

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

In the Matter of)	
)	File No. EB-08-SE-120
)	NAL/Acct. No. 200832100051
Union Telephone Company)	FRN # 0001630201
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 9, 2008

Released: June 11, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Union Telephone Company (“Union”), a Global System for Mobile Communications-based (“GSM”) carrier serving rural Wyoming, Colorado, Utah, and Idaho, apparently willfully and repeatedly violated Section 20.19(d)(2) of the Commission’s Rules (“Rules”)¹ by failing to include in its digital wireless handset offerings, by September 18, 2006, at least two models that meet the inductive coupling standards for hearing aid compatibility. For Union’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.² The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.³ Specifically, the Commission adopted a standard for radio frequency interference (the

¹ 47 C.F.R. § 20.19(d)(2).

² *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into electrical signals. In telecoil mode, with the microphone turned off, the
(continued ...)

“U3” or “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “U3T” or “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard if they did not come under the *de minimis* exception.⁶

3. The Commission required that manufacturers and service providers begin making commercially available at least two handset models per air interface that meet the U3 or M3 rating for radio frequency interference by September 16, 2005.⁷ The Commission also required that manufacturers and service providers make commercially available at least two handset models per air interface that meet the U3T or T3 rating for inductive coupling by September 18, 2006.⁸ In connection with the offer of

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telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

Id. at 16763 ¶ 22.

⁴ Section 20.19(b)(1) provides that a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2). On April 25, 2005, the Commission’s Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. *See OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau and Office of Engineering and Technology announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. *See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006). In addition, since the 2005 version, the ANSI C63.19 technical standard has used an “M” nomenclature for the radio frequency interference rating rather than a “U,” and a “T” nomenclature for the handset’s inductive coupling rating, rather than a “UT.” The Commission has approved the use of the “M” and “T” nomenclature and considers the M/T and U/UT nomenclatures as synonymous. *See Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238 ¶ 33.

⁵ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), Time Division Multiple Access (TDMA) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁶ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; *see also* 47 C.F.R. § 20.19(c).

⁸ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; *see also* 47 C.F.R. § 20.19(d). In addition, on February 28, 2008, the Commission released an order that, as modified on reconsideration, among other things: (a) (continued ...)

hearing aid-compatible handset models, the Commission further required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.⁹ In order to monitor the availability of these handsets, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.¹⁰

4. In its November 17, 2006 hearing aid compatibility report,¹¹ Union stated that it was offering the LG C2000, which is T3-rated, and the Motorola RAZR v3, which was being tested for T3 compliance.¹² Subsequently, upon learning that the Motorola RAZR v3 was not T3 compliant, Union stated in its June 5, 2007 Report that the Motorola RAZR v3 would be "replaced" with the Nokia 6085, which is T3-rated.¹³

5. In its June 14, 2007 request for waiver of Section 20.19(d)(2) of the Rules, Union stated that despite its best efforts to acquire two models, it was misled by its vendor into believing that the Motorola RAZR v3 was T3 compliant.¹⁴ Union stated that it would "be offering a second model, the Nokia 6085 ... rated M3T3, by June 30, 2007" and that the Nokia 6085 would be "stocked and selling in all of Union's retail stores by that date."¹⁵ Union further argued that even if it had realized the error, there was no other model of T3 compliant handset available from its vendors.¹⁶

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modifies the obligation on manufacturers and service providers to offer handset models that meet the U3/M3 (radio frequency) standard, (b) increases the obligation on manufacturers and service providers to offer handset models that meet the U3T/T3 (inductive coupling) standard, (c) allows service providers other than Tier I carriers an additional three months to meet the new handset deployment benchmarks, (d) adopts a technology "refresh" requirement for manufacturers, (e) requires service providers to offer hearing aid-compatible handsets with different levels of functionality, (f) adopts an updated version of the technical standard for measuring hearing aid compatibility, and (g) requires manufacturers and service providers to submit annual reports on an open ended basis, beginning January 15, 2009. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-3411, 3418 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). The new rules became effective on June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008).

⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86; see also 47 C.F.R. § 20.19(f).

¹⁰ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004). The Commission will now require service providers to submit annual status reports beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, FCC 08-68 at ¶ 13. Manufacturers will report on January 15, 2009, and then annually beginning July 15, 2009. *Id.* at ¶¶ 13, 101.

¹¹ Lukas, Nace, Gutierrez & Sachs, Chartered filed the report on behalf of Union.

¹² *Id.* at 1.

¹³ Report, filed by Union Telephone Company, June 5, 2007 ("June 5, 2007 Report").

¹⁴ Petition for Temporary Waiver filed by Union Telephone Company, June 14, 2007 ("Waiver Petition") at 5.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 6.

6. The Commission denied Union's waiver request and referred the matter to the Enforcement Bureau for possible enforcement action.¹⁷ The Commission acknowledged that as a Tier III carrier, Union may well have been unable to come into compliance with Section 20.19(d)(2) by September 18, 2006, but that Union did not demonstrate the exercise of sufficient diligence to warrant a waiver of nine months past the deadline.¹⁸ The Commission found that Union's reliance on "a single vendor's oral communication for nine months, without more, does not represent the sort of diligence or circumstances beyond one's control that would justify a waiver."¹⁹ The Commission ruled that given the fact that most other carriers were able to acquire compliant handsets by January 2007, Union's inability to procure a second compliant model handset before June 2007 indicated a failure to exercise due diligence.²⁰

III. DISCUSSION

A. Failure to Offer For Sale Two Hearing Aid-Compatible Handset Models

7. Section 20.19(d)(2) of the Rules requires digital wireless service providers to begin offering for sale at least two handset models for each air interface that meet at least a T3 rating for inductive coupling by September 18, 2006. Union admits that it did not offer for sale the required two models of inductive coupling-compliant handsets by the September 18, 2006 deadline. Specifically, it did not offer for sale the required two inductive coupling-compliant handsets until June 30, 2007.²¹ Accordingly, we conclude that Union apparently willfully²² and repeatedly²³ failed to comply with Section 20.19(d)(2) of the Rules.

B. Proposed Forfeiture

8. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁴ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture

¹⁷ *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones and Petitions for Waiver of Section 20.19 of the Commission's Rules*, WT Docket No. 01-309, Memorandum Opinion and Order, 23 FCC Rcd 3352, 3371 ¶ 41 (2008) ("Waiver Order").

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* The Commission acknowledged that Union provided one compliant handset in a timely manner, the LG C2000. *Id.* at ¶ 40.

²¹ See Waiver Petition at 1-2.

²² Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²³ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 9 (2001); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

²⁴ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

penalty should be imposed.²⁵ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁶ We conclude under this standard that Union is apparently liable for forfeiture for its apparent willful and repeated violation of Section 20.19(d)(2) of the Rules.

9. Under Section 503(b)(2)(B) of the Act,²⁷ we may assess a common carrier a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. In exercising such authority, we are required to 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.”²⁸

10. The Commission’s *Forfeiture Policy Statement*²⁹ and Section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in Section 20.19 of the Rules. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”³⁰ The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.³¹

11. In determining the appropriate forfeiture amount for violation of the hearing aid compatibility handset requirements, we take into account that these requirements serve to ensure that individuals with hearing disabilities have access to digital wireless telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing impairments should not be denied the public safety and convenience benefits of digital wireless telephony.³² Moreover, as the Commission has noted, the

²⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁶ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

²⁷ 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); see also 47 C.F.R. § 1.80(c).

²⁸ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁹ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

³⁰ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

³¹ See *id.*

³² *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population.³³

12. We note that in a recent decision, a base forfeiture amount of \$15,000 per handset was established for violations of the hearing aid compatibility handset requirements.³⁴ This base forfeiture amount was based on a determination that a significantly higher base forfeiture amount is warranted for violations of the hearing aid compatibility handset requirements than for violations of the labeling requirements for wireless hearing aid-compatible handsets.³⁵ In reaching this determination, we found that a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications.³⁶ Further, because providers were required to offer at least two handset models that meet at least a T3 rating for inductive coupling, we determined that a proposed forfeiture for violation of these requirements should be applied on a per handset basis. Accordingly, we impose a base forfeiture amount of \$15,000 per handset for violation of the hearing aid compatibility handset requirements.

13. Union offered only one handset that met a T3 rating for inductive coupling by September 18, 2006. Union did not come into compliance with the inductive coupling compatibility requirements by offering a second compliant handset until June 30, 2007. Although Union's failure to offer two handsets that meet the FCC's inductive coupling compatibility requirements is a continuing violation for purposes of determining an appropriate forfeiture, we exercise our prosecutorial discretion and decline to assess a forfeiture on a continuing violation basis in this case.³⁷ We note, in this regard, that Union is a Tier III carrier, *i.e.*, a wireless radio service provider with 500,000 or fewer subscribers.³⁸ Accordingly, we find

³³ *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, 28 million, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). See also *Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 ¶ 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was "at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade").

³⁴ See *South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24-25 (Enf. Bur., Spectrum Enf. Div. 2008) ("*South Canaan*"); See also *AST Telecom, LLC d/b/a Blue Sky Communications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2838, 2842 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2008).

³⁵ The Enforcement Bureau has established a base forfeiture amount of \$8,000 for violation of the labeling requirements for wireless hearing aid-compatible handsets. See *e.g.*, *South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660, 7665 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*.

³⁶ *South Canaan*, 23 FCC Rcd at 24.

³⁷ We caution Union and other carriers that future enforcement actions may consider all failures to comply with our hearing aid compatibility rules, including the inductive coupling requirements, as continuing violations for purposes of calculating appropriate forfeiture amounts.

³⁸ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14847 ¶¶ 22-24 (2002).

that Union is apparently liable for a \$15,000 forfeiture for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of Section 20.19(d)(2).³⁹

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Union Telephone Company **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Section 20.19(d)(2) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Union Telephone Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Union Wireless will also send electronic notification on the date said payment is made to Susan Stickley at susan.stickley@fcc.gov and Ricardo Durham at ricardo.durham@fcc.gov.

17. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3)

³⁹ Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a notice of apparent liability for forfeiture. Section 503(b)(6) does not, however, bar us from considering Union’s prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827 ¶ 20 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 ¶ 3 (1967) *recon. denied*, 11 FCC 2d 193, 195 ¶ 6 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Union’s apparent violations that have occurred within the past year.

some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Todd Crook, Product Manager, Union Telephone Company, PO Box 160, 850 N. State Highway 414, Mountain View, Wyoming 32939, and to its counsel, Pamela Gist, Esq., Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Boulevard, Suite 1500, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau