in the *2015 Forfeiture Policy Statement* to resolve investigations more quickly through a "treble damages" methodology. If necessary, the Commission can adjust the forfeiture methodologies for payment violations, consistent with section 503(b)(2)(E) of the Act, our *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules, to address potential issues involving the efficient and timely resolution of payment violation investigations.

9. Because we have vacated the *2015 Forfeiture Policy Statement*, we dismiss as moot the challenges raised in the Petition for Reconsideration.<sup>22</sup> In the Petition for Stay, Petitioners requested that the Commission stay the effectiveness of the *2015 Forfeiture Policy Statement* pending the outcome of the Petition for Reconsideration.<sup>23</sup> Because we resolve the Petition for Reconsideration, we also dismiss the Petition for Stay as moot.<sup>24</sup>

10. Even if we were not vacating the *2015 Forfeiture Policy Statement*, Petitioners' challenges to treating payment and reporting violations as continuing violations would be denied because

---

and subsequent orders, we demonstrate our intention to move aggressively to ensure the full and timely funding of the . . . support mechanisms.) (*Conquest Forfeiture Order*).

<sup>20</sup> See, e.g., *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, para. 38 ("We again warn carriers that if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them"); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546-47, paras. 7-8 (2000) ("in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future . . . based on some variant of [the forfeiture methodology]"), *forfeiture issued*, Forfeiture Order, 16 FCC Rcd. 10553 (2001), *reconsideration denied*, Memorandum Opinion and Order, 16 FCC Rcd 18105 (2001); *Conquest Forfeiture Order*, 14 FCC Rcd at 12528, para. 20 ("those carriers contemplating continued non-payment should be aware that, in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future" that "will be based on some variant of the [forfeiture methodology].")

<sup>21</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd 17087. In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations. *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30.

<sup>22</sup> See, e.g., *Monroe Cablevision, Inc.*, Order on Reconsideration, 16 FCC Rcd 16408, 16409, para. 3 (CSB 2001) (because Petitioner's arguments concerned an issue that was resolved, the petitions for stay and for reconsideration were dismissed as moot); *USA Mobile Commc'ns, Inc. II*, Order, 12 FCC Rcd 19582, 19582, para. 1 (WTB, CWD 1997) (dismissing petition for reconsideration as moot because Commission staff provided requested relief).

<sup>23</sup> Stay Petition at 9.

<sup>24</sup> See *Morris Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 3179, 3180, para. 1 (2008) (because application for review was resolved, motion for stay was dismissed as moot), *aff'd*, 566 F.3d 184 (D.C. Cir. 2009); *Monroe Cablevision*, 16 FCC Rcd at 16409, para. 3.

the challenges are outside the scope of the *2015 Forfeiture Policy Statement*.<sup>25</sup> Petitioners argue that a single, brief reference in the *2015 Forfeiture Policy Statement* to the continuing nature of payment rule violations conflicts with the Act's statute of limitations.<sup>26</sup> That reference stated: "As the Commission has observed, each single failure to pay a federal program assessment constitutes a separate violation that continues until the assessment is fully paid."<sup>27</sup> The *2015 Forfeiture Policy Statement* did not purport to and did not change any Commission policies concerning continuing violations. The *2015 Forfeiture Policy Statement* was solely concerned with potential forfeitures for certain payment violations. In the context of addressing the statutory maximum forfeiture authorized under the Act,<sup>28</sup> the Commission merely repeated a policy the Commission established in prior enforcement items issued between 2006 and 2015.<sup>29</sup> This brief mention merely confirmed the Commission's existing, previously established policies concerning continuing violations, and therefore is outside the scope of the *2015 Forfeiture Policy Statement*.<sup>30</sup>

11. Likewise, the *2015 Forfeiture Policy Statement* addressed only forfeitures for certain payment rule violations.<sup>31</sup> Although the Commission did not address Commission reporting requirements,<sup>32</sup> Petitioners nonetheless challenged the application of a continuing violations doctrine to Commission reporting requirements.<sup>33</sup> This was also outside the scope of the *2015 Forfeiture Policy Statement*.<sup>34</sup> Thus, even if we were not vacating the *2015 Forfeiture Policy Statement*, Petitioners challenges to the continuing violations doctrine were outside the bounds of the *2015 Forfeiture Policy Statement* and not a proper subject of reconsideration. In any event, our future consideration of the scope and application of the statutory provision with respect to continuing violations will be based not on the now vacated *2015 Forfeiture Policy Statement* but on a case-by-case basis and after consideration of prior precedent.

---

<sup>25</sup> 47 CFR § 1.106(p)(5).

<sup>26</sup> Petition for Reconsideration at 12-15.

<sup>27</sup> *2105 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7 (citing *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4725, n. 105 (2006)).

<sup>28</sup> *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7 (citing 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 28 FCC Rcd 10785 (2013)).

<sup>29</sup> *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7. (citing *Globcom Forfeiture Order*, 21 FCC Rcd at 4725 & n.105). See also, e.g., *Telseven NAL*, 27 FCC Rcd at 6644, para. 15; *Kajeet NAL*, 26 FCC Rcd at 16694, para. 21; *NTS NAL*, 25 FCC Rcd at 5142, para. 12.

<sup>30</sup> 47 CFR § 1.106(p)(5). See, e.g., *Continental Media Group, LLC*, 32 FCC Rcd 10325, 10328, para. 9 (MB 2017) (dismissing argument that was outside the scope of the proceeding); *AT&T Corp. v. All Am. Tel. Co.*, 29 FCC Rcd 6393, 6398, para. 13 (2014) (finding that because issue was not decided in the order under review, the issue was not subject to reconsideration).

<sup>31</sup> See *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1622, para. 2 ("As part of our ongoing efforts to reform our processes in ways that enhance the Commission's efficiency and effectiveness, we have reevaluated our methodologies for calculating forfeitures for violations of the USF and other federal program payment Rules.") (citing 47 U.S.C. §§ 159, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604(c)(5)(iii)).

<sup>32</sup> To enable administrators to determine assessments for USF, TRS, LNP, NANP and federal regulatory fee payment requirements, Commission rules require that service providers file Telecommunications Reporting Worksheets. See, e.g., 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B).

<sup>33</sup> Petition for Reconsideration at 12-15.

<sup>34</sup> 47 CFR § 1.106(p)(5).

**IV. ORDERING CLAUSES**

12. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission's rules, the *2015 Forfeiture Policy Statement* is hereby **VACATED**, and the Petition for Reconsideration filed by CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL is hereby **DISMISSED** as moot.<sup>35</sup>

13. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act and sections 1.43 and 1.106(n) of the Commission's rules, the Petition for Stay filed by CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL is hereby **DISMISSED** as moot.<sup>36</sup>

14. **IT IS FURTHER ORDERED** that pursuant to section 1.103(a) of the Commission's rules, this Memorandum Opinion and Order is effective upon release.<sup>37</sup>

15. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to (a) Thomas C. Power, Senior Vice President and General Counsel, and Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, 1400 16th Street N.W., Suite 600, Washington, D.C. 20036; (b) David H. Solomon, Senior Statesperson, and J. Wade Lindsay, Partner, Wilkinson Barker Knauer, LLP, Counsel to CTIA, 1800 M Street N.W., Suite 800N, Washington, DC 20036; (c) Rick Chessen, Senior Vice President, Legal and Regulatory Affairs and Chief Legal Officer, NCTA – The Internet & Television Association, 25 Massachusetts Ave., N.W., Suite 100, Washington, D.C. 20001; (d) Angie Kronenberg, Chief Advocate and General Counsel, INCOMPAS, 1100 G Street, N.W., Suite 800, Washington, D.C. 20005; and (e) Jonathan Banks, Senior Vice President, Law & Policy, United States Telecom Association, 601 New Jersey Avenue, N.W., Suite 600, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>35</sup> 47 U.S.C. § 405; 47 CFR § 1.106.

<sup>36</sup> 47 U.S.C. § 154(i), (j); 47 CFR §§ 1.43, 1.106(n).

<sup>37</sup> 47 CFR § 1.103(a).