

## Federal Communications Commission

## § 1.80

Distribution Services are set out in part 101 of this chapter.

[28 FR 12415, Nov. 22, 1963, as amended at 44 FR 39180, July 5, 1979; 47 FR 53378, Nov. 26, 1982; 61 FR 26670, May 28, 1996; 62 FR 23162, Apr. 29, 1997; 63 FR 36596, July 7, 1998; 66 FR 47895, Sept. 14, 2001]

### MISCELLANEOUS PROCEEDINGS

#### § 1.80 Forfeiture proceedings.

(a) *Persons against whom and violations for which a forfeiture may be assessed.* A forfeiture penalty may be assessed against any person found to have:

(1) Willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission;

(2) Willfully or repeatedly failed to comply with any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the Commission under that Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding on the United States;

(3) Violated any provision of section 317(c) or 508(a) of the Communications Act; or

(4) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall not apply to conduct which is subject to a forfeiture penalty under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), 503(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(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.

NOTE TO PARAGRAPH (b)(3): For information concerning notices of apparent liability and notices of opportunity for hearing, see paragraphs (e), (f), and (g) 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):

§ 1.80

47 CFR Ch. I (10–1–02 Edition)

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 § 1.80(b)(5)(iii). These statutory maxima are effective November 13, 2000. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

Section I.—Base Amounts for Section 503 Forfeitures

Forfeitures	Violation Amount
Misrepresentation/lack of candor .....	( <sup>1</sup> )
Construction and/or operation without an instrument of authorization for the service .....	\$10,000
Failure to comply with prescribed lighting and/or marking .....	10,000
Violation of public file rules .....	10,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination .....	9,000
Unauthorized substantial transfer of control .....	8,000
Violation of children's television commercialization or programming requirements .....	8,000
Violations of rules relating to distress and safety frequencies .....	8,000
False distress communications .....	8,000
EAS equipment not installed or operational .....	8,000
Alien ownership violation .....	8,000
Failure to permit inspection .....	7,000
Transmission of indecent/obscene materials .....	7,000
Interference .....	7,000
Importation or marketing of unauthorized equipment .....	7,000
Exceeding of authorized antenna height .....	5,000
Fraud by wire, radio or television .....	5,000
Unauthorized discontinuance of service .....	5,000
Use of unauthorized equipment .....	5,000
Exceeding power limits .....	4,000
Failure to respond to Commission communications .....	4,000
Violation of sponsorship ID requirements .....	4,000
Unauthorized emissions .....	4,000
Using unauthorized frequency .....	4,000
Failure to engage in required frequency coordination .....	4,000
Construction or operation at unauthorized location .....	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests .....	4,000
Violation of transmitter control and metering requirements .....	3,000
Failure to file required forms or information .....	3,000
Failure to make required measurements or conduct required monitoring .....	2,000
Failure to provide station ID .....	1,000
Unauthorized pro forma transfer of control .....	1,000
Failure to maintain required records .....	1,000

<sup>1</sup> Statutory Maximum for each Service.

Violations Unique to the Service

Violation	Services affected	Amount
Unauthorized conversion of long distance telephone service.	Common Carrier .....	\$40,000
Violation of operator services requirements.	Common Carrier .....	7,000
Violation of pay-per-call requirements.	Common Carrier .....	7,000
Failure to implement rate reduction or refund order.	Cable .....	7,500
Violation of cable program access rules.	Cable .....	7,500
Violation of cable leased access rules.	Cable .....	7,500
Violation of cable cross-ownership rules.	Cable .....	7,500
Violation of cable broadcast carriage rules.	Cable .....	7,500
Violation of pole attachment rules.	Cable .....	7,500
Failure to maintain directional pattern within prescribed parameters.	Broadcast .....	7,000
Violation of main studio rule.	Broadcast .....	7,000
Violation of broadcast hoax rule.	Broadcast .....	7,000
AM tower fencing .....	Broadcast .....	7,000
Broadcasting telephone conversations without authorization.	Broadcast .....	4,000
Violation of enhanced underwriting requirements.	Broadcast .....	2,000

Section II. Adjustment Criteria for Section 503 Forfeitures

Upward Adjustment Criteria

- (1) Egregious misconduct.
- (2) Ability to pay/relative disincentive.
- (3) Intentional violation.
- (4) Substantial harm.
- (5) Prior violations of any FCC requirements.
- (6) Substantial economic gain.
- (7) Repeated or continuous violation.

Downward Adjustment Criteria

- (1) Minor violation.
- (2) Good faith or voluntary disclosure.
- (3) History of overall compliance.
- (4) Inability to pay.

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

**Federal Communications Commission**

**§ 1.80**

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) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104-134 (110 Stat. 1321-358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101-410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the following formula. First, obtain the inflation factor by dividing the CPI for June of the preceding year by the CPI for June of the year the forfeiture was last set or adjusted. Then, multiply the inflation factor by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

(ii) The rounding rules are as follows:

(A) Round increase to the nearest multiple of \$10 if the penalty is from \$0 to \$100;

(B) Round increase to the nearest multiple of \$100 if the penalty is from \$101 to \$1,000;

(C) Round increase to the nearest multiple of \$1,000 if the penalty is from \$1,001 to \$10,000;

(D) Round increase to the nearest multiple of \$5,000 if the penalty is from \$10,001 to \$100,000;

(E) Round increase to the nearest multiple of \$10,000 if the penalty is from \$100,001 to \$200,000; or

(F) Round increase to the nearest multiple of \$25,000 if the penalty is over \$200,001.

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

NOTE TO PARAGRAPH (b)(5): Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

(c) *Limits on the time when a proceeding may be initiated.* (1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, "date of commencement of the

current license term” means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(2) In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.

(3) In all other cases, no penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.

(d) *Preliminary procedure in some cases; citations.* No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person: (1) Is sent a citation reciting the violation charged; (2) is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person’s place of residence; and (3) subsequently engages in conduct of the type described in the citation. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the ci-

tation without issuance of an additional citation.

(e) *Alternative procedures.* In the discretion of the Commission, a forfeiture proceeding may be initiated either: (1) By issuing a notice of apparent liability, in accordance with paragraph (f) of this section, or (2) a notice of opportunity for hearing, in accordance with paragraph (g).

(f) *Notice of apparent liability.* Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission or its designee will issue a written notice of apparent liability.

(1) *Content of notice.* The notice of apparent liability will:

(i) Identify each specific provision, term, or condition of any act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, or instrument of authorization which the respondent has apparently violated or with which he has failed to comply,

(ii) Set forth the nature of the act or omission charged against the respondent and the facts upon which such charge is based,

(iii) State the date(s) on which such conduct occurred, and

(iv) Specify the amount of the apparent forfeiture penalty.

(2) *Delivery.* The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see §1.5).

(3) *Response.* The respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.

(4) *Forfeiture order.* If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an order canceling or reducing the proposed forfeiture or requiring that it be paid in full and stating the date by which the forfeiture must be paid.

## Federal Communications Commission

## § 1.83

(5) *Judicial enforcement of forfeiture order.* If the forfeiture is not paid, the case will be referred to the Department of Justice for collection under section 504(a) of the Communications Act.

(g) *Notice of opportunity for hearing.* The procedures set out in this paragraph will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture (such as, to determine whether a renewal application should be granted) and a forfeiture is to be considered as an alternative or in addition to any other Commission action. However, these procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice.

(1) Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission will issue a notice of opportunity for hearing. The hearing will be a full evidentiary hearing before an administrative law judge, conducted under procedures set out in subpart B of this part, including procedures for appeal and review of initial decisions. A final Commission order assessing a forfeiture under the provisions of this paragraph is subject to judicial review under section 402(a) of the Communications Act.

(2) If, after a forfeiture penalty is imposed and not appealed or after a court enters final judgment in favor of the Commission, the forfeiture is not paid, the Commission will refer the matter to the Department of Justice for collection. In an action to recover the forfeiture, the validity and appropriateness of the order imposing the forfeiture are not subject to review.

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by §1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commis-

sion so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

(h) *Payment.* The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

(i) *Remission and mitigation.* In its discretion, the Commission, or its designee, may remit or reduce any forfeiture imposed under this section. After issuance of a forfeiture order, any request that it do so shall be submitted as a petition for reconsideration pursuant to §1.106.

(j) *Effective date.* Amendments to paragraph (b) of this section implementing Pub. L. No. 101-239 are effective December 19, 1989.

[43 FR 49308, Oct. 23, 1978, as amended at 48 FR 15631, Apr. 12, 1983; 50 FR 40855, Oct. 7, 1985; 55 FR 25605, June 22, 1990; 56 FR 25638, June 5, 1991; 57 FR 23161, June 2, 1992; 57 FR 47006, Oct. 14, 1992; 57 FR 48333, Oct. 23, 1992; 58 FR 6896, Feb. 3, 1993; 58 FR 27473, May 10, 1993; 62 FR 4918, Feb. 3, 1997; 62 FR 43475, Aug. 14, 1997; 63 FR 26992, May 15, 1998; 65 FR 60868, Oct. 13, 2000]

### § 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter. Detailed information about application forms, filing procedures, and where to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from the Commission's Forms Distribution Center by calling 1-800-418-FORM (3676).

[47 FR 53378, Nov. 26, 1982, as amended at 58 FR 13021, Mar. 9, 1993; 63 FR 68920, Dec. 14, 1998]