

ARTICLE

FCC Intends To Seek Treble Damages for Universal Service Fund and Other Federal Program Payment Violations

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February 4, 2015—The Federal Communications Commission (FCC) intends to increase significantly the penalties that will apply when a provider fails to pay federal regulatory fees or make timely contributions to the Universal Service Fund, Telecommunications Relay Service Fund, and the cost recovery mechanisms associated with local number portability and the North American Numbering Plan.

In a Policy Statement released on February 3, 2015, the FCC announced that it will use a treble damages approach by which a violator's base forfeiture liability will be *three times* the delinquent contributor's debts to the federal programs. According to the FCC, this approach will allow the agency to "resolve payment investigations more quickly, which will lead to swifter penalties for delinquent contributors, and to perform significantly more investigations, resulting in increased compliance with the payment requirements."

Adopted without public notice or opportunity for comment, the Commission's new treble damages approach to enforcing its payment rules will put additional pressure on providers to ensure that they are paying regulatory fees and making timely program contributions. For example, if a contributor is delinquent in its quarterly USF contributions by \$100,000, it would face a base forfeiture of \$300,000 under the Commission's new approach. Furthermore, the FCC considers each single failure to pay a federal program assessment a separate violation that continues until the assessment is fully paid, which can result in significant financial exposure.

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