

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

In the Matter of)	
)	File No. EB-09-SE-161
Smith Bagley, Inc.)	NAL/Acct. No. 201032100006
d/b/a Cellular One of NE Arizona)	FRN # 0013706106

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 23, 2009

Released: November 25, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we propose a forfeiture of fifteen thousand dollars (\$15,000) against Smith Bagley, Inc., d/b/a Cellular One of NE Arizona (“SBI”), a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier,¹ serving parts of Arizona and New Mexico. As detailed herein, we find that SBI apparently willfully and repeatedly violated Section 20.19(c)(3) of the Commission’s Rules (“Rules”),² by failing to timely provide in its digital wireless handset offerings to consumers at least eight handset models that meet the radio frequency interference standards for hearing aid compatibility set forth in Section 20.19(b)(1), or in the alternative, ensure that at least 50% percent of the handset models that it offered to consumers complied with the radio frequency interference standards.

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.³ 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.⁴ Specifically, the Commission adopted a standard for radio frequency interference (the

¹ Tier III carriers are non-Nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of September 2001. 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, 14847-48 ¶¶ 22-24 (2002) (“*Non-Nationwide Carrier Order*”).

² 47 C.F.R. § 20.19(c)(3).

³ *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).

⁴ 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

“M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁵

3. In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established, for each standard, deadlines from 2008 through 2011 by which service providers are required to offer specified numbers or percentages of digital wireless handset models per air interface⁶ that are compliant with the relevant standard if they do not come under the *de minimis* exception.⁷ Specifically, the Commission required that, prior to September 7, 2008, non-Tier I service providers include in their commercial handset offerings at least two models that met or exceeded the M3 rating for radio frequency interference.⁸ Between September 7, 2008 and May 15, 2009, non-Tier I service providers were required to make commercially available at least eight handset models per digital air interface that met or exceeded the M3 rating for radio frequency interference, or in the alternative, ensure that at least 50% of the handset models they offered per air interface met or exceeded the M3 standard.⁹ Prior to September 7, 2008, non-Tier I service providers were also required to offer at least two handset models that met or exceeded the T3 rating for inductive coupling. Between September 7, 2008 and May 15, 2009, non-Tier I

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.

⁵ As subsequently amended, Section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI 63.19-2007 (June 8, 2007). 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008 and ending January 1, 2010, a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI 63.19-2007 (June 8, 2007). 47 C.F.R. § 20.19(b)(2).

⁶ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁷ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3418-24 ¶¶ 34-46 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008); 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).

⁸ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3418 ¶ 34 and Appendix C; see also 47 C.F.R. § 20.19(c)(3)(i).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3418 ¶ 34 and Appendix C; see also 47 C.F.R. § 20.19(c)(3)(ii). Beginning May 15, 2009, the minimum number of commercially available radio frequency interference-compliant handset models per air interface that must be provided by non-Tier I service providers if they do not meet the 50 percent threshold increased to nine. 47 C.F.R. § 20.19(c)(3)(ii)(B)(2).

service providers were required to offer at least three handset models per air interface that met or exceeded the T3 rating, or in the alternative, ensure that at least one-third of their commercially available handset models per air interface met or exceeded the T3 rating.¹⁰ 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.¹¹ In order to monitor the availability of these handsets, the Commission required digital wireless service providers to submit annual status reports, beginning January 15, 2009, on efforts toward compliance with the hearing aid compatibility requirements.¹²

4. As required by the Commission, SBI submitted its annual status report on January 15, 2009.¹³ In its January 2009 Hearing Aid Compatibility Status Report ("January Status Report"), SBI reported that during each month for the period between July 2008 and December 2008,¹⁴ it offered eight handset models to consumers that met or exceeded the M3 rating, and that in January 2009, it offered nine such models, and thus was in compliance with the requirements of Section 20.19(c)(3).¹⁵ However, in a filing submitted on August 6, 2009 in response to an inquiry from the Wireless Telecommunications Bureau ("WTB"), SBI amended its January Status Report, and acknowledged that during the period between September 7, 2008 and December 31, 2008, SBI had only offered seven handset models to consumers that met or exceeded the M3 standard, and that these seven handsets did not constitute a minimum of 50% of the total number of handsets that SBI offered to consumers in that period.¹⁶

5. On September 16, 2009, WTB referred SBI's apparent violation of the hearing aid compatibility handset requirements to the Enforcement Bureau for possible enforcement action.

III. DISCUSSION

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

6. Section 20.19(c)(3) of the Rules provides that prior to September 7, 2008, non-Tier I digital wireless service providers were required to offer at least two handset models per air interface that met or exceeded the M3 rating for radio frequency interference, and between September 7, 2008 and May 15, 2009, these service providers were required either to offer for sale at least eight handset models for each air interface that met or exceeded a M3 rating for radio frequency interference, or in the alternative, to ensure that at least 50% of the handset models per air interface offered to consumers met or exceeded the M3 rating. According to its January Status Report, although SBI satisfied the requirement that it offer

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3418 ¶ 34 and Appendix C; see also 47 C.F.R. § 20.19(d). Beginning May 15, 2009, the minimum number of commercially available inductive coupling-compliant handset models per air interface that must be provided by non-Tier I service providers if they do not meet the one-third threshold increased to five. 47 C.F.R. § 20.19(d)(3)(ii)(B)(2).

¹¹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785; see also 47 C.F.R. § 20.19(f).

¹² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410 ¶ 13; 47 C.F.R. § 20.19(i)(1).

¹³ See, Smith Bagley, Inc., Hearing Aid Compatibility Status Report, Docket No. 07-250 (January 15, 2009) ("January Status Report").

¹⁴ In the status report that was due on January 15, 2009, service providers were only required to provide information on hearing aid compliant handsets for the period between July 1 and December 31, 2008. 47 C.F.R. § 20.19(i)(3).

¹⁵ See January Status Report at Exhibit A.

¹⁶ See Smith Bagley, Inc., Amended Hearing Aid Compatibility Status Report, Docket No. 07-250 (August 6, 2009) ("Amended Status Report") at Exhibit A. Specifically, in its Amended Status Report, SBI acknowledged that it previously had erroneously classified the Motorola K1 handset (FCC ID IHDT56GT1) as a M3-rated handset, when in fact it is a non-M3 compliant handset. *Id.* SBI indicated in its January Status Report that it offered a total of 18-20 handset models to consumers during this period. See January Status Report at Exhibit A.

at least two M3-compliant handset models for the months of July and August 2008, for the period from September 7, 2008 through December 31, 2008, SBI offered for sale only seven M3-compliant handset models, which did not constitute at least 50% of the total number of handset models that SBI offered to consumers. Accordingly, we conclude that SBI apparently willfully¹⁷ and repeatedly¹⁸ failed to comply with Section 20.19(c)(3) of the Rules, by failing to offer at least eight radio frequency interference-compliant handset models, or in the alternative, ensure that at least 50% of its handset models were radio frequency interference-compliant, for the period from September 7, 2008 through December 31, 2008.

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.¹⁹ 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.²⁰ 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.²¹ We conclude under this standard that SBI is apparently liable for forfeiture for its apparent willful and repeated violation of Section 20.19(c)(3) of the Rules.

8. Section 503(b)(2)(B) of the Act²² authorizes a forfeiture assessment against a common carrier up to \$150,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,500,000 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,

¹⁷ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁸ 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 (2001); *Southern California*, 6 FCC Rcd at 4388.

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

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

²¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²² 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*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945, 10947 (2004) (adjusting the maximum statutory amounts for common carriers from \$120,000/\$1,200,000 to \$130,000/\$1,300,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221, 18223 (2000) (adjusting the maximum statutory amounts for common carriers from \$100,000/\$1,000,000 to \$120,000/\$1,200,000). The most recent inflation adjustment took effect September 2, 2008 and only applies to violations that occur after that date. See 73 Fed. Reg. 44663-5. As SBI’s apparent violations occurred after September 2, 2008, they are therefore subject to the new forfeiture limits.

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³

9. The Commission’s *Forfeiture Policy Statement*²⁴ 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.”²⁵ 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.²⁶

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.²⁷ 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.²⁸

11. Our recent decisions established a base forfeiture amount of \$15,000 per handset for violations of the hearing aid compatibility handset requirements.²⁹ In establishing this base forfeiture amount, we determined that violations of the hearing aid compatibility handset requirements warranted a significantly higher forfeiture than for violations of the labeling requirements for wireless hearing aid-

²³ 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.

²⁴ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²⁵ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

²⁶ *Id.*

²⁷ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

²⁸ *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”).

²⁹ See, e.g., *SLO Cellular, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3990, 3996-97 ¶ 14 (Enf. Bur. 2008), response received; *NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009), forfeiture paid; *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567, 11571 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), response received; *Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9403 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), response received; *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), forfeiture paid; *Iowa Wireless Services, LLC d/b/a i Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4735, 4739 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008); *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706, 4711-12 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), response received.

compatible handsets.³⁰ 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.³¹ We also found that the Rules required that, prior to September 7, 2008, service providers were required to offer at least two handset models that met at least a M3 rating for radio frequency interference, and thus determined that a proposed forfeiture for violation of these requirements should be applied on a per handset basis. We see no reason to alter this logic for violations that took place between September 7, 2008 and May 15, 2009, when the number of compliant handsets that service providers were required to offer increased from two to eight, or in the alternative, to 50% of the total number of handsets available to consumers from the service provider.

12. The record establishes that from September 7, 2008 through December 31, 2008, SBI offered only seven handset models that met or exceeded the M3 standard, and thus did not satisfy the requirement that non-Tier I service providers either offer at least eight handset models, or ensure that at least 50% of the handset models that they offer, meet or exceed the M3 standard. SBI did not come into compliance with Section 20.19(c)(3) until January 2009.³² Accordingly, SBI is apparently liable for a base forfeiture of \$15,000 for failing to comply with the radio frequency interference requirements in willful and repeated violation of Section 20.19(c)(3).

13. Based on the record before us, and having considered the statutory factors set forth above, we conclude that no upward or downward adjustment of the forfeiture from the base amount of \$15,000 is warranted. We therefore propose a \$15,000 forfeiture against SBI for failing to comply with the acoustic coupling compatibility requirements in apparent willful and repeated violation of Section 20.19(c)(3).

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Smith Bagley, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Section 20.19(c)(3) 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, Smith Bagley, 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

³⁰ 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, 19255-56 ¶ 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), *consent decree ordered*, Order, 23 FCC Rcd 4485 (Enf. Bur. 2008).

³¹ *See supra* note 29.

³² *See* Amended Status Report at Exhibit A (reporting that SBI offered eight handset models meeting at least an M3 standard in January 2009).

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. SBI will also send electronic notification on the date said payment is made to Kathy Berthot at Kathy.Berthot@fcc.gov and Deborah Broderson at Deborah.Broderson@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. The response should also be emailed to Kathy Berthot at kathy.berthot@fcc.gov and Deborah Broderson at deborah.broderson@fcc.gov.

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 Richard Watkins, COO, Smith Bagley, Inc., 1500 South White Mountain Road, Suite 103, Show Low, AZ 85901, and to counsel for Smith Bagley, Inc., Thomas Gutierrez, Esq., Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Blvd., Suite 1500, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau