

# In a Shift, FCC Shelves Prior Forfeiture Methodology For Failure to Pay Into USF and Other Federal Programs

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Today, the Federal Communications Commission released a [Policy Statement](#) announcing a “treble damages” methodology to assess forfeitures for failure to make payment to a series of federal programs, a move which the agency anticipates will allow it to begin “significantly more investigations.” The new policy appears to allow the FCC to impose significantly larger fines than in similar investigations in the past, but may implicate the FCC’s statutory maximum forfeiture authority in some cases.

The trebling of amounts owed will apply to unpaid FCC regulatory fees and debts owed to the Universal Service Fund (USF), Telecommunications Relay Service (TRS), Local Number Portability (LNP) and the North American Numbering Plan (NANP). All of these assessments are calculated based on data from a party’s annual filing of FCC Form 499-A and quarterly filing of FCC Forms 499-Q. (Regulatory fees may be assessed on a number of other bases as well.)

Under the current methodology for such fines, the FCC typically imposes a fine for each unpaid invoice (within the one year statute of limitations), with an “upward adjustment” equal to 50% of the highest amount owed. For failures to pay USF contributions, for example, the current policy leads to fines of \$240,000 plus 1/2 of the outstanding balance. The FCC decided that its current methodology is “unnecessarily cumbersome” and results in time-consuming and resource-intensive investigations. Therefore, the FCC has decided to change its method of calculating base forfeitures. Going forward, base forfeitures will be three times the “the delinquent contributor’s debts” to the USF, TRS, LNP, NANP and regulatory fee programs, without reference to a restriction based on the one-year statute of limitations. The order also states that payments made after the company becomes aware of an investigation will not be considered to offset the amount of the debt for purposes of the forfeiture calculation.

The potential ramifications of the new, hard-hitting policy should be carefully considered by all service providers, but especially those that have made aggressive service categorization decisions for some of their products, keeping revenues from them out of the interstate or international columns on the Forms 499-Q and 499-A. In addition, those entities claiming a regulatory classification which doesn’t require filing Forms 499-Q and 499-A or payment of regulatory fees, such

as certain private carriers or those claiming non-interconnected VoIP or information service provider status, should also review their determinations, particularly if their offerings have evolved since they last reviewed their regulatory classification. In addition, the new policy could yield base forfeitures that far exceed the statutory maximum per violation, particularly if the company has significant revenues and resulting federal program payments that are large.