

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554  <b>FCC DIRECTIVE</b>	<b>Title</b>	
	<b>Forfeiture Tracking, Collections and Follow-up Systems</b>	
	<b>Directive Number</b> FCC INST 1157.4	<b>Effective Date</b> April 2016

1. **PURPOSE:** This directive sets forth the Federal Communications Commission’s (“FCC” or “Commission”) policies, procedures, guidelines, and responsibilities relating to the FCC’s Civil Monetary Penalty (“CMP”) Program. It provides persons involved in recording, tracking, and reporting of the FCC’s forfeiture proceedings and payments with a summary of relevant Commission policies, procedures, and internal controls necessary to maintain accountability of receivables and administrative proceedings resulting in a CMP. The primary objectives are to:
  - a. Ensure timely and uniform recording, tracking and monitoring of forfeiture proceedings;
  - b. Ensure timely deposits in a U.S. Department of Treasury (“Treasury”) approved lockbox bank of remittances arising from forfeiture proceedings;
  - c. Ensure timely and accurate reporting to Bureaus and Offices (“B/Os”) of transactions and balances;
  - d. Ensure adequate internal controls including separation of duties;
  - e. Ensure that the FCC Office of General Counsel (“OGC”) refers to the U.S. Department of Justice (“DOJ”) forfeiture proceedings that meet DOJ acceptance standards in a timely manner; and
  - f. Maintain accountability of all forfeitures issued by the Commission.
  
2. **AUTHORITY:**
  - a. Telecommunications Rules and Regulations 47 C.F.R. §§0.111, 0.311, 0.314, 1.80, 1.1901.
  - b. Money and Finance 31 U.S.C. §§ 3701, 3711.
  - c. Money and Finance Treasury 31 C.F.R. §§ 285, 901-903.
  - d. Forfeitures 47 U.S.C. §§ 503, 504.
  
3. **SCOPE:** This directive applies to all B/Os of the Commission that issue, track, or enforce forfeitures, refer forfeitures to DOJ, or process remittances pertaining to forfeitures.

#### 4. DEFINITIONS:

- a. Civil Monetary Penalty (CMP). A monetary penalty or forfeiture proposed, assessed or enforced by the Commission pursuant to Federal Law, including court ordered payments resulting from judicial enforcement of a Forfeiture Order.
- b. Consent Decree (CD). An agreement resolving an investigation or forfeiture proceeding pertaining to a violation of the Communications Act, a Commission rule, a Commission order, or a term or condition of a Commission authorization through a voluntary contribution to the Treasury and future administrative compliance.
- c. Debt. An amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another Federal agency. "Claim" and "debt" include amounts due the United States from fees, penalties, damages, interest, taxes, and forfeitures issued after a Notice of Apparent Liability that have been partially paid or for which a court of competent jurisdiction has ordered payment and such order is final.
- d. Debt Collection Officer (DCO). The employee responsible for collecting outstanding debts or other amounts owed to the Commission. The DCO is a designated management official from within the Office of the Managing Director (OMD), Office of the Chief Financial Officer (OMD-FO). OMD-FO is responsible for administering the collection of the Commission's outstanding debts.
- e. Debt Collection Procedures. Procedures for debt collection that comply with 31 U.S.C., 47 C.F.R., and 31 C.F.R.
- f. Demand Letter. The initial step of debt collection procedures used by OMD-FO, in which OMD-FO sends a letter and invoice to the subject of the legally enforceable debt, demanding full payment of the debt by a certain date.
- g. Forfeiture Follow-up. Actions taken by OMD-FO to collect a forfeiture penalty after the amount has become a legally enforceable debt using debt collection procedures – issuance of a payment Demand Letter and invoice, permitting payment under the terms of an installment payment plan, or referral to Treasury for delinquent debt collection.
- h. Forfeiture Order (FO). An order issued by the Commission or by the Enforcement Bureau or Media Bureau under delegated authority assessing a monetary forfeiture for a violation of the Communications Act, a Commission rule, a Commission order, or a term or condition of a Commission authorization. An FO is not a legally enforceable debt until either a partial payment is made, or a court of competent jurisdiction has issued an order enforcing the forfeiture that is final.
- i. Notice of Apparent Liability (NAL). A preliminary notice issued by the Commission or by the Enforcement Bureau or Media Bureau under delegated authority, notifying the recipient of a proposed forfeiture penalty, the reason for the proposed forfeiture, and an opportunity to provide a written response to the proposed forfeiture.

- j. Termination of Collection Action. Termination of Collection Action occurs when the Commission determines it has taken all appropriate efforts and (1) is unable to collect any substantial amount through its own efforts or through the efforts of others; (2) the Commission is unable to locate the debtor; (3) the costs of collection are anticipated to exceed the amount recoverable; (4) the debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations; (5) the debt cannot be substantiated; or (6) the debt against the debtor has been discharged in bankruptcy.
  - k. Trial *de novo*. Trial *de novo* in law literally means trial “from the beginning.” Pursuant to Sections 503(b) and 504(a) of the Communications Act, FOs that are not assessed by an administrative law judge are subject to a trial *de novo* when an enforcement action is brought by DOJ in a United States District Court. The government bears the burden of proving the violation and the liability for forfeiture.
5. BACKGROUND: The Commission, as well as the Commission’s Enforcement Bureau and Media Bureau acting under delegated authority, may issue a NAL proposing a forfeiture (also referred to as a CMP) against any person or entity that appears to have violated the Communications Act, a Commission rule, a Commission order, or a term or condition of a Commission authorization. In certain instances, a Citation, notifying a party of a violation of the Communications Act, Commission rule, or a Commission order and providing the party an opportunity to respond, must be issued prior to the issuance of an NAL. As set forth in Title 47, Chapter 1 of the Code of Federal Regulations (C.F.R.), the person or entity receiving an NAL will receive notification of the reason for the NAL, and be allowed a period of time (usually 30 days) to pay the proposed forfeiture amount or show in writing why the proposed forfeiture penalty should not be imposed or should be reduced. If the proposed forfeiture penalty is not paid in full in response to the NAL, the Commission or relevant B/O may cancel the proposed forfeiture, or issue an FO requiring payment of either the full or a reduced amount by a specific date. If the forfeiture is not paid, the case may be referred to OGC for possible referral to DOJ for action to enforce the forfeiture, provided that the case meets certain requirements, such as minimum monetary threshold. If DOJ accepts the case, it will file a complaint in a United States District Court seeking an order from the Court to enforce the forfeiture. The forfeiture amount is not a legally enforceable debt owed to the United States until either a partial payment of the forfeiture amount is made, or a court of competent jurisdiction has ordered payment and such order is final. In the alternative, the Commission, the relevant B/O acting under delegated authority, and the party may enter into a Consent Decree (“CD”) resulting in a voluntary contribution to the Treasury and compliance with certain other conditions. All CMPs that become legally enforceable debts owed to the United States are reported as such for financial accounting purposes.

Forfeiture payments are made through the Commission’s online fee filing system (Fee Filer), and the lockbox bank for deposit into the miscellaneous receipts fund of the Treasury.

6. POLICY:

The following FCC policy applies:

- a. Timing of Enforcement Actions: Assessment and enforcement of monetary forfeitures imposed by the Commission will be governed by procedures prescribed in 47 U.S.C. §§ 503, 504 and 47 C.F.R. § 1.80.
- b. Timing of Collection Actions. The Commission will determine if delinquent debt procedures are appropriate, after the conclusion of forfeiture enforcement proceedings. The Commission may determine that delinquent debt collection procedures are appropriate, but OMD-FO Demand Letters or other collection actions will not be issued or commenced until:
  - (1) The violator makes a partial payment towards the forfeiture amount set forth in the NAL or FO, and 30-days have passed since issuance of the NAL or FO pursuant to which the partial payment was made;
  - (2) The Commission receives from a court of competent jurisdiction a final order for payment; or
  - (3) The B/O confirms that the violator has failed to comply with the voluntary contribution and administrative compliance of the CD.
- c. Delinquent Debt. Legally enforceable delinquent debt will be transferred by OMD-FO to the Treasury in accordance with the Debt Collection Improvement Act of 1996 - i.e., 31 U.S.C. § 3711, Subpart O of the Commission's rules, and 31 C.F.R. § 285.12. Upon transfer to Treasury, the Commission will cease all collection activity related to the debt. The debt will be retained on the Commission's books.
- d. Installment Payments and Partial Payments. Under Commission rules, the Commission may allow a violator to pay the forfeiture amount under the terms of an installment payment plan administered by OMD-FO.

Partial payments will be accepted and applied in accordance with the Commission's rules. Upon receipt of a partial payment, and in the absence of an agreed-upon installment plan, OMD-FO will notify the violator through a Demand Letter that the remaining balance of the forfeiture penalty is a legally enforceable debt that is delinquent and the Commission will enforce debt collection procedures including assessment of interest and penalties, application of the Commission's Red Light Rule, and referral of the delinquent debt to Treasury.
- e. Collection of Interest, Penalties, and Assessments. Interest and penalties will be assessed as set forth in 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.
- f. Write-Off Debt and Suspension and Termination of Collection Activity. The Commission, through OMD-FO, will follow procedures in 31 C.F.R. §903.1 – 903.3, 47 C.F.R. § 1.1916, and OMB Cir. A-129 to Write-Off uncollectable debt and to suspend or terminate collection activity. Subsequently, the Commission may Close-Out the debt and issue the debtor a form 1099-C.

- g. Effect of Bankruptcy Proceedings on Collection Activity. Upon notification of bankruptcy, the Commission shall terminate collection activity on an enforceable debt and notify the Commission's OGC bankruptcy counsel to prepare a proof of claim. The Commission may continue collection activity subject to the provision of the Bankruptcy Code, or Bankruptcy Court Order, for any payments provided under a plan of reorganization.

7. RESPONSIBILITIES:

a. The Office of the Managing Director, Chief Financial Officer, shall:

- (1) Initiate collection of all civil monetary penalties that are legally enforceable debts;
- (2) Record into the Commission's financial system as accounts receivable all valid and legally enforceable debts arising from NALs, FOs and CDs;
- (3) Track proposed assessments and payment activities on each CMP imposed by the Commission or a B/O, whether or not the CMP is a legally enforceable debt;
- (4) Update the status of NALs, FOs, and CDs upon receipt or issuance of subsequent correspondence;
- (5) Administer the activities of the lockbox bank to provide a depository for payment of a civil monetary penalty;
- (6) Process documents/remittances received at the lockbox bank and forwarded to the Commission;
- (7) Notify the FCC OGC Litigation Division ("OGC/Litigation") if a partial or full payment is received for a case that has previously been forwarded to DOJ for enforcement;
- (8) Maintain financial files of legally enforceable debts, to include as applicable the NAL, FO, CD, court order, Claim Collection Litigation Report and related correspondence;
- (9) Refer all legally enforceable debts that are 120-days past due to the Treasury;
- (10) Obtain supporting documentation for all Intra-Governmental Payment and Collection ("IPAC") transactions received from DOJ or Treasury, and post IPAC payment receipt(s) transactions to the proper account(s);
- (11) Close out cases where the Outstanding Balance Due represents the amount retained by DOJ for the Civil Debt Litigation Collection Fee of 3%;
- (12) Maintain records to provide the Commission with reports on collection efforts and compliance with these procedures;
- (13) Ensure compliance with the Debt Collection Improvement Act of 1996;

- (14) Write-Off and Close-Out debt, and suspend or terminate collection activities, as appropriate;
- (15) Periodically review information recorded in the Commission's financial system for recording accounts receivable;
- (16) Review the violator's ability to pay in full the amount of the forfeiture assessment, and approve or disapprove requests for CMP installment payment plans;
- (17) Manage and maintain the CMP installment portfolio;
- (18) Update the Commission's financial system for recording accounts receivable on the status of the debtor's installment payment plan or default;
- (19) Forward financial documentation to OGC/Litigation upon request;
- (20) Obtain FCC OGC legal advice on procedures to follow pertaining to notices of bankruptcy, matters involving claims, administrative procedures, and/or litigation;
- (21) Make all financial records available to authorized Commission staff;
- (22) Notify B/Os that payment of a forfeiture has not been received by the required date;
- (23) Provide monthly reports to applicable staff in OMD-FO, Enforcement Bureau, Media Bureau and OGC/Litigation of CMPs with Outstanding Balance Due, and CMP payment receipt activity; and
- (24) Provide annual report to applicable staff in OMD-FO, Enforcement Bureau, Media Bureau and OGC/Litigation of CMPs aging data.

b. The Enforcement Bureau and Media Bureau shall:

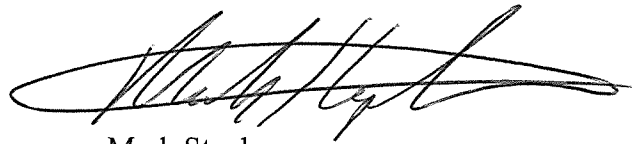
- (1) Initiate and issue NALs and FOs, in accordance with pertinent delegated authority provisions, and review and respond to requests for reconsideration or mitigation, where appropriate;
- (2) Negotiate and enter into CDs, where appropriate;
- (3) Provide notice of any NAL, FO, or CD and subsequent actions to OMD-FO;
- (4) Maintain supporting documentation (can be maintained electronically or in hard copy) pertaining to each forfeiture proceeding initiated until the proceeding is completed;

- (5) Forward the forfeiture case file to OGC/Litigation for review and timely referral to DOJ to ensure that a complaint may be filed before the expiration of the controlling statute of limitations, upon notification by OMD-FO that payment of a forfeiture has not been received by the required date, provided that the forfeiture amount exceeds the statutory minimum necessary for institution of collection proceedings;
- (6) Notify OMD-FO and close out the forfeiture case file upon notification that payment of the assessed forfeiture amount has been received in full, or that the enforcement or collection proceeding has been concluded;
- (7) Review all case files for further action upon notification by OMD-FO that payment is delinquent, and annually to determine whether the forfeiture proceeding should be terminated; and
- (8) Forward to OMD-FO any request for installment payment plan, and B/O installment agreements.

c. The FCC OGC/Litigation Division shall:

- (1) Receive forfeiture case files referred from the Enforcement Bureau or Media Bureau, and notify the relevant B/O or OMD-FO of additional documents or information needed;
- (2) Review referred forfeiture case file to determine whether to: return the case to the relevant B/O (e.g. because additional documentation is needed, or an administrative appeal is pending before the Commission, etc.), issue a Final Notice Letter to the subject of the forfeiture, refer the case to DOJ, or close the case and return it to the relevant B/O for termination of collection activity (e.g. because the forfeiture amount does not meet monetary thresholds established by DOJ regulations or individual United States Attorney's Offices; the statute of limitations in 28 U.S.C. § 2462 may bar the case or not permit sufficient time for DOJ to file an enforcement action; the subject is judgment proof; the amount is too insignificant to justify proceeding with a trial *de novo*; the claim cannot be substantiated by evidence);
- (3) Prepare a case file for the referred forfeiture and record case information in OGC tracking documents;
- (4) Time permitting, issue Final Notice Letter to the subject of the referred FO that the Commission has ordered payment of a forfeiture, and, where applicable, that the forfeiture may be referred to DOJ for enforcement if payment is not received;
- (5) Verify that subject of FO did not respond to Final Notice letter;
- (6) Prepare Claim Collection Litigation Report;

- (7) Refer forfeiture cases that meet the requirements set forth in 31 C.F.R. § 904 and all applicable documents to DOJ for enforcement and provide assistance to DOJ in the enforcement action;
- (8) Notify OMD-FO and the B/Os of cases declined by DOJ;
- (9) Notify the Assistant United States Attorney Office (AUSA) of any payments or other matters affecting the enforcement action;
- (10) Notify OMD-FO and relevant B/Os of the case status and disposition (e.g. partial payment, suit filed, DOJ declined, settlement, judgment, appeals, bankruptcy action, case closure by OGC) and provide copies of documents;
- (11) Notify OMD-FO and the relevant B/Os if DOJ has determined that an enforceable forfeiture is uncollectible, so that OMD-FO and the relevant B/O terminate and suspend collection activity; and
- (12) Furnish legal advice to OMD-FO and B/Os on matters involving claims, bankruptcy, administrative procedures, and/or litigation.

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a large, sweeping flourish underneath.

Mark Stephens  
Acting Managing Director