

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

In the Matter of
Forfeiture Methodology for Violations of Rules
Governing Payment to Certain Federal Programs

POLICY STATEMENT

Adopted: February 2, 2015

Released: February 3, 2015

By the Commission:

I. INTRODUCTION

1. Telecommunications service providers are required to pay federal regulatory fees and make timely contributions to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, and the cost recovery mechanisms for local number portability (LNP) and the North American Numbering Plan (NANP). When telecommunications service providers fail to pay their share of obligations to the USF, TRS, LNP, NANP and regulatory fee programs, and fail to file data required to assess their payment obligations for these programs, they undermine the efficiency and effectiveness of these federal programs. These delinquent contributors also obtain an unfair competitive advantage over companies that comply with the Communications Act of 1934, as amended (Act) and the Commission’s rules (Rules).

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. As discussed below, this reevaluation has made clear that our current methodologies are unnecessarily cumbersome and therefore prevent us from resolving investigations quickly and efficiently, which in effect constrains our ability to deter non-compliance. We therefore adopt a treble damages methodology to assess forfeitures for violations of federal program payment Rules. Assessing forfeitures for payment violations on this simpler and more straight-forward basis will enable the Commission to resolve investigations more quickly and thereby promote increased compliance with the federal program payment Rules.

II. DISCUSSION

3. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply substantially with any of the provisions of [the Communications Act] or of any rule, regulation, or order issued by the Commission.” In exercising our forfeiture authority, we must 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

1 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.”).

2 See 47 U.S.C. §§ 159, 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604(c)(5)(iii).

3 See 47 U.S.C. § 503(b)(1)(B).

such other matters as justice may require.”⁴ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁵ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁶

4. As part of our ongoing process reform efforts, we have reevaluated the methodologies for enforcing our USF, TRS, LNP, NANP and regulatory fee payment Rules. That reevaluation makes clear that the current methodologies for calculating forfeitures for violations of these Rules are overly cumbersome, requiring Commission staff to devote large amounts of time to each individual enforcement effort. This precludes the Commission from taking swift and effective enforcement action against delinquent contributors and thereby undermines the Commission’s objective of promoting full compliance with federal program payment requirements. Previously the Commission has assessed forfeitures for payment violations based on the number of monthly bills that remain unpaid within the one-year statute of limitations; and for USF and TRS payment violations, we have added 50 percent of the highest debts owed by delinquent companies for these programs, taking into account the timing of assessments, payments, collection transfers and reversals, and installment plan activities. To determine a delinquent contributor’s forfeiture liability, Commission staff must therefore engage in a time-consuming and resource-intensive process similar to forensic accounting, gathering and analyzing large amounts of data that are difficult to track, and usually involve multiple entities over multiple years.

5. These methodologies and their predecessors have enabled the Commission to propose forfeitures totaling over \$20,000,000 for apparent payment failures involving the federal USF, TRS, LNP, NANP, and regulatory fee programs since 1998. Despite these enforcement efforts, we continue to receive a significant number of referrals and complaints alleging federal payment compliance failures. The Commission has in the past imposed increasingly higher forfeitures for USF contribution violations because of the importance of this program.⁷ In 2006, for example, the Commission determined that higher forfeitures were needed to deter carriers from violating the USF contribution and reporting Rules.⁸ The Commission also warned non-contributors that it would further increase penalties, revise its forfeiture methodology, or take other action as necessary to deter violations of the USF and TRS Fund contribution Rules.⁹

6. In view of the accounting complexities involved with federal program payment investigations, and the continuously significant number of violators,¹⁰ today we adopt for future enforcement actions a simpler and more straight-forward method of calculating base forfeitures for contribution and regulatory fee violations. Specifically, we will replace the current methodologies with a treble damages approach that, we believe, will be more efficient and effective. Under this approach, each

⁴ 47 U.S.C. § 503(b)(2)(E).

⁵ 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8).

⁶ *Id.*

⁷ *E.g., Local Phone Servs., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9980, para. 15 (2006) (basing forfeiture on more than 12 monthly payment violations) ; *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710, 4723-24, paras. 36-38 (2006) (*Globcom Forfeiture Order*).

⁸ *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, para. 37.

⁹ *See id.* at 4724, paras. 35–38 & n.105.

¹⁰ While the number of investigations is significant in terms of the Commission’s goal of ensuring maximum compliance, the number of referrals or complaints concerning delinquent contributors is a small percentage of the number of contributors fully complying with the payment obligations for the USF and other federal regulatory programs.

violator's apparent base forfeiture liability will be three times the delinquent contributor's debts to the USF, TRS, LNP, NANP, and regulatory fee programs.¹¹ Because many non-contributors collect the required payments from their customers through surcharges and then fail to pay the regulatory programs, the revised forfeiture also corresponds in those instances to three times the amount of economic gain from the violation. By assessing forfeitures on this basis, we anticipate that we will be able to resolve payment investigations more quickly, which will lead to swifter penalties for delinquent contributors, and to perform significantly more investigations, resulting in increased compliance with the payment requirements.

7. The Act authorizes the Commission to assess common carriers, or applicants for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, a forfeiture of up to \$160,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,575,000 for a single act or failure to act.¹² 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.¹³ As we apply our improved methodology to assess forfeitures for program payment violations, we will not hesitate to exercise our maximum forfeiture authority to promote compliance with the federal payment obligations contained in the Act and our Rules.

III. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 303(r) and 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, this Policy Statement is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ To assess the amount of a delinquent contributor's debt to each federal program, Commission staff will consider all transfers for debt collection, any debt reflected in the administrator's invoices for the federal fund or regulatory fees that has not been transferred for collection, any information the investigation target provides on payments or other credits affecting the target's debt, and any other information relevant to determining a delinquent contributor's debt to a federal program. Payments made after a target becomes aware of a Commission investigation will not be considered to offset the amount of a delinquent contributor's debt to each federal program for the purposes of a forfeiture calculation.

¹² See 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 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).

¹³ See, e.g., *Globcom Forfeiture Order*, 21 FCC Rcd at 4725, n.105.