

FCC's New Forfeiture Methodology for Payment Violations Eliminates Treble Damages Cap

On May 30, 2023, the Federal Communications Commission (“FCC”) [released](#) a memorandum opinion and order (“Order”) clarifying the methodology for calculating forfeiture penalties for Universal Service Fund (“USF”), Telecommunications Relay Service Fund (“TRS Fund”), Local Number Portability (“LNP”), North American Numbering Plan (“NANP”), and regulatory fee payment violations. The Order vacates the FCC’s previous 2015 Policy Statement that required a treble damages methodology and replaces it with a case-by-case approach. *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Memorandum Opinion and Order, FCC-23-42, EB Docket No. 16-330 (rel. May 30, 2023).

The Order establishes that future USF, TRS Fund, LNP, NANP, and federal regulatory fee payment violations will be adjudicated by applying the factors articulated in Section 503(b)(2)(E) of the Communications Act of 1934, as amended (“the Act”). Specifically, the Act requires the FCC to 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 such other matters as justice may require.” 47 U.S.C. § 503(b)(2)(E).

The FCC justifies the new methodology by finding that the benefits of an “individualized” adjudication outweigh its interest in faster processing through a treble damages approach. *Order* at 8. The Order conveys an openness to applying forfeitures that are either higher or lower than the standardized treble damages to ensure compliance with the rules of its cost recovery programs. *Id.* While the 2015 Policy Statement was never applied in practice, the Order underscores the importance of remaining vigilant and compliant with all cost recovery program requirements. Notably, the FCC immediately demonstrated this new flexibility by [proposing](#) a fine of \$1.4 million against PayG, an amount that *exceeded* a treble damages calculation.

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