

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 1.80(b)(1) of the) EB-06-IH-2271
Commission's Rules)
)
Increase of Forfeiture Maxima for Obscene,)
Indecent, and Profane Broadcasts to Implement)
The Broadcast Decency Enforcement Act of 2005)
)

ORDER

Adopted: May 17, 2007

Released: June 1, 2007

By the Commission:

1. On June 15, 2006, President George W. Bush signed into law The Broadcast Decency Enforcement Act of 2005 ("Broadcast Decency Enforcement Act").1 The legislation amends Section 503(b)(2) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 503(b)(2), to increase the maximum forfeiture penalties for obscene, indecent, and profane broadcasts. This Order amends Section 1.80(b)(1) of the Commission's Rules ("Rules"), 47 C.F.R. § 1.80(b)(1), to reflect the new penalties.

2. Section 1.80(b)(1) of the Rules specifies the maximum possible forfeiture penalties for a range of violations, including, but not limited to: failure to comply with the terms and conditions of any Commission license, permit, certificate or instrument of authorization; failure to comply with any provision of the Communications Act or any Commission rule, regulation or order; and violation of section 1304 (broadcast of lottery information), 1343 (fraud by wire, radio or television) and 1464 (broadcast of obscene, indecent, or profane material) of Title 18, United States Code. Under the rule, the Commission may propose forfeitures against broadcast licensees of up to \$32,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed \$325,000 for any single act or failure to act.2 The Broadcast Decency Enforcement Act increases those amounts for obscene, indecent, or profane broadcasts. Specifically, the new law raises the maximum forfeiture for the broadcast of obscenity, indecency, or profanity to \$325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed \$3,000,000 for any single act or failure to act. Accordingly, Section 1.80(b)(1) will be modified to reflect the new maximum penalties specified in the legislation.

1 Pub. L. No. 109-235, 120 Stat. 491 (2006).

2 The current maximum penalty amounts became effective September 7, 2004, when the Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See Amendment of Section 1.80(b) of the Commission's Rules, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004).

3. This Order is limited to revising Section 1.80(b)(1) pursuant to the Broadcast Decency Enforcement Act, which concerns only penalties for obscenity, indecency, and profanity broadcast violations. The existing penalty limits described in Section 1.80(b)(1) would remain as the applicable maxima for all other broadcast violations subject to that rule.

4. The rule change adopted in this Order merely implements a specific statutory command and does not involve discretionary action on the part of the Commission. Accordingly, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary.³

5. Since a notice of proposed rulemaking is not required, the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, does not apply.⁴

6. The actions taken herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record keeping requirements or burdens on the public. In addition, therefore, our actions do not impose any new or modified information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4).

7. Accordingly, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and The Broadcast Decency Enforcement Act of 2005, IT IS ORDERED that 47 C.F.R. § 1.80(b)(1) is AMENDED as set forth in the Appendix, EFFECTIVE 30 days after publication in the Federal Register.

8. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³ *See* 5 U.S.C. § 553(b)(B).

⁴ *See* 5 U.S.C. §§ 603-604.

APPENDIX

FINAL RULE

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

Part 1---PRACTICE AND PROCEDURE**Subpart A---General Rules of Practice and Procedure****MISCELLANEOUS PROCEEDINGS**

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

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 303(r), and 309.

2. Section 1.80 is amended by revising paragraph (b)(1) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(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 \$32,500 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 \$325,000 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. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed \$325,000 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 \$3,000,000 for any single act or failure to act described in paragraph (a) of this section.

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