

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

In the Matter of	)	
	)	File No. EB-08-SE-143
American Samoa Telecommunications Authority	)	NAL/Acct. No. 200932100005
	)	FRN # 0001726488

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 3, 2008**

**Released: November 5, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that American Samoa Telecommunications Authority (“ASTCA”) apparently willfully and repeatedly violated the hearing aid compatibility status report filing requirements set forth in the Commission’s 2003 *Hearing Aid Compatibility Order*.<sup>1</sup> For these apparent violations, we propose a forfeiture in the amount of six thousand dollars (\$6,000). We also admonish ASTCA for failing to include in its digital wireless handset offerings at least two handset models that meet the hearing aid compatibility requirements for radio frequency interference and two handset models that meet the hearing aid compatibility requirements for inductive coupling capability by the compliance deadlines in apparent violation of former Sections 20.19(c)(2)(i)(B)(1) and 20.19(d)(2) of the Commission’s Rules (“Rules”).<sup>2</sup>

**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>3</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

<sup>1</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (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*”).

<sup>2</sup> 47 C.F.R. § 20.19(c)(2)(i)(B)(1) (2007); 20.19(d)(2) (2007). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission, made several changes to these rules, including, *inter alia*, the continuation and expansion of hearing aid compatibility reporting requirements, and the phasing in of new technical standards for hearing aid compatibility. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-11, 3418 at ¶¶ 6-13, 34 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). See also *infra* note 9. These revised rules, however, do not govern ASTCA’s conduct prior to the effective date of the revisions, June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008). Accordingly, we assess ASTCA’s conduct in this NAL under the former version of the rules.

<sup>3</sup> *Id.* 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).

(telecoil) modes.<sup>4</sup> Specifically, the Commission adopted a standard for radio frequency interference (the “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>5</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>6</sup> that are compliant with the relevant standard if they did not come under the *de minimis* exception.<sup>7</sup> The Commission required that manufacturers and service providers begin making commercially available at least two handset models

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<sup>4</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2) (2007). 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 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>5</sup> Former Section 20.19(b)(1) of the Rules provided 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) (2007). Former Section 20.19(b)(2) of the Rules provided 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) (2007). 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>6</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>7</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d) (2007). 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 mobile 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).

per air interface that meet the U3 or M3 rating for radio frequency interference by September 16, 2005.<sup>8</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>9</sup> In connection with the offer of 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>10</sup>

3. 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 (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).<sup>11</sup> In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.<sup>12</sup>

4. In March 2008, the Enforcement Bureau received a complaint alleging that ASTCA had failed to file the required hearing aid compatibility status reports and therefore may not be in compliance with the hearing aid compatibility requirements. On March 24, 2008, the Division issued ASTCA a Letter of Inquiry ("LOI").<sup>13</sup>

5. In its May 9, 2008 response, ASTCA explained that it failed to file the required reports because it was not aware of the *Hearing Aid Compatibility Order* or its subsequent amendments.<sup>14</sup>

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<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; see also 47 C.F.R. § 20.19(c) (2007).

<sup>9</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; see also 47 C.F.R. § 20.19(d) (2007). In addition, on February 28, 2008, the Commission released an order that, as modified on reconsideration, among other things: (a) modified 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 took effect, (b) increased the obligation on manufacturers and service providers to offer handset models that meet the U3T/T3 (inductive coupling) standard, (c) allowed service providers other than Tier I carriers an additional three months to meet the new handset deployment benchmarks, (d) adopted a technology "refresh" requirement for manufacturers, (e) required service providers to offer hearing aid-compatible handsets with different levels of functionality, (f) adopted an updated version of the technical standard for measuring hearing aid compatibility, and (g) required manufacturers and service providers to submit annual reports on an open ended basis, beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3408-11, 3418 ¶¶ 6-13, 34. The effective date of the revised rules was June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008).

<sup>10</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86; see also 47 C.F.R. § 20.19(f).

<sup>11</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).

<sup>12</sup> See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99. The Commission also made clear that these reporting requirements apply to carriers that fit within the *de minimus* exception. *Id.* at ¶ 99.

<sup>13</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Aliko Sene, Executive Director, American Samoa Telecommunications Authority (March 24, 2008).

<sup>14</sup> Letter from Gwen Tauiliili-Langkilde, Esq., Legal Counsel, American Samoa Telecommunications Authority to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 9, 2008).

ASTCA also provided a list of all digital wireless models it offered since September of 2005.<sup>15</sup> Based on this list, ASTCA apparently offered its first digital wireless handset model meeting the Commission's standards for RF interference, the Motorola v265, on October 27, 2005, and its second, the Motorola v266, on April 10, 2006. In addition, ASTCA apparently offered its first inductive coupling-compliant handset model, the Motorola v323i, on March 21, 2007, and its second, the Motorola Razr v3m, on May 3, 2007.

### III. DISCUSSION

#### A. Failure to File Hearing Aid Compatibility Status Reports

6. The 2003 *Hearing Aid Compatibility Order* required digital wireless service providers to file hearing aid compatibility status reports every sixth months for the first three years of implementation, and annually thereafter.<sup>16</sup> ASTCA admits that it failed to file seven status reports between May 2004 and November 2007. Accordingly, we find that ASTCA failed to file the hearing aid compatibility status reports in apparent willful<sup>17</sup> and repeated<sup>18</sup> violation of the requirements set forth in the *Hearing Aid Compatibility Order*.

#### 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>19</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>20</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>21</sup> We conclude under this standard that ASTCA is apparently liable for forfeiture for its failure to file the required hearing aid compatibility status reports in apparent willful and repeated violation of the requirements set forth in the Commission's *Hearing Aid Compatibility Order*.

8. At the time of ASTCA's apparent violations, we were authorized under Section 503(b)(2)(B) of the Act to assess a common carrier a forfeiture of up to \$130,000 for each violation, or

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<sup>15</sup> *Id.* at Attachment A.

<sup>16</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

<sup>17</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>18</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>19</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>21</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act.<sup>22</sup> 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>23</sup>

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules set a base forfeiture amount of \$3,000 for the failure to file required forms or information.<sup>24</sup> While the base forfeiture requirements are guidelines lending some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.<sup>25</sup> Having considered the statutory factors, as explained below, we exercise our discretionary authority and establish a base forfeiture amount of \$6,000 for failure to file hearing aid compatibility reports.

10. In determining the appropriate forfeiture amount, we take into account that the status reports are essential to the implementation and enforcement of the hearing aid compatibility rules. The Commission relies on these reports to provide consumers with information regarding the technical specifications and commercial availability of hearing aid-compatible digital wireless handsets and to hold the digital wireless industry accountable to the increasing number of hearing impaired individuals.<sup>26</sup> We note that when setting an \$8,000 base forfeiture for violations of the hearing aid compatible handset labeling requirements, the Commission emphasized that individuals with hearing impairments could only take advantage of critically important public safety benefits of digital wireless services if they had access to accurate information regarding hearing aid compatibility features of handsets.<sup>27</sup> We also note that the

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<sup>22</sup> 47 U.S.C. § 503(b)(2)(B). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum 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 for common carriers 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 for common carriers from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *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 for common carriers from \$130,000/\$1,325,000 to \$150,000/\$1,500,000). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See* 73 Fed. Reg. 44663-5.

<sup>23</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>24</sup> 47 C.F.R. § 1.80(b).

<sup>25</sup> *See Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22, 17101 ¶ 29. *See also* 47 C.F.R. § 1.80(b)(4) (“The Commission and its staff *may* use these guidelines in particular cases [, and] retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”) (*emphasis added*).

<sup>26</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89.

<sup>27</sup> *See, e.g., South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *Pine Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9205, 9210 (Enf. Bur., Spectrum Enf. Div. 2007), *consent decree ordered*, 23 FCC Rcd 4485 (2008); *IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660, 7665 (Enf. Bur., Spectrum Enf. Div. 2007), *consent decree ordered*, 23 FCC Rcd 11161. *See also Hearing Aid Compatibility Order*, 18 FCC Rcd at 16757 (“as wireless service has evolved to become increasingly more important to Americans’ safety and quality of life, the need for persons with hearing disabilities to have access to wireless services has become critical”).

Commission has upwardly adjusted the base forfeiture when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.<sup>28</sup> Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we upwardly adjust the base forfeiture for the failure to file hearing aid compatibility reports to \$6,000.

11. ASTCA failed to file seven hearing aid compatibility status reports between May 2004 and November 2007. Although the reports were due on specific dates, ASTCA's failure to file the reports had a continued adverse impact on the Commission's ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets. Accordingly, we find that each of ASTCA's failures to file constitutes a separate violation that continues until the violation is cured.<sup>29</sup> Nevertheless, because the Commission has previously suggested that the statute of limitations under Section 503(b)(6)(B) bars a forfeiture for failure to file more than one year beyond the deadline,<sup>30</sup> we exercise our prosecutorial discretion here and decline to propose forfeitures for ASTCA's failure to file hearing aid compatibility status reports more than one year prior to the date of this NAL. We caution ASTCA and other wireless providers that future enforcement actions may consider all failures to file hearing aid compatibility status reports as continuing violations subject to forfeiture action. Accordingly, we propose a forfeiture of \$6,000 against ASTCA for apparently willfully and repeatedly failing to file its November 19, 2007 hearing aid compatibility status report.

### C. Failure to Comply with the Hearing Aid Compatibility Deployment Requirements

12. Former Section 20.19(c)(2)(i)(B)(1) of the Rules required digital wireless service providers to begin offering for sale at least two handset models for each air interface that meet at least a U3-rating for radio frequency interference by September 16, 2005. Former Section 20.19(d)(2) of the Rules required 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 capability by September 18, 2006. ASTCA did not offer two digital wireless handset models with reduced emissions levels meeting the Commission's RF requirements until April 10, 2006, approximately seven months after the September 16, 2005 compliance deadline, and did not offer two digital wireless handset models meeting the Commission's standards for inductive coupling until May 3, 2007, approximately eight months after the

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<sup>28</sup> See, e.g., *InPhonics, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, 22 FCC Rcd 8689, 8769 (2007) (upwardly adjusting base forfeiture for the failure to file in recognition of the potential harm to the administration of the universal service fund); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006), *forfeiture ordered*, 23 FCC Rcd 89520 (2008) (same); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19905 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006) (same); *R & G Distributors, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8665, 8667 (Enf. Bur., 2001), *forfeiture ordered*, 17 FCC Rcd 10934 (Enf. Bur. 2002) (upwardly adjusting the base forfeiture for the failure to file in recognition of the potential harm to the Commission's numbering administration and optimization).

<sup>29</sup> See *Telrite Corporation*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7244-45 (2008) (determining that the failure to file Telecommunications Reporting Worksheets was a continuing violation) ("*Telrite*"); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138 (2008) (same) ("*Compass Global*"); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940 (2007) (determining that the failure to file Lifeline and Linkup Worksheets was a continuing violation) ("*VCI*").

<sup>30</sup> See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19905 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006) ("*Globcom*"). See also *Telrite*, 23 FCC Rcd at 7245 (reconsidering the position stated in *Globcom* that the statute of limitations under Section 503(b)(6)(B) bars a forfeiture for the failure to file a Telecommunications Reporting Worksheet more than one year beyond the filing deadline); *Compass Global*, 23 FCC Rcd at 6138 (same); *VCI*, 22 FCC Rcd at 15940 (same).

September 18, 2006 compliance deadline.<sup>31</sup> Accordingly, we conclude that ASTCA apparently violated former Sections 20.19(c)(2)(i)(B) and 20.19(d)(2) of the Rules by failing to comply with hearing aid compatibility requirements by the applicable deadline.

13. Although we believe that a monetary forfeiture would be warranted for these violations, we note that the statute of limitations for proposing a forfeiture is one year from the date of violation.<sup>32</sup> Accordingly, based upon our review of the facts and circumstances in this case, and because we are barred by the one-year statute of limitations from proposing a forfeiture for these violations, we admonish ASTCA for these violations.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, American Samoa Telecommunications Authority **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for failing to file its hearing aid compatibility status reports in apparent willful and repeated violation of the requirements set forth in the Commission's *Hearing Aid Compatibility Order*.

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, American Samoa Telecommunications Authority **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. **IT IS FURTHER ORDERED** that American Samoa Telecommunications Authority **IS ADMONISHED** for failing to comply with the acoustic coupling and inductive coupling compatibility requirements on its network by the compliance deadlines in violation of former Sections 20.19(c)(2)(i)(B) and 20.19(d)(2) of the Rules.

17. 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. ASTCA will also send electronic notification on the date said payment is made to [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov) and [Nissa.Laughner@fcc.gov](mailto:Nissa.Laughner@fcc.gov).

18. 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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<sup>31</sup> Because the revised rules grandfathered in handsets certified as hearing aid compatible prior to the effective date of the new rules, June 6, 2008, any handsets offered by ATSCA under the former version of the rules remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(c)(2)(i)(B)(1)(i) and (B)(2)(i).

<sup>32</sup> See 47 U.S.C. § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(3).

19. 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.

20. **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 Gwen Tauiliili-Langkilde, Esq., Legal Counsel, American Samoa Telecommunications Authority, P.O. Box M, Pago Pago, AS 96799.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau