

(June 19, 1934, ch. 652, title V, § 502, 48 Stat. 1100.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 503. Forfeitures

(a) Rebates and offsets

Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this chapter, shall in addition to any other penalty provided by this chapter forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) Activities constituting violations authorizing imposition of forfeiture penalty; amount of penalty; procedures applicable; persons subject to penalty; liability exemption period

(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 509(a) of this title; or

(D) violated any provision of section 1304, 1343, 1464, or 2252 of title 18;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this chapter; except that this subsection shall not apply to any conduct which is subject to forfeiture under subchapter II of this chapter, part II or III of subchapter III of this chapter, or section 507 of this title.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$25,000 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 \$250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this chapter or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed \$100,000 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 \$1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.

(C) Notwithstanding subparagraph (A), if the violator is—

(i)(I) a broadcast station licensee or permittee; or

(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language,¹ the amount of any forfeiture penalty determined under this subsection 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.

(D) In any case not covered in subparagraph (A), (B), or (C), the amount of any forfeiture penalty determined under this subsection shall not exceed \$10,000 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 \$75,000 for any single act or failure to act described in paragraph (1) of this subsection.

(E) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account 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.

(F) Subject to paragraph (5) of this section, if the violator is a manufacturer or service provider subject to the requirements of section 255, 617, or 619 of this title, and is determined by the Commission to have violated any such requirement, the manufacturer or provider shall be liable to the United States for a forfeiture penalty of not more than \$100,000 for each violation or

¹ So in original. Following provision probably should be set flush with subpar. (C).

each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a) of this title.

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this title.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such cita-

tion. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e) of this title, or in the case of violations of section 303(q) of this title, if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier; or

(B) such person does not hold a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, “date of commencement of the current term of such license” means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) of this title pending decision on an application for renewal of the license.

(June 19, 1934, ch. 652, title V, § 503, 48 Stat. 1101; Pub. L. 86-752, § 7(a), Sept. 13, 1960, 74 Stat. 894; Pub. L. 95-234, § 2, Feb. 21, 1978, 92 Stat. 33; Pub. L. 96-507, § 2(b), Dec. 8, 1980, 94 Stat. 2747; Pub. L. 97-259, title I, § 124, Sept. 13, 1982, 96 Stat. 1098; Pub. L. 98-214, § 4(b), Dec. 8, 1983, 97 Stat. 1468; Pub. L. 101-239, title III, § 3002(i), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 101-396, § 10, Sept. 28, 1990, 104 Stat. 851; Pub. L. 102-538, title II, §§ 206, 210(b), Oct. 27, 1992, 106 Stat. 3543, 3544; Pub. L. 109-235, § 2, June 15, 2006, 120 Stat. 491; Pub. L. 110-385, title II, § 221, Oct. 10, 2008, 122 Stat. 4105; Pub. L. 111-260, title I, § 104(c), Oct. 8, 2010, 124 Stat. 2761.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Parts II and III of subchapter III of this chapter, referred to in subsec. (b)(1), are classified to sections 351 et seq. and 381 et seq., respectively, of this title.

AMENDMENTS

2010—Subsec. (b)(2)(F). Pub. L. 111-260 added subpar. (F).

2008—Subsec. (b)(1)(D). Pub. L. 110-385 substituted “1464, or 2252” for “or 1464”.

2006—Subsec. (b)(2)(C). Pub. L. 109-235, §2(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(2)(D). Pub. L. 109-235, §2(1), (3), redesignated subpar. (C) as (D) and substituted “subparagraph (A), (B), or (C)” for “subparagraph (A) or (B)”. Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 109-235, §(2)(1), redesignated subpar. (D) as (E).

1992—Subsec. (b)(5). Pub. L. 102-538, §210(b), substituted “system operator,” for “system operator or” and inserted “, or in the case of violations of section 303(q) of this title, if the person involved is a non-licensee tower owner who has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower” after “section 307(e) of this title”.

Subsec. (b)(6). Pub. L. 102-538, §206(2), inserted at end “For purposes of this paragraph, ‘date of commencement of the current term of such license’ means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) of this title pending decision on an application for renewal of the license.”

Subsec. (b)(6)(A). Pub. L. 102-538, §206(1), struck out “so long as such violation occurred within 3 years prior to the date of issuance of such required notice” after “whichever is earlier”.

1990—Subsec. (b)(5). Pub. L. 101-396 inserted “and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission,” before “unless, prior”.

1989—Subsec. (b)(1), (2). Pub. L. 101-239 inserted “(1)” before “Any person who” in first par., added par. (2), and struck out former par. (2) thereby resulting in increasing penalty if violator is a common carrier from \$20,000 to \$100,000 per day to a maximum of \$1,000,000 per act and penalty if violator is a broadcast station licensee or cable television operator from \$20,000 to \$25,000 per day to a maximum of \$250,000 per act, making such penalty also applicable to television operator applicants, and increasing penalty in all other cases from \$5,000 to \$10,000 per day to a maximum of \$75,000.

1983—Subsec. (b)(5). Pub. L. 98-214 inserted “or if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e) of this title”.

1982—Subsec. (b)(5). Pub. L. 97-259 inserted “, or is a cable television system operator” after “other authorization is required”.

1980—Subsec. (b). Pub. L. 96-507 conformed references in first paragraph to sections 509(a) and 507 of this title to reflect renumbering of those sections which required no change in text.

1978—Subsec. (b). Pub. L. 95-234 substituted provisions relating to activities making persons liable for forfeiture penalties, amounts of forfeiture penalties, procedures applicable for imposition of forfeiture penalties, and exemptions from liability from imposition of forfeiture penalties, for provisions relating to activities of licensees or permittees constituting violations and authorizing forfeiture to the United States of a sum not to exceed \$1,000 for each separate offense, procedures applicable for imposition of forfeiture liability, and limitations on imposition of forfeiture liability.

1960—Pub. L. 86-752 amended section catchline substituting “Forfeitures” for “Rebates and offsets, forfeitures,” designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-234 effective on thirtieth day after Feb. 21, 1978, except that the provisions of subsec. (b) of this section, as in effect on Feb. 21, 1978, shall continue to constitute the applicable law with respect to any act or omission which occurs prior to such thirtieth day, see section 7 of Pub. L. 95-234, set out as a note under section 152 of this title.

§ 504. Forfeitures

(a) Recovery

The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided*, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo: *Provided further*, That in the case of forfeiture by a ship, said forfeiture may also be recoverable by way of libel in any district in which such ship shall arrive or depart. Such forfeitures shall be in addition to any other general or specific penalties provided in this chapter. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this chapter. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) Remission and mitigation

The forfeitures imposed by subchapter II of this chapter, parts II and III of subchapter III of this chapter, and sections 503(b) and 507 of this title shall be subject to remission or mitigation by the Commission under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however*, That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

(c) Use of notice of apparent liability

In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

(June 19, 1934, ch. 652, title V, §504, 48 Stat. 1101; May 20, 1937, ch. 229, §14, 50 Stat. 197; June 25, 1948, ch. 646, §1, 62 Stat. 909; Aug. 13, 1954, ch. 735, §4, 68 Stat. 729; Aug. 6, 1956, ch. 973, §2, 70 Stat. 1048; Pub. L. 86-752, §7(b)-(d), Sept. 13, 1960, 74 Stat. 895; Pub. L. 87-448, §2, May 11, 1962, 76 Stat. 69; Pub. L. 95-234, §3, Feb. 21, 1978, 92 Stat. 35; Pub. L. 96-507, §2(c), Dec. 8, 1980, 94 Stat. 2747.)