

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

In the Matter of	)	
	)	File No. EB-07-SE-407
SLO Cellular, Inc. d/b/a Cellular One of San Luis	)	NAL/Acct. No. 200832100021
Obispo	)	FRN # 0001650324

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 12, 2008**

**Released: March 13, 2008**

By the Deputy Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo (“SLO Cellular”) apparently willfully and repeatedly violated Sections 20.19(c)(2)(i)(B)(1)<sup>1</sup> and 20.19(d)(2)<sup>2</sup> of the Commission’s Rules (“Rules”) by failing to include in its digital wireless handset offerings at least two models that meet the radio frequency interference and inductive coupling standards for hearing aid compatibility by the applicable deadline. For SLO Cellular’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of forty-five thousand dollars (\$45,000).

**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>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 (telecoil) modes.<sup>4</sup> Specifically, the Commission adopted a standard for radio frequency interference (the

<sup>1</sup> 47 C.F.R. § 20.19(c)(2)(i)(B)(1).

<sup>2</sup> 47 C.F.R. § 20.19(d)(2).

<sup>3</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>4</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 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.

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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>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 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

(Continued from previous page ...)

*Id.* at 16763 ¶ 22.

<sup>5</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, applicants for certification may 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). 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>8</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; *see also* 47 C.F.R. § 20.19(c).

<sup>9</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; *see also* 47 C.F.R. § 20.19(d). In addition, on February 28, 2008, the Commission released an order that, among other things: (a) modifies the requirement, presently stayed until April 18, 2008, 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, (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* (continued ...)

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, and then annually thereafter through the fifth year of implementation.<sup>11</sup>

4. In the 2005 *Hearing Aid Compatibility Reconsideration Order*, the Commission modified the hearing aid compatibility requirements applicable to wireless carriers that operate TDMA networks and plan to overbuild them to employ alternative air interfaces.<sup>12</sup> Specifically, the Commission determined that these carriers would be considered compliant with the September 16, 2005 handset deployment benchmark for acoustic coupling compatibility if they: (1) offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (i.e., non-TDMA) portion of the network, (2) overbuild their entire network, and (3) complete the overbuild by September 18, 2006.<sup>13</sup> In granting this limited relief to overbuilding TDMA carriers, the Commission recognized that the wireless industry was generally migrating away from the TDMA air interface and that small carriers using TDMA networks were unlikely to have the influence necessary to ensure the availability of TDMA-compatible, acoustic coupling handsets.<sup>14</sup> The Commission also acknowledged that "a technology overbuild represents a considerable undertaking and requires a significant investment," and that the limited relief afforded TDMA carriers would allow them to focus their limited resources primarily on upgrading their networks, and avoid unintended network shut-downs.<sup>15</sup>

5. On September 16, 2005, SLO Cellular and Entertainment Unlimited ("EU"), both of which operated TDMA networks, filed a joint petition for temporary waiver or stay requesting an extension of the September 16, 2005 compliance deadline for acoustic coupling compatibility, citing the unavailability of U3-rated handsets for the TDMA air interface.<sup>16</sup> The Commission dismissed this joint petition as unnecessary, finding that both carriers planned to replace their existing TDMA facilities with

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*Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, FCC 08-68 at ¶¶ 6-13, 34 (released February 28, 2008) ("*Hearing Aid Compatibility First Report and Order*").

<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 (WTB 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>12</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11242-43 ¶¶ 48-50.

<sup>13</sup> See *id.* at 11243 ¶ 48; see also 47 C.F.R. 20.19(c)(1)(i)(B)(1).

<sup>14</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11243 ¶ 49.

<sup>15</sup> See *id.*

<sup>16</sup> See SLO Cellular and Entertainment Unlimited Petition for Temporary Waiver or Stay, September 16, 2005. On September 14, 2006, SLO Cellular and EU filed another petition for temporary waiver or stay, seeking an additional one-year extension of the September 16, 2005 compliance deadline for acoustic coupling compatibility. See SLO Cellular and Entertainment Unlimited Petition for Temporary Waiver or Stay of Acoustic-Coupling Handset Requirements, September 14, 2006.

GSM facilities and therefore were eligible for the relief provided to overbuilding TDMA carriers in the *Hearing Aid Compatibility Reconsideration Order*.<sup>17</sup>

6. On September 14, 2006, SLO Cellular and EU filed a joint petition for temporary waiver or temporary stay seeking a one-year extension of the September 18, 2006 compliance deadline for inductive coupling compatibility, citing the unavailability of T3-rated handsets for the TDMA air interface.<sup>18</sup> On November 17, 2006, SLO Cellular filed another petition for temporary waiver or temporary stay.<sup>19</sup> In this petition, SLO Cellular indicated that it placed its GSM overbuild into commercial service on or around October 16, 2006, but admitted that only one of the digital wireless handsets that it currently offered to the public, the Motorola RAZR V3, was U3-rated for radio frequency interference and none of its handsets were T3-rated for inductive coupling.<sup>20</sup> SLO Cellular indicated that it had ordered two handsets, the Motorola RAZR V3i and the LG C2000, both of which were approved for both acoustic coupling and inductive coupling compatibility, and that it expected these handsets to arrive by the end of November 2006.<sup>21</sup> SLO explained that its failure to provide compliant handsets as of October 16, 2006, was the result of an “oversight” on its part, and requested an extension of the compliance deadlines for both acoustic coupling compatibility and inductive coupling compatibility until January 31, 2007.<sup>22</sup> In a supplemental compliance status report filed June 6, 2007, SLO Cellular stated that it had come into compliance on its GSM network by offering for sale at least two handsets that were approved for both acoustic coupling and inductive coupling compatibility as of December 1, 2006.<sup>23</sup>

7. On February 27, 2008, the Commission released the *February 2008 Inductive Coupling Compatibility Waiver Order*,<sup>24</sup> addressing individually each of 46 waiver petitions filed on behalf of a total of 90 Tier III carriers, including SLO Cellular, five Tier II carriers, one Mobile Virtual Network Operator, and one handset manufacturer for relief from the hearing aid compatibility requirements for wireless digital telephones. The Commission concluded that SLO Cellular failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waivers.<sup>25</sup> The Commission found that with respect to its TDMA network, SLO Cellular based its waiver request primarily on the lack of hearing aid-compatible handsets that operate on TDMA networks.<sup>26</sup> In the *Hearing Aid Compatibility Reconsideration Order*, however, the Commission determined that TDMA carriers seeking relief from the acoustic coupling compatibility requirements must complete their overbuilds by September 18, 2006, and would not be granted relief from hearing aid compatibility

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<sup>17</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, 22 FCC Rcd 7171, 7196 ¶ 60 (2007) (“*Acoustic Coupling Compatibility Waiver Order*”).

<sup>18</sup> See SLO Cellular and EU Petition for Temporary Waiver or Stay of Inductive-Coupling Handset Requirements, September 14, 2006.

<sup>19</sup> See SLO Cellular Petition for Temporary Waiver or Temporary Stay, November 17, 2006. SLO Cellular requested that its petition be accepted for filing *nunc pro tunc* as of October 16, 2006.

<sup>20</sup> See *id.* at 2. See also SLO Cellular, Sixth Semi-Annual Report, November 17, 2006, at 2.

<sup>21</sup> See SLO Cellular Petition for Temporary Waiver or Temporary Stay, November 17, 2006, at 2.

<sup>22</sup> See *id.* at 1, 5.

<sup>23</sup> See SLO Cellular Supplement to Petition for Temporary Waiver or Temporary Stay, June 6, 2007, at 2.

<sup>24</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing-Aid Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, FCC 08-67 (released February 27, 2008) (“*February 2008 Inductive Coupling Compatibility Waiver Order*”).

<sup>25</sup> See *id.* at ¶ 34.

<sup>26</sup> See *id.*

obligations beyond that date.<sup>27</sup> The Commission noted that SLO Cellular provided no details in its waiver petition as to why it could not complete its overbuild by that deadline.<sup>28</sup> Consistent with the reasoning behind the *Hearing Aid Compatibility Reconsideration Order*, the Commission therefore denied SLO Cellular relief from the inductive coupling compatibility obligations with respect to its TDMA network.<sup>29</sup> Moreover, with respect to its GSM overbuild network, the Commission observed that SLO Cellular offered no explanation for its delay in offering compatible handset models other than “oversight.”<sup>30</sup> According to the Commission, “[u]nlike those carriers who made diligent efforts to obtain inductive coupling-compatible handsets but were unable timely to procure supplies, SLO [Cellular]’s inattention does not constitute extraordinary circumstances to support a waiver.”<sup>31</sup> The Commission therefore denied SLO Cellular’s waiver petitions and referred its apparent violations of Sections 20.19(c)(2)(i)(B)(1) and 20.19(d)(2) of the rules to the Enforcement Bureau.<sup>32</sup>

### III. DISCUSSION

#### A. Failure to Comply with the Hearing Aid Compatibility Requirements on its GSM Network

8. Section 20.19(c)(2)(i)(B)(1) of the Rules requires digital wireless service providers that are overbuilding a TDMA network to begin offering for sale to customers that receive service from the overbuilt (i.e., non-TDMA) portion of their network at least two handset models with reduced emission levels that meet at least a U3 rating for radio frequency interference by September 16, 2005. SLO Cellular made its overbuilt GSM network commercially available on October 16, 2006. As noted above, SLO Cellular admitted that it offered only one handset that was U3-rated for radio frequency interference at the time that it made its GSM network commercially available. SLO Cellular did not offer a second handset model that met a U3 rating until December 1, 2006, approximately one and a half months later.<sup>33</sup>

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<sup>27</sup> See *id.* at ¶ 34; see also *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11243 ¶ 50.

<sup>28</sup> See *February 2008 Inductive Coupling Compatibility Waiver Order* at ¶ 34.

<sup>29</sup> Although SLO Cellular did not address the matter in its pleadings, the Commission also noted that under Section 20.19(c)(2)(i)(B) of the rules, SLO Cellular was entitled to relief from the acoustic coupling-compatibility requirement on its TDMA network only on the condition that it complete its overbuild by September 18, 2006. Previously, the Commission had dismissed SLO Cellular’s request for waiver of the acoustic coupling-compatibility requirement on the ground that it qualified for the relief afforded in the *Hearing Aid Compatibility Reconsideration Order*. This dismissal, however, was predicated on the assumption that SLO Cellular would comply with the conditions that the Commission established for relief. Therefore, because it missed the overbuild deadline, the acoustic coupling-compatibility requirement applied to SLO Cellular’s TDMA network as of September 18, 2006. Noting that it was not aware that any compatible TDMA handsets are available on the market, the Commission questioned SLO Cellular’s compliance with this requirement and directed the Enforcement Bureau to investigate this possible violation as well. See *id.* at n. 133.

<sup>30</sup> See *id.* at ¶ 34.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> On November 30, 2007, SLO Cellular and the Enforcement Bureau executed a Tolling Agreement tolling the one-year statute of limitations set forth in Section 503(b)(6) of the Act until March 15, 2008 in order to permit settlement discussions. Tolling Agreement, File No. EB-07-SE-407, executed by and between Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Bruce G. Patterson, Executive Vice President, SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo (November 30, 2007). SLO Cellular subsequently declined to extend the Tolling Agreement.

Accordingly, we conclude that SLO Cellular apparently willfully<sup>34</sup> and repeatedly<sup>35</sup> failed to comply with Section 20.19(c)(2)(i)(B)(1) of the Rules.

9. 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. SLO Cellular made its overbuilt GSM network commercially available on October 16, 2006. By its own admission, however, SLO Cellular did not offer any handset models that met a T3 rating until December 1, 2006, approximately one and a half months later. Accordingly, we conclude that SLO Cellular apparently willfully and repeatedly failed to comply with Section 20.19(d)(2) of the Rules.

## B. Proposed Forfeiture

10. 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>36</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>37</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>38</sup> We conclude under this standard that SLO Cellular is apparently liable for forfeiture for its apparent willful and repeated violations of Sections 20.19(c)(2)(i)(B)(1) and 20.19(d)(2) of the Rules.

11. Under Section 503(b)(2)(B) of the Act,<sup>39</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,

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<sup>34</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>35</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>36</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>37</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>38</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>39</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).

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>40</sup>

12. The Commission’s *Forfeiture Policy Statement*<sup>41</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>42</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>43</sup>

13. 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>44</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>45</sup>

14. 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>46</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>47</sup> In reaching this determination, we found that a violation of the labeling requirements, while serious because it deprives hearing aid users from

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<sup>40</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>41</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, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>42</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

<sup>43</sup> See *id.*

<sup>44</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>45</sup> *Id.* at 16786 ¶ 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”).

<sup>46</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*”).

<sup>47</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*; *Pine Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9205, 9210 ¶ 11 (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*.

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>48</sup> Further, because providers were required to offer at least two handset models per air interface that meet a U3 rating for radio frequency interference and 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.

15. SLO Cellular offered only one handset that met a U3 rating for radio frequency interference and did not offer any handset models that met a T3 rating at the time that it made its overbuilt GSM network commercially available on October 16, 2006. SLO Cellular did not come into compliance with the acoustic coupling and inductive coupling compatibility requirements until December 1, 2006, almost one and a half months later. Moreover, while SLO Cellular sought a waiver of the deadlines,<sup>49</sup> it not make a showing of good faith, diligent efforts to come into compliance, as other Tier III carriers did, and the commission, therefore, denied the waiver request.<sup>50</sup> Although SLO Cellular's failure to offer at least two models that meet the FCC's radio frequency interference standards for hearing aid compatibility and two models that meet the inductive coupling standards for hearing aid compatibility are continuing violations for purposes of determining an appropriate forfeiture, we exercise our prosecutorial discretion in light of the relatively short duration of the violations and decline to assess a forfeiture on a continuing violation basis in this case.<sup>51</sup> We also note that SLO Cellular is a Tier III carrier, i.e., a non-nationwide wireless radio service provider with 500,000 or fewer subscribers.<sup>52</sup> Accordingly, SLO Cellular is apparently liable for a \$15,000 forfeiture (one handset model \* \$15,000) for failing to comply with the acoustic coupling compatibility requirements in willful and repeated violation of Section 20.19(c)(2)(i)(B)(1) of the Rules, and a \$30,000 forfeiture (two handset models \* \$15,000) for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of Section 20.19(d)(2), for an aggregate proposed forfeiture of \$45,000.<sup>53</sup>

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<sup>48</sup> *South Canaan*, 23 FCC Rcd at 24.

<sup>49</sup> See SLO Cellular Petition for Temporary Waiver or Temporary Stay, November 17, 2006.

<sup>50</sup> *February 2008 Inductive Coupling Compatibility Waiver Order* at ¶ 34. See also *supra* ¶ 7.

<sup>51</sup> We caution SLO Cellular 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>52</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>53</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 SLO Cellular'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, 1828 (2006) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967) *recon. denied*, 11 FCC 2d 193, 195 (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 SLO Cellular's apparent violations that have occurred within the past year.



### C. Failure to Comply with the Hearing Aid Compatibility Requirements on its TDMA Network

16. Under Section 20.19(c)(2)(i)(B) of the Rules, digital wireless providers carriers are considered compliant with the September 16, 2005 handset deployment benchmark for acoustic coupling compatibility if they: (1) offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (i.e., non-TDMA) portion of the network, (2) overbuild their entire network, and (3) complete the overbuild by September 18, 2006. SLO Cellular did not complete its overbuild of its TDMA network until October 16, 2006. The Commission accordingly found in the *February 2008 Inductive Coupling Compatibility Waiver Order* that the acoustic coupling compatibility requirement applied to SLO Cellular's TDMA network as of September 18, 2006.<sup>54</sup> In addition, under Section 20.19(d)(2) of the Rules, digital wireless service providers must 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. In the *February 2008 Inductive Coupling Compatibility Waiver Order*, the Commission denied SLO Cellular relief from the inductive coupling compatibility obligations with respect to its TDMA network, noting that it failed to provide any details as to why it as could not complete its overbuild by September 18, 2006.<sup>55</sup> We therefore conclude that SLO Cellular apparently violated Sections 20.19(c)(2)(i)(B) and 20.19(d)(2) of the Rules by failing to comply with the acoustic coupling and inductive coupling compatibility requirements on its TDMA network by September 18, 2006. We note, however, that the statute of limitations for proposing a forfeiture for these violations is one year from the date of violation.<sup>56</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 SLO Cellular for these violations.

### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty-five thousand dollars (\$45,000) for willful and repeated violations of Sections 20.19(c)(2)(i)(B)(1) and 20.19(d)(2) of the Rules.

18. **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, SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. **IT IS FURTHER ORDERED** that SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo **IS ADMONISHED** for failing to comply with the acoustic coupling and inductive coupling compatibility requirements on its TDMA network by September 18, 2006 in violation of Sections 20.19(c)(2)(i)(B) and 20.19(d)(2) of the Rules.

20. 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

<sup>54</sup> See *February 2008 Inductive Coupling Compatibility Waiver Order* at n. 133.

<sup>55</sup> See *id.* at ¶ 34.

<sup>56</sup> See 47 U.S.C. § 503(b)(6); 47 C.F.R. § 1.80(c)(3).

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.

21. 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.

22. 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.

23. **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 SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo, 733 Marsh Street, Suite B, San Luis Obispo, California 93401, and to Robert M. Jackson, Esquire, Counsel for SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, 2120 L Street, N.W., Suite 300 Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Susan McNeil  
Deputy Chief, Enforcement Bureau