

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

In the Matter of	)	
	)	File No. EB-07-SE-278
	)	NAL/Acct. No. 200832100053
PinPoint Wireless, Inc.	)	FRN # 0002377901
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: June 11, 2008**

**Released: June 13, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that PinPoint Wireless, Inc. (“PinPoint”), a Global System for Mobile Communications-based (“GSM”) carrier serving rural Nebraska, apparently willfully and repeatedly violated Section 20.19(d)(2) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to include in its digital wireless handset offerings at least two models that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006. For PinPoint’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of thirty thousand dollars (\$30,000).

**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.<sup>2</sup> 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.<sup>3</sup> Specifically, the Commission adopted a standard for radio frequency interference (the

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<sup>1</sup> 47 C.F.R. § 20.19(d)(2).

<sup>2</sup> *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).

<sup>3</sup> 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 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

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“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.<sup>4</sup> 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 interface<sup>5</sup> that are compliant with the relevant standard if they did not come under the *de minimis* exception.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> In connection with the offer of

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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.

<sup>4</sup> 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.

<sup>5</sup> 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 Dispatch Enhanced Network (iDEN), Time Division Multiple Access (TDMA) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

<sup>6</sup> *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).

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

<sup>8</sup> *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) modifies the requirement that manufacturers and service providers ensure that 50 percent of their digital wireless handset models per air interface meet the U3/M3 (radio frequency) standard and stayed enforcement of that requirement until the new rules became effective, (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 (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.<sup>9</sup> 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.<sup>10</sup>

4. In its November 14, 2006 hearing aid compatibility report,<sup>11</sup> PinPoint listed seven handset models that it offered.<sup>12</sup> Though PinPoint characterized the handsets as hearing aid-compatible, the seven handsets did not meet the T3 rating for inductive coupling, and the Wireless Telecommunications Bureau referred the matter to the Enforcement Bureau's Spectrum Enforcement Division for investigation.<sup>13</sup>

5. On August 13, 2007, the Spectrum Enforcement Division issued PinPoint a Letter of Inquiry ("LOI").<sup>14</sup> In its Response to the LOI, PinPoint did not deny that it failed to offer at least two handset models that met the T3 rating for inductive coupling by September 18, 2006, as required under Section 20.19(d)(2).<sup>15</sup> PinPoint claims that it was operating "under the assumption that its handsets had the FCC's hearing aid compatibility standards since the handsets it was carrying contained labels and inserts designating them as [hearing aid-compatible] compliant."<sup>16</sup> PinPoint explains that upon learning that the handsets it was selling on September 18, 2006 met only the "M" standard, it immediately acquired and

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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, FCC 08-117 (rel. April 17, 2008). The effective date of the new rules was June 6, 2008. *See* 73 Fed. Reg. 25,566 (May 7, 2008).

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

<sup>10</sup> *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.

<sup>11</sup> The Law Offices of Bennet & Bennet, PLLC filed the report on behalf of PinPoint.

<sup>12</sup> *Id.* at 1. The seven handsets included the following models: Motorola V3, Motorola V220, Motorola V235, Nokia 6101, Nokia 6102, Nokia 6010, Nokia 6061.

<sup>13</sup> *See Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17703 ¶ 33 (October 5, 2007) (recommending that the Commission "vigilantly monitor compliance with its hearing aid compatibility rules, and take appropriate enforcement action against parties that violate the rules") ("*2007 Report*").

<sup>14</sup> *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to J. Richard Shoemaker, PinPoint Wireless, Inc. (August 13, 2007).

<sup>15</sup> *See* Letter from Michael Bennet, Esq., Bennet & Bennet, PLLC to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 27, 2007) ("*LOI Response*"). PinPoint stated that in preparing its response to the LOI, it discovered that the handsets it was selling on September 18, 2006, were not T-rated. LOI Response at 2.

<sup>16</sup> *Id.* at 2.

began offering two inductive coupling-compliant handset models on August 22, 2007.<sup>17</sup> PinPoint also notes that it is an extremely small, rural company with less than 200 wireless subscribers and operates at a loss, and requests that the Commission “keep these factors in mind as it pursues its investigation of PinPoint.”<sup>18</sup>

### III. DISCUSSION

#### A. Failure to Offer For Sale Two Hearing Aid-Compatible Handsets

6. 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. PinPoint admits that it did not offer for sale the required two models of inductive coupling-compliant handsets prior to the September 18, 2006 deadline. Specifically, it did not offer for sale the two compliant handsets until August 22, 2007.<sup>19</sup> Accordingly, we conclude that PinPoint apparently willfully<sup>20</sup> and repeatedly<sup>21</sup> failed to comply with Section 20.19(d)(2) of the Rules.

#### B. Proposed Forfeiture

7. 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.<sup>22</sup> 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 penalty should be imposed.<sup>23</sup> 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.<sup>24</sup> We conclude under this standard that PinPoint is apparently liable for forfeiture for its apparent willful and repeated violation of Section 20.19(d)(2) of the Rules.

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<sup>17</sup> According to PinPoint, it began offering the Nokia 6126(h) and Motorola v3i on August 22, 2007. *Id.*

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at n.16.

<sup>20</sup> 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, 97<sup>th</sup> 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*”).

<sup>21</sup> 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.

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>24</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

8. Under Section 503(b)(2)(B) of the Act,<sup>25</sup> 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.”<sup>26</sup>

9. The Commission’s *Forfeiture Policy Statement*<sup>27</sup> 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.”<sup>28</sup> 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.<sup>29</sup>

10. 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.<sup>30</sup> Moreover, as the Commission has noted, the 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.<sup>31</sup>

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<sup>25</sup> 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).

<sup>26</sup> 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.

<sup>27</sup> *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*”).

<sup>28</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

<sup>29</sup> *See id.*

<sup>30</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>31</sup> *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”).



11. 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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.

12. PinPoint did not offer any handsets that met the T3 rating for inductive coupling by September 18, 2006. PinPoint did not come into compliance with the inductive coupling compatibility requirements until August 22, 2007, when it began offering two compliant handsets. Although PinPoint'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.<sup>35</sup> We note, in this regard, that PinPoint is a Tier III carrier, *i.e.*, a wireless radio service provider with 500,000 or fewer subscribers.<sup>36</sup> Moreover, while PinPoint was in violation of Section 20.19(d)(2) until August 22, 2007, almost a year after the September 18, 2006 deadline, we decline to assess an upward adjustment of the forfeiture amount for the extended duration of the violation given that PinPoint is small, rural company with less than 200 wireless subscribers. Accordingly, we find that PinPoint is apparently liable for a \$30,000 forfeiture for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of Section 20.19(d)(2).<sup>37</sup>

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<sup>32</sup> 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).

<sup>33</sup> 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*.

<sup>34</sup> *South Canaan*, 23 FCC Rcd at 24.

<sup>35</sup> We caution PinPoint 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.

<sup>36</sup> 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).

<sup>37</sup> 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 PinPoint'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 (continued ...)

13. Finally, we consider PinPoint's request that we take into consideration that it is an extremely small, rural company with less than 200 wireless subscribers in a high cost area and operates at a loss. We note, however, that entities that claim financial hardship or inability to pay must support their claims with financial documentation.<sup>38</sup> PinPoint will have the opportunity to provide such documentation in response to this NAL.<sup>39</sup>

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, PinPoint Wireless, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty thousand dollars (\$30,000) 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, PinPoint Wireless, Inc. **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. PinPoint Wireless will also send electronic notification on the date said payment is made to Celia Lewis at celia.lewis@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.

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(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 PinPoint's apparent violations that have occurred within the past year.

<sup>38</sup> See *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2431-32 ¶ 10 (2008) (emphasizing that in order to make a successful claim of inability to pay, a licensee must provide adequate supporting financial documentation); See also *Radio X Broadcasting Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 12209, 12217 ¶ 19 (2006); *Webnet Communications, Inc.*, Order of Forfeiture, 18 FCC Rcd 6870, 6878 ¶ 16 (2003).

<sup>39</sup> See ¶ 18 *infra*.

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) 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 J. Richard Shoemaker, PinPoint Wireless, Inc., PO Box 490, 611 Patterson Street, Cambridge, NE 69022, and to its counsel, Michael Bennet, Esq., Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau