

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

In the matter of	)	
	)	File No. EB-10-SE-119
Sandhill Communications	)	NAL/Acct. No. 201132100017
	)	
	)	FRN 0001886464

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 30, 2010**

**Released: December 30, 2010**

By the Chief, 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 Sandhill Communications (“Sandhill”), a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier,<sup>1</sup> serving parts of South Carolina. As detailed herein, we find that Sandhill apparently willfully and repeatedly violated section 20.19(c)(3)(ii) of the Commission’s rules (“Rules”),<sup>2</sup> by failing to offer to consumers the required number or percentage of digital wireless handsets that met or exceeded the radio frequency interference standards for hearing aid compatibility set forth in section 20.19(b)(1) of the Rules.<sup>3</sup>

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>4</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>5</sup>

<sup>1</sup> Tier III carriers are non-Nationwide wireless radio service providers with 500,000 or fewer subscribers. *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).

<sup>2</sup> 47 C.F.R. § 20.19(c)(3)(ii).

<sup>3</sup> 47 C.F.R. § 20.19(b)(1).

<sup>4</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). 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 (“Act”), 47 U.S.C. § 610(b)(2)(C).

<sup>5</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  
(continued....)

Specifically, the Commission adopted a standard for radio frequency interference (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.<sup>6</sup>

3. In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established several deadlines between 2008 and 2011 by which manufacturers and service providers are required to offer specified numbers or percentages of digital wireless handset models.<sup>7</sup> The number or percentage of digital wireless handset models required by each deadline is based on several factors, including the applicable interference standard and air interface.<sup>8</sup> For example, between May 15, 2009 and May 14, 2010, non-Tier I service providers were required to ensure that at least nine handset models per digital air interface, or at least 50% of the models offered per digital air interface, met or exceeded the M3 rating,<sup>9</sup> and that at least five handset models per digital air interface, or at least one-third of the models

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telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Id.* at 16763 ¶ 22.

<sup>6</sup> 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).

<sup>7</sup> These requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. 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). We note that the Commission recently limited the *de minimis* exception to exclude service providers that are not small entities after an initial two-year period. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-89 ¶¶ 35-59 (2010).

<sup>8</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 Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

<sup>9</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

offered per digital air interface, met or exceeded the T3 rating.<sup>10</sup> To ensure that the Commission can accurately 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), the FCC also requires annual compliance reports from service providers and manufacturers.<sup>11</sup>

4. On January 6, 2010, Sandhill submitted its hearing aid compatibility status report for the 2009 reporting period.<sup>12</sup> Some of the handsets that Sandhill claimed as hearing-aid compatible, however, have not been rated as such. Specifically, Sandhill's 2009 Report revealed apparent inconsistencies between the hearing aid compatibility ratings for certain handsets listed in Sandhill's 2009 Report and the ratings for those handsets specified in the relevant equipment authorizations.<sup>13</sup> Taking into account these apparent inconsistencies, Sandhill's 2009 Report indicated that in August and December of 2009, it did not offer to consumers the required number or percentage of handsets that met or exceeded the M3 rating. Specifically, instead of the required nine handsets, only eight of 17 handset models it offered to consumers in August of 2009 met or exceeded the M3 rating, and only eight of 18 handset models it offered to consumers in December of 2009 met or exceeded the M3 rating.<sup>14</sup>

5. The Wireless Telecommunications Bureau subsequently referred Sandhill's apparent violation of the hearing aid-compatible handset deployment requirements to the Enforcement Bureau ("Bureau") for possible enforcement action. On September 23, 2010, the Bureau issued a letter of inquiry ("LOI") to Sandhill.<sup>15</sup> Sandhill responded to the LOI on October 13, 2010.<sup>16</sup> In its LOI Response, Sandhill claimed that as a result of "inadvertent human error," it incorrectly reported the HTC Quickfire handset model (FCC ID O6Y-GTX75) as M4/T4-rated<sup>17</sup> and the LG Shine handset model (FCC ID BEJCU720) as M3/T3-rated.<sup>18</sup> Sandhill also stated that it incorrectly reported the Samsung SGH-I617

<sup>10</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

<sup>11</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91; 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). 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. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410 ¶ 13. In addition, the Commission made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception. *Id.* at 3446 ¶ 99.

<sup>12</sup> See Sandhill Communications Hearing Aid Compatibility Status Report (filed January 6, 2010) ("2009 Report"), at [http://wireless.fcc.gov/hac\\_documents/100317/Sandhill%20Communicati\\_104.PDF](http://wireless.fcc.gov/hac_documents/100317/Sandhill%20Communicati_104.PDF) (last visited December 29, 2010).

<sup>13</sup> Specifically, Sandhill's 2009 Report indicated that the HTC Quickfire handset (FCC ID O6Y-GTX75) has an M4/T4 rating, the Samsung SGH-I617 handset (FCC ID A3LSGHI617) has an M3/T3 rating, and the LG Shine handset (FCC ID BEJCU720) has an M4/T4 rating. See 2009 Report. Commission records, however, show that these handsets have not been rated for hearing aid compatibility.

<sup>14</sup> See 2009 Report.

<sup>15</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ms. Jeanne K. Oliver, Sandhill Communications (September 23, 2010) ("LOI").

<sup>16</sup> See Letter from Ms. Jeanne K. Oliver, Sales Supervisor, October 13, 2010, Sandhill Communications, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 13, 2010) ("LOI Response").

<sup>17</sup> LOI Response at 1.

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

handset model (FCC ID A3LSGHI617) as M3/T3 rated because, “[a]s a reseller of AT&T Wireless, Sandhill relies on the handset ratings provided by AT&T. The AT&T website indicated an M3 rating for Samsung SGH-I617 handset. . . .”<sup>19</sup> Sandhill further added that, after making adjustments for the errors made in its report and the inconsistency between the third-party website and the Commission’s records, it concluded “that the handset deployment requirements set forth in 47 C.F.R. § 20.19 (c)(3)(ii) were met with the exception of two months, August and December 2009.”<sup>20</sup>

### III. DISCUSSION

#### A. Failure to Comply with Hearing Aid-Compatible Handset Deployment Requirements

6. According to its 2009 Report, Sandhill failed to ensure that it offered the required number of handset models that met or exceeded the M3 rating during the 2009 reporting period. Section 20.19(c)(3)(ii) required non-Tier I digital wireless service providers, like Sandhill, to ensure that between May 15, 2009 and May 14, 2010, for each air interface for which they offered handsets to consumers,<sup>21</sup> at least 50% of the handset models they offered, or at least nine handset models, met or exceeded the M3 rating for radio frequency interference.<sup>22</sup> Thus, Sandhill was required to offer at least nine M3-compliant handsets from May 15, 2009 through the end of calendar year 2009. Only eight of the 17 handset models Sandhill offered to consumers in August of 2009, however, met or exceeded the M3 rating, and only eight of the 18 handset models it offered to consumers in December of 2009 met or exceeded the M3 rating.

7. While Sandhill asserted in its LOI Response that it incorrectly claimed some handset models as hearing-aid compatible due to “inadvertent human error,”<sup>23</sup> the Commission has held that violations resulting from errors or a failure to become familiar with the FCC’s requirements are willful violations.<sup>24</sup> Section 312(f)(1) of the Act<sup>25</sup> provides that “the term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission.”<sup>26</sup> Indeed, it is well established that, in the context of forfeiture actions, “willful” does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term “willful” simply requires that the violator knew it was

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 3.

<sup>21</sup> All of Sandhill’s handsets for the 2009 reporting period operated only over the GSM air interface.

<sup>22</sup> 47 C.F.R. § 20.19(c)(3)(ii).

<sup>23</sup> LOI Response at 1 and 3, respectively.

<sup>24</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“Southern California”) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>25</sup> 47 U.S.C. § 312(f)(1).

<sup>26</sup> 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* 6 FCC Rcd 4387, 4387-88.

taking or failing to take the action in question, irrespective of any intent to violate the Commission's rules.<sup>27</sup> Sandhill is also responsible for the acts and omissions of its employees and third party contractors.<sup>28</sup> Accordingly, we conclude that Sandhill apparently willfully and repeatedly violated section 20.19(c)(3)(ii) of the Rules.

## B. 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.<sup>29</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>30</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>31</sup> We conclude under this standard that Sandhill is apparently liable for a forfeiture for its apparent willful and repeated violations of section 20.19(c)(3)(ii) of the Rules.

9. Section 503(b)(2)(B) of the Act 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.<sup>32</sup> In exercising such authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator,

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<sup>27</sup> See *Southern California*, 6 FCC Rcd at 4387-88 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance" and applying the definitions of willful in section 312(f)(1) to forfeiture cases). See also *Abocom Systems, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7448, 7451 (Enf. Bur. 2007) (rejecting Abocom's argument that it was only "inadvertently noncompliant" and that "its actions were not deliberate or intended to violate the rules"); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651-52 (Enf. Bur., Spectrum Enf. Div. 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div. 2006) ("*Domtar Industries*") (same); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div. 2006) (same).

<sup>28</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>29</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>30</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>31</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>32</sup> 47 U.S.C. § 503(b)(2)(B). The Commission has amended section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. 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); 73 Fed. Reg. 44663-5.

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>33</sup>

10. The Commission’s *Forfeiture Policy Statement*<sup>34</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>35</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>36</sup>

11. In determining the appropriate forfeiture amount for violation of the hearing aid-compatible handset deployment requirements, we take into account that these requirements serve to ensure that consumers with hearing loss 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 loss should not be denied the public safety and convenience benefits of digital wireless telephony.<sup>37</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>38</sup>

12. We have previously determined that violations of the hearing aid-compatible handset deployment requirements are serious in nature because failure to make compliant handsets available actually prevents hearing aid users from accessing digital wireless communications.<sup>39</sup> As such, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.<sup>40</sup> We have

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<sup>33</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>34</sup> 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*”).

<sup>35</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

<sup>36</sup> *Id.*

<sup>37</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>38</sup> *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, 28 million, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). See also *Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 ¶ 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was “at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade”).

<sup>39</sup> Compare, 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 and Consent Decree, 23 FCC Rcd 4485 (Enf. Bur. 2008).

<sup>40</sup> See, e.g., *Oklahoma Independent RSA 5 Partnership*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12589, 12593-94 ¶ 11 (Enf. Bur. 2010), response pending; *OK-5 Licensee Co., LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12610, 12614-15 ¶ 11 (Enf. Bur. 2010), response pending; *TX-10 Licensee, LLC dba Cellular One*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12602, 12606-07 ¶ 11 (Enf. Bur. 2010), (continued....)

also applied the \$15,000 base forfeiture on a per handset basis (*i.e.*, for each handset model below the minimum number of hearing aid-compatible handsets required by the rules).<sup>41</sup>

13. The record establishes that only eight of the 17 handsets Sandhill offered for sale in August of 2009, and only eight of the 18 handsets offered in December of 2009, met or exceeded the M3 rating. Furthermore, Sandhill admits that it failed to comply for these two months, and therefore, Sandhill did not satisfy the requirement that non-Tier I service providers ensure that at least 50% of the handset models they offered or nine handset models met or exceeded the M3 rating for radio frequency interference. Accordingly, because Sandhill was one handset short of the minimum number of M3-compliant handsets in August and December of 2009, Sandhill is apparently liable for a forfeiture of \$15,000 for willful and repeated violations of section 20.19(c)(3)(ii) of the Rules.

14. 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 under these particular circumstances. While Sandhill argues that the inconsistency in the rating for the Samsung SGH-I617 handset model was due to reliance on information that it obtained from a third-party website,<sup>42</sup> it is well established that a violator's erroneous beliefs are not a mitigating factor warranting a forfeiture reduction.<sup>43</sup> We also note that hearing aid compatibility ratings information for wireless handsets is publicly-available on the FCC's web site, simply by entering the FCC

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*response pending; SLO Cellular, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3990, 3996-97 ¶ 14 (Enf. Bur. 2008), *response pending; NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009); *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567, 11571 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending; Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9403 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending; Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008); *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 pending*.

<sup>41</sup> *Id.*

<sup>42</sup> LOI Response at 2.

<sup>43</sup> *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 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 "inadvertent[ce], due to inexperience and ignorance of the rules ... are not reasons to mitigate a forfeiture" for violation of the advertisement restrictions).

Identification number for the handset into the Office of Engineering and Technology's Equipment Authorization Database.<sup>44</sup>

15. In light of the foregoing, we propose a \$15,000 forfeiture against Sandhill for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in section 20.19(c)(3)(ii) of the Rules.<sup>45</sup>

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, and 1.80 of the Rules,<sup>46</sup> Sandhill Communications **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violations of section 20.19(c)(3)(ii) of the Rules.

17. **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*, Sandhill Communications **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. 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 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:

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<sup>44</sup> See <http://www.fcc.gov/oet/ea/fccid/>. The hearing aid compatibility ratings information is included on the equipment certification for the handset.

<sup>45</sup> Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. 47 U.S.C. § 503(b)(6). Section 503(b)(6) does not, however, bar the Commission from assessing whether Sandhill's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 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 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid). Thus, while we may consider the fact that Sandhill's conduct occurred during at least two months (August and December, 2009), the forfeiture amount we propose herein relates only to the apparent violations that have occurred within the past year.

<sup>46</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.



ar inquiries@fcc.gov with any questions regarding payment procedures. Sandhill Communications must also send electronic notification on the date said payment is made to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

19. 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/Account No. referenced in the caption. The statement must also be emailed to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

20. 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.

21. **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 Jeanne K. Oliver, Sales Supervisor, Sandhill Communications, 122 S. Main Street, Jefferson, South Carolina 29718.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau