

"Purchasers are warned that the parts purchased herewith may not be in compliance with applicable Federal Aviation Administration requirements. Purchasers are not exempted from and must comply with applicable Federal Aviation Administration requirements. Purchasers are solely responsible for all FAA inspections and/or modifications necessary to bring the purchased items into compliance with 14 CFR (Code of Federal Regulations)."

(c) The Federal agency must ensure that the following certification is executed by the purchaser and received by the Government prior to releasing such parts to the purchaser:

"The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item."

§ 101-37.609 What are the procedures for mutilating unsalvageable aircraft parts?

(a) Identify unsalvageable aircraft parts which require mutilation.

(b) Mutilate unsalvageable aircraft parts so they can no longer be utilized for aviation purposes. Mutilation includes destruction of the data plate, removing the serial/lot/part number, and cutting, crushing, grinding, melting, burning, or other means which will prevent the parts from being misidentified or used as serviceable aircraft parts. Obtain additional guidance on the mutilation of unsalvageable aircraft parts in FAA AC No. 21-38, Disposition of Unsalvageable Aircraft Parts and Materials.

(c) Ensure an authorized agency official witnesses and documents the mutilation, retain a signed certification and statement of mutilation.

(d) If unable to perform the mutilation, turn in the parts to a Federal or Federally-approved facility for mutilation and proper disposition. Ensure that contractor performance is in accordance with the provisions of this part.

(e) Ensure that mutilated aircraft parts are sold only as scrap.

§ 101-37.610 Are there special procedures for the exchange/sale of Government aircraft parts?

Yes. Executive agencies may exchange or sell aircraft parts as part of a transaction to acquire similar replacement parts in accordance with FPMR part 101-46. In addition to the requirements of this subpart, agencies must ensure that the exchange/sale transaction is accomplished in

accordance with the methods and procedures contained in part 101-46 of this chapter, and comply with the restrictions and limitations under § 101-46.202 of this chapter.

(a) Prior to the proposed exchange/sale, agencies should determine whether the parts identified for disposition are airworthy parts. For additional guidance refer to the applicable FAA Advisory Circular(s), or contact the local FAA FSDO.

(b) At the time of exchange or sale, agencies must ensure that applicable labels and tags, historical data and modification records accompany the aircraft parts prior to release. The records must contain the information and content as required by current DOD and FAA requirements for maintenance and inspections.

(c) Life limited parts that have reached or exceeded their life limits, or which have missing or incomplete documentation, must either be returned to the FAA production approval holder as part of an exchange transaction, or mutilated in accordance with § 101-37.609.

(d) Unsalvageable aircraft parts, other than parts in paragraph (c) of this section, must not be used for exchange/sale purposes; they must be mutilated in accordance with § 101-37.609.

Dated: July 7, 1997.

David J. Barram,

Administrator of General Services.

[FR Doc. 97-21388 Filed 8-13-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97-218]

Forfeiture Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends the Commission's rules to incorporate, as a note to the rule, the Commission's policy statement regarding forfeitures and a suggested schedule of base forfeiture amounts. The policy statement and schedule of base forfeiture amounts is intended to provide a measure of predictability and uniformity to the process of assessing forfeitures.

EFFECTIVE DATES: Effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Pamela D. Hairston, Compliance and Information Bureau, (202) 418-1160.

SUPPLEMENTARY INFORMATION:

Adopted: June 19, 1997.

Released: July 28, 1997.

1. This rule making responds to the concerns expressed by the U.S. Court of Appeals for the District of Columbia Circuit when it vacated the Commission's previous policy statement in the decision, *United States Telephone Association v. FCC*.¹ In that decision, the Court stated that the forfeiture guidelines used by the Commission constituted a rule that was adopted without notice and comment proceedings as required by the Administrative Procedure Act. In light of the court's decision, the Commission initiated a Notice of Proposed Rule making proceeding,² proposing that the prior policy statement be adopted, but requesting comments on all aspects of the proposal. In addition, the Commission requested specific comment on: (a) Whether the Commission should use guidelines to assess forfeitures instead of the traditional case-by-case approach; (b) whether the guidelines proposed in the notice of proposed rule making should be modified; and (c) whether adjustment factor ranges should be adopted.

2. After evaluation of the record, the Commission adopted a Forfeiture Policy Statement on June 19, 1997. The majority of the commenters agreed that a guideline based approach was preferable to the traditional case-by-case approach. One commenter disagreed with the guideline approach and argued that too much Commission discretion or flexibility in the guidelines would invite litigation. The Commission agreed with the majority that guidelines would add a measure of predictability and uniformity to the forfeiture process. Regardless of which approach is used, Section 503 of the Act provides the violators an opportunity to litigate the facts underlying the violation in an administrative law hearing or a trial *de novo*. We do not believe, therefore, that the potential for litigation should preclude us from providing necessary guidance in the forfeiture process. Thus, the Commission expressly retains its discretion to depart from the guidelines where warranted by the facts of the case.

¹ *United States Telephone Association v. FCC*, 28 F.3d 1232 (1994).

² *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 10 FCC Rcd 2945 (1995), 60 FR 10056 (February 23, 1995).

3. Some commenters suggested that the Commission revise its forfeiture guidelines in view of the changes in the telecommunications industry since the Commission developed its original Forfeiture Policy Statement. Commenters argued that the base amounts were too high, and discriminatory because they were established according to the nature of the service or identity of the violator rather than the nature of the violation. They suggested that the base forfeiture amounts for identical violations should be uniform for all services. We agreed and have made revisions to the base forfeiture structure. We also agreed with the commenters that the adjustment factor percentage ranges were difficult to apply, and we are therefore eliminating the percentage ranges. The Commission will continue to use the adjustment factors to increase or decrease a forfeiture based on the unique facts of the case.

4. In sum, unless a violation is unique to a particular service, the base forfeiture amount for a violation will be the same for all services, regardless of the identity of the violator. We believe this is a more fair approach than our prior guidelines. There are two exceptions, however, to this methodology. The base amount for misrepresentation is set at the statutory maximum for each service. Moreover, base forfeiture amounts for violations that are unique to each service are established relative to the statutory maximum for that service. The schedule of forfeitures adopted with this Forfeiture Policy Statement does not constitute a comprehensive listing of all potential violations and concomitant base amounts. Omission from the forfeiture schedule does not mean that a violation is unimportant or that a forfeiture for an omitted violation would be less than those outlined in the schedule. We also note that assessing forfeitures for violations of the Commission's Broadcast Equal Employment Opportunities (EEO) rules will be addressed in a separate proceeding.³

5. To create base amounts that could be applied uniformly to all services, we used the statutory maximum for services other than those in the broadcasting, cable, and common carrier categories as the common denominator for developing base forfeiture amounts. Base forfeiture amounts may be

increased or decreased upon evaluation of the unique facts of the case in light of the adjustment factors. These factors mirror the concerns outlined in Section 503 of the Act regarding the violation as well as the violator. Thus, a highly profitable entity can expect that its forfeiture may ultimately be assessed higher than the base amount in light of its ability to pay whereas a less profitable entity may be assessed a lesser amount. Factors such as degree of harm of the violation as well as the nature and circumstances surrounding the violation may mitigate or increase a forfeiture. We also believe that the guidelines established in this Forfeiture Policy Statement comport with the requirements of the Small Business Regulatory Fairness Enforcement Act (SBREFA) of the Contract with America Advancement Act of 1996.⁴

6. The Forfeiture Policy Statement also addresses several other issues raised in the proceeding. In response to the recommendation that warnings be issued for all first time violations, the Commission will continue to use its discretion in deciding whether to issue warnings, rather than assessing forfeitures, on a case-by-case basis. The commenters also contended, with respect to the issue of ability to pay a forfeiture, that the Commission focused solely on gross revenues in its evaluation and that the documentation required by the Commission to demonstrate inability to pay a forfeiture proved burdensome. The Commission noted, however, that it would look to the totality of the violator's circumstances and that it would consider objective documented evidence in evaluating a violator's ability, or lack thereof, to pay a forfeiture. With respect to use of prior forfeitures in subsequent proceedings, the Commission reiterated that the legislative history of Section 504 supports its use of the underlying facts of a prior violation in its evaluation of subsequent violations.

7. With respect to administrative matters, several commenters suggested that the Commission rescind all pending forfeitures imposed under the prior Forfeiture Policy Statements. The Commission explicitly stated that the pending forfeitures would not be cancelled because the forfeitures were assessed in full accord with Section 503 of the Act. Thus, the Commission will use the case-by-case approach in evaluating pending cases. This approach will also be used in cases where the violation occurred prior to the release of

the Forfeiture Policy Statement but where the Commission commences forfeiture action after the effective date of the instant rule making.

8. Accordingly, pursuant to sections 4 (i) and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), *it is ordered* that 47 CFR § 1.80 is amended as set forth below, effective October 14, 1997. For copies of the Final Regulatory Flexibility Statement, contact International Transcription Services, Inc., (202) 857-3800.

List of Subjects in 47 CFR Part 1 Penalties.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 1, is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

PART 1—PRACTICE AND PROCEDURE

Authority: 47 U.S.C. 151, 154, 303, and 309(j); unless otherwise noted.

2. Section 1.80 is amended by adding a note following paragraph (b)(4) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(4) * * *

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 \$25,000 for broadcasters and cable operators or applicants, \$100,000 for common carriers or applicants, and \$10,000 for all others. These base amounts listed are for a single violation or single day of a continuing violation. 47 U.S.C. 503(b)(2); 47 CFR 1.80. For continuing violations involving a single act or failure to act, the statute limits the forfeiture to \$250,000 for broadcasters and cable operators or applicants, \$1,000,000 for common carriers or applicants, and \$75,000 for all others. *Id.* Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, section 31001, 110 Stat. 1321 (1996), civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts

³ Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, Order and Notice of Proposed Rule Making, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996).

⁴ Public Law. 104-121, section 110 Stat. 847 (1996).

as provided by federal law, must be adjusted for inflation at least every four years based on the formula outlined in the DCIA. Thus, the statutory maxima increased to \$27,500 for broadcasters and cable operators or applicants; \$110,000 for common carriers or applicants, and \$11,000 for others. For continuing violations, the statutory maxima increased to \$27,500 for broadcasters, cable operators, or applicants; \$1,100,000 for common carriers or applicants; and \$82,500

for others. The increased statutory maxima became effective March 5, 1997. There is an upward adjustment factor for repeated or continuous violations, see Section II, *infra*. That upward adjustment is not necessarily applied on a per violation or per day basis. *Id.* Unless Commission authorization is required for the behavior involved, a Section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or common carrier can only be

initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). A prior citation is not required, however, for non-licensee tower owners who have previously received notice of the obligations imposed by Section 303(q) and part 17 of the Commission's rules from the Commission. 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

Violation	Amount
Misrepresentation/lack of candor	(1)
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

¹ 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 a maximum of \$50,000 per day. For convenience, the Commission will treat the \$50,000 set forth in Section 223 as if it were a prescribed base amount, subject to downward adjustments. The following amounts were adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA) Public Law 104-134, section 31001, 110 Stat 1321 (1996). The new amounts became effective on March 5, 1997. 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	6,600 330/day.
Sec. 203(e) Common Carrier Tariffs	6,600 330/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	6,600/day.
Sec. 223(b) Dial-a-Porn	55,000 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.

* * * * *
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94-129; FCC 97-248]

Unauthorized Changes of Consumer's Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a combined Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration which amends the Commission's rules and policies governing the unauthorized switching of subscribers' primary interexchange carriers (PICs), an activity more commonly known as "slamming." In the Order on Reconsideration, the Commission disposes of six petitions for reconsideration of its 1995 Report and Order, and amends its rules regarding changes in subscribers' long distance

carriers in three respects. The Commission's decision is intended to deter and ultimately eliminate unauthorized changes in subscribers' long distance carriers.

EFFECTIVE DATE: January 12, 1998 except for § 64.1150 which will become effective upon approval by the Office of Management and Budget. The Commission will publish a document at a later date announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Cathy Seidel, Enforcement Division, Common Carrier Bureau (202) 418-0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration in CC Docket No. 94-129 [FCC 97-248], adopted on July 14, 1997 and released on July 15, 1997. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International

Transcription Services, 1231 20th Street, N.W., Washington, D.C.

Summary of Memorandum Opinion and Order on Reconsideration

I. Background

1. The Commission first established safeguards to deter slamming when equal access was implemented in 1985. By 1992, because the interexchange market had become more competitive, the need for additional safeguards to deter slamming increased. Therefore, the Commission adopted rules requiring that all IXCS institute one of four verification procedures before submitting a carrier change request generated through telemarketing on behalf of a customer. 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993). In 1994, the Commission on its own motion and in response to continuing complaints from subscribers regarding slamming, instituted a rule making and adopted rules in its *1995 Report and Order* 10 FCC Rcd 9560, 60 FR 35846 (July 12, 1995), establishing further anti-slamming safeguards to deter misleading letters of agency (LOAs). A LOA is a document signed by a subscriber which states that a