



TELECOMMUNICATIONS

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FCC Adopts Policy Statement Implementing Treble Damages for Failure to Pay Regulatory Fees

On February 2, 2015, the Federal Communications Commission (“FCC” or “Commission”) adopted a Policy Statement revising its methodology for assessing forfeitures on entities that fail to timely pay federal regulatory fees or make required 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”), or file data required to assess payment obligations for these programs. The FCC intends to apply this new methodology in all future enforcement proceedings.

Under the old methodology, forfeitures were primarily assessed based upon the number of monthly bills that remained unpaid within the one-year statute of limitations, with the FCC increasing the forfeiture amount for violations of USF and TRS, as well as violations that were egregious, intentional, repeated, caused substantial harm, or generated substantial economic gain for the violator – a process the Commission found to be unnecessarily cumbersome and therefore prevented its ability to take swift and effective enforcement action. Through the Policy Statement, the FCC adopted a “one size fits all” treble damages methodology, whereby the base forfeiture liability for each delinquent contributor will be three times its debts to the USF, TRS, LNP, NANP, and other regulatory fee programs. The FCC believes that, by assessing forfeitures on this basis, payment investigations will be completed more quickly, stronger penalties on delinquent contributors will be assessed, significantly more investigations will be performed, and compliance with the payment requirements will increase.

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The FCC reiterated its authority under the Communications Act to assess common carriers, or applicants for any common carrier license or other instrument of authorization, 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. In applying the new methodology, the FCC will not hesitate to exercise its maximum forfeiture authority to promote compliance, and will consider each single failure to pay a federal program assessment as a separate violation that continues until such assessment is paid in full.

Last Friday, March 6th, the communications service provider trade associations of CTIA – The Wireless Association, USTelecom, NCTA and CompTel (the “Associations”) filed two petitions with the FCC challenging the lawfulness and implementation schedule of/for the Policy Statement. The first petition requests that the FCC reconsider its decision, arguing that the FCC’s Policy Statement is a results-oriented, substantive decision that did not comply with the notice and comment procedures of the Administrative Procedures Act, and is therefore “arbitrary and capricious” and invalid. The second petition asks the FCC to immediately stay its Policy Statement pending the outcome of the petition for reconsideration. Pending FCC action on the Associations’ petitions, affected entities should proceed on the assumption that the FCC’s new policy will apply to future forfeiture actions.

Regardless of the ultimate outcome of the Associations’ petitions and any future legal action, the FCC’s adoption of the Policy Statement is a reminder of the contribution obligations that certain service providers have under the Communications Act. Telecommunications providers and providers of interconnected VoIP services, for example, have contribution obligations relating to one or more of USF, TRS, NANP, and LNP, depending on revenues derived from interstate and international services. Non-interconnected VoIP providers, meanwhile, have TRS contribution obligations, while other service providers may also have contribution obligations.

We will continue to provide further updates as the FCC acts upon the Associations’ petitions.

If you have questions about this Policy Statement or the Associations’ petitions, or if we may otherwise be of assistance to you, please feel free to contact us.

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