

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

In the Matter of)	File No. EB-09-SE-170
)	
Cbeyond Communications, LLC)	NAL/Acct. No. 201132100007
)	
)	FRN 0003759602

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 26, 2010

Released: October 26, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Cbeyond Communications, LLC (“Cbeyond”) d/b/a Beyond Mobile, a reseller of mobile wireless services,¹ apparently willfully violated the wireless handset hearing aid compatibility status report filing requirements set forth in Section 20.19(i)(1) of the Commission’s Rules (“Rules”)² and apparently willfully and repeatedly violated the public web site posting requirements set forth in Section 20.19(h) of the Rules.³ For these apparent violations, we propose a forfeiture in the amount of twelve thousand dollars (\$12,000).

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.⁴ 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.⁵ 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 interface⁶ that are compliant with the relevant standard if they did not come

¹ Cbeyond also holds Section 214 authority from the Commission to operate as a facilities-based carrier.

² 47 C.F.R. § 20.19(i)(1).

³ 47 C.F.R. § 20.19(h).

⁴ 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). See *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).

⁵ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (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).

under the *de minimis* exception.⁷ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁸

3. Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁹ The Commission initially 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).¹⁰ 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, 2009.¹¹ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹² In addition, the Commission instituted a requirement that manufacturers and service providers with publicly-accessible web sites maintain a list of hearing aid-compatible handset models and provide certain information regarding those models on their web sites.¹³ The web site postings, which must be updated within 30 days of a change in a manufacturer's or service provider's offerings, enable consumers to obtain up-to-date hearing aid compatibility information from their service providers.¹⁴

4. Cbeyond failed to timely file the required report for the period from July 1, 2008 through December 31, 2008 (due January 15, 2009). The Wireless Telecommunications Bureau ("WTB") referred Cbeyond's apparent violation of the hearing aid compatibility reporting requirements to the Enforcement Bureau for action.

5. On October 14, 2009, the Spectrum Enforcement Division of the Enforcement Bureau sent a Letter of Inquiry ("LOI") to Cbeyond.¹⁵ Cbeyond responded to the LOI on December 4, 2009.¹⁶

⁷ 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 deployment 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).

⁸ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

¹⁰ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹¹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹² *Id.* at 3446 ¶ 99.

¹³ *Id.* at 3450 ¶ 112.

¹⁴ *Id.*

¹⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. Richard J. Batelaan, Chief Operations Officer, Cbeyond, Inc. d/b/a/ Beyond Mobile (November 3, 2009) ("LOI").

On December 4, 2009, Cbeyond also filed its hearing aid compatibility status report for the July 1, 2008 through December 31, 2008 reporting period.¹⁷ In its report, Cbeyond stated that it is a relatively new service provider and was unaware of the requirement to file a hearing aid compatibility status report for the calendar year 2008.¹⁸ Cbeyond also admitted in its report that it failed to post all of the required information concerning its handsets on its publicly-accessible web site during the reporting period.¹⁹ Specifically, Cbeyond stated in its report that “[d]uring the reporting period, Cbeyond posted on its website information describing its hearing aid-compatible models and the capabilities of each. The information posted did not include ratings, which were developed after the reporting period.”²⁰

III. DISCUSSION

A. Failure to File Timely Hearing Aid Compatibility Status Report

6. Section 20.19(i)(1) of the Rules requires service providers to file hearing aid compatibility status reports on January 15, 2009 (covering the six month period ending December 31, 2008) and then annually thereafter.²¹ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether Cbeyond is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. Cbeyond admitted that it did not file the required hearing aid compatibility status report on the January 15, 2009 due date.²² Accordingly, we find Cbeyond in apparent willful²³ violation of the requirements set forth in Section 20.19(i)(1) of the Rules.²⁴

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¹⁶ See Letter from John J. Heitmann, Counsel to Cbeyond Communications, LLC to Ms. Karen Mercer, Spectrum Enforcement Division, Federal Communications Commission (December 4, 2009) (“LOI Response”). Cbeyond was granted an extension until December 4, 2009, to respond to the LOI. Cbeyond requested that its entire response be accorded confidential treatment because it contained company-specific and competitively-sensitive information concerning its business operations and customers. *Id.* This kind of blanket confidentiality request is overbroad, especially with regard to information that is otherwise in the public domain. However, we will defer action on the confidentiality request, as we need not disclose potentially sensitive information in this *NAL*. See 47 C.F.R. § 0.459(d)(3).

¹⁷ See Cbeyond Communications, LLC Hearing Aid Compatibility Status Report (filed December 4, 2009) (“Report”) at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020351164>.

¹⁸ *Id.* at Cover Letter.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 8. It also appears from the information before us that Cbeyond failed to provide an explanation of the rating system on its web site.

²¹ 47 C.F.R. § 20.19(i)(1).

²² Report at Cover Letter.

²³ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008) (“*Telrite*”); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007); *San Jose Navigation, Inc.*, Forfeiture Order 22 FCC Rcd 1040, 1042 ¶ 9 (2007).

²⁴ 47 C.F.R. § 20.19(i)(1).

B. Failure to Post Required Information Concerning Hearing Aid-Compatible Handset Models on its Web Site

7. Section 20.19(h) of the Rules requires that, beginning January 15, 2009, each manufacturer and service provider that operates a publicly-accessible web site make available on its web site a list of all hearing aid-compatible handset models currently offered, the ratings of those models, and an explanation of the rating system. In addition, the Commission has stated that any changes to a manufacturer's or service provider's offerings must be reflected on its public web site listing within 30 days of the change.²⁵ These web site postings provide consumers up-to-date hearing aid compatibility information. Cbeyond admitted that it failed to provide ratings information for its hearing aid-compatible handset models on its web site during the reporting period.²⁶ Accordingly, we find that Cbeyond apparently willfully and repeatedly violated the web site posting requirements set forth in Section 20.19(h) of the Rules.

C. Proposed Forfeiture

8. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁷ 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.²⁸ 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.²⁹ Under this standard, we conclude that Cbeyond is apparently liable for forfeiture for its failure to timely file the required hearing aid compatibility status report in apparent willful violation of Section 20.19(i)(1) of the Rules, and for its failure to post the required information regarding its hearing aid-compatible handsets on its web site in apparent willful and repeated violation of Section 20.19(h) of the Rules.

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.³⁰ While the base forfeiture guidelines lend 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.³¹ In exercising such discretion, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to

²⁵ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

²⁶ Report at 8. Subsequent to receipt of the LOI, CBeyond posted the required information for its hearing aid-compatible handset models on its web site at [www.cbeyond.net/small-business-solutions/core-packages/beyondvoice-mobile-edition/hearing-aid-compatible-\(hac\)-devices](http://www.cbeyond.net/small-business-solutions/core-packages/beyondvoice-mobile-edition/hearing-aid-compatible-(hac)-devices).

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

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

²⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

³⁰ *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, 17113, *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures.

³¹ 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*).

the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³²

10. We have exercised our discretion to set a higher base forfeiture amount for violations of the wireless hearing aid compatibility reporting requirements. In the *American Samoa Telecommunications Authority NAL*, we found that status reports are essential to the implementation and enforcement of the hearing aid compatibility rules.³³ 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.³⁴ We noted 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.³⁵ We also noted that the Commission has adjusted upward the base forfeiture when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.³⁶ Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we exercised our discretionary authority and established a base forfeiture amount of \$6,000 for failure to file hearing aid compatibility reports.³⁷ Consistent with *ASTCA*, we believe the established \$6,000 base forfeiture for each hearing aid compatibility reporting violation should apply here.

11. Failure to file these reports, as is the case here, can have an adverse impact on the Commission’s ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets, to the detriment of consumers. Furthermore, in *ASTCA*, we made clear that failure to file a hearing aid compatibility status report constitutes a continuing violation that continues until the violation is cured.³⁸ Cbeyond’s failure to file the report on time had an adverse impact on the Commission’s ability to monitor and ensure the commercial availability of hearing aid-compatible digital wireless handsets. We do not believe that the circumstances presented warrant any downward adjustment of the proposed forfeiture amount. It is well established that a violator’s lack of knowledge or erroneous beliefs are not a mitigating factor warranting a forfeiture reduction.³⁹ Accordingly, we propose a forfeiture of \$6,000

³² 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.

³³ See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending* (“*ASTCA NAL*”).

³⁴ See *ASTCA NAL*, 23 FCC Rcd at 16436-47 ¶ 10.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 16437 ¶ 11. See also *Telrite*, 23 FCC Rcd at 7244-45 (determining that the failure to file Telecommunications Reporting Worksheets was a continuing violation); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138 (2008) (same); *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).

³⁹ See, e.g., *Profit Enterprises, Inc.*, Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 2846, 2846 ¶ 5 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor”); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 ¶ 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an (continued ...)

against Cbeyond for apparently willfully failing to timely file its January 15, 2009 hearing aid compatibility status report in violation of Section 20.19(i)(1) of the Rules.⁴⁰

12. We have also recently exercised our discretion to set a higher base forfeiture amount for violation of the web posting requirements set forth in Section 20.19(h) of the Rules. In determining the appropriate forfeiture amount for violation of the web site information posting requirements, we noted that these requirements are “essential to the proper functioning of our hearing aid compatibility rules” and serve to increase the availability of up-to-date hearing aid compatibility information to consumers and service providers.⁴¹ In particular, we found that the web site may be the primary means through which consumers obtain information, and that the updated information between status reports is likely to be critical to both consumers and service providers.⁴² We further found that the web site postings, which must be updated within 30 days of a change in a manufacturer’s or service provider’s offerings, will enable consumers to obtain up-to-date hearing aid compatibility information from their service providers and will also enable service providers to readily obtain up-to-date information from their manufacturer suppliers.⁴³ Accordingly, we concluded that the same considerations that led us to increase the base forfeitures for hearing aid compatibility status reporting violations also apply to the requirement for web posting.⁴⁴ We therefore established \$6,000 as the base forfeiture for violation of Section 20.19(h).⁴⁵

13. As noted above, while Cbeyond did provide some limited information, Cbeyond admitted in its Report that it failed to provide information about the ratings of its hearing aid-compatible handset models on its web site—information that the Commission deemed important for consumers with hearing disabilities. Accordingly, we propose a forfeiture of \$6,000 against Cbeyond for apparently willfully and repeatedly⁴⁶ failing to provide required information concerning its hearing aid-compatible handset models on its public web site in violation of Section 20.19(h) of the Rules.⁴⁷

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unfamiliarity with the station identification requirements, stating that licensees are expected “to know and conform their conduct to the requirements of our rules”); *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935 ¶ 7 (Enf. Bur. 2000), *forfeiture ordered*, 15 FCC Rcd 23991 (Enf. Bur. 2000), (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broadcasting Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784 ¶ 2 (MMB 1993), *recon. denied*, Memorandum Opinion and Order, 8 FCC Rcd 4322 (MMB 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of “inadverten[ce], due to inexperience and ignorance of the rules ... are not reasons to mitigate a forfeiture” for violation of the advertisement restrictions).

⁴⁰ 47 C.F.R. § 20.19(i)(1).

⁴¹ See e.g., *Locus Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 330, 335 ¶ 13 (Enf. Bur., Spectrum Enf. Div. 2010) (“*Locus*”) (quoting *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112).

⁴² *Locus*, 25 FCC Rcd at 335 ¶ 14.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ In this regard, we note that each manufacturer and service provider is required to continuously maintain the required information concerning its hearing aid-compatible handset models on its web site and to update the web sites within 30 days of a change in its handset offerings.

⁴⁷ 47 C.F.R. § 20.19(h).

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Cbeyond **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for its failure to timely file its hearing aid compatibility status reports in apparent willful violation of the requirements set forth in Section 20.19(i)(1) of the Rules, and for failing to post required information concerning its hearing aid-compatible handset models on its public web site in apparent willful and repeated violation of Section 20.19(h) 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, Cbeyond **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement 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 statement should also be emailed to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Karen Mercer at Karen.Mercer@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 J. Batelaan, Chief Operating Officer, Cbeyond Communications, LLC, 320 Interstate North Parkway, Suite 500, Atlanta, Georgia 30339, and to John J. Heitmann, Esq., Kelley Drye & Warren, 3050 K Street, N.W., Suite 400, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau