

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

In the matter of)	
)	File No. EB-09-SE-186
)	NAL/Acct. No. 201132100019
STi Prepaid, LLC)	FRN 0016004731

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 find that STi Prepaid, LLC, a reseller of wireless services through its operating division, STi Mobile (collectively, “STi Prepaid”),¹ apparently willfully and repeatedly violated section 20.19(e)(2) of the Commission’s rules (“Rules”)² by failing for 18 months to include in its digital wireless handset offerings at least one handset model that meets the inductive coupling standard for hearing aid compatibility set forth in section 20.19(b)(2) of the Rules.³ Further, we find that STi Prepaid apparently willfully violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules,⁴ and apparently willfully and repeatedly violated the public web site posting requirements set forth in section 20.19(h) of the Rules.⁵ For these apparent violations, we propose a total forfeiture of thirty-four thousand five hundred dollars (\$34,500).

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.⁶ The Commission established technical standards that digital wireless handsets must meet to be considered

¹ STi Prepaid also holds both domestic and international section 214 authorizations.

² 47 C.F.R. § 20.19(e)(2).

³ 47 C.F.R. § 20.19(b)(2).

⁴ 47 C.F.R. § 20.19(i)(1).

⁵ 47 C.F.R. § 20.19(h).

⁶ 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) (“*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).

compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁷ Specifically, the Commission adopted a standard for radio frequency interference (the “M” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode and a separate standard (the “T” rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁸

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.⁹ 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 as well as the number of handsets offered.¹⁰ In this regard, the Commission created the *de minimis* exception set forth in section 20.19(e) of the Rules, which establishes different handset deployment benchmarks for manufacturers and service providers that offer three or fewer handset models. Under the *de minimis* exception, service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements.¹¹ Service providers that offer three digital wireless handset models per air interface, however, must offer at least one model that is compliant with the acoustic coupling standard and at least one model that is compliant with the inductive coupling standard.¹²

4. The Commission also adopted reporting requirements to ensure that it could monitor the availability of hearing aid-compatible handsets and to provide valuable information to the public concerning the technical testing and commercial availability of these handsets (including on the

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁸ As subsequently amended, section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending January 1, 2010, a newly certified 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 newly certified 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). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

⁹ 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).

¹⁰ 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).

¹¹ 47 C.F.R. § 20.19(e).

¹² *Id.* We note that the Commission recently limited the *de minimis* exception so that it is unavailable to 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, FCC 10-145 ¶¶ 35-59 (rel. Aug. 5, 2010).

Internet).¹³ 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).¹⁴ 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, 2009.¹⁵ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹⁶ In addition, the Commission required manufacturers and service providers with publicly-accessible web sites to maintain a list of hearing aid-compatible handset models and provide certain information regarding those models on their web sites.¹⁷ 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.¹⁸

5. STi Prepaid, a reseller of wireless services, failed to file the required hearing aid compatibility status report for the period July 1, 2008 through December 31, 2008 (originally due on January 15, 2009), and failed to post on its web site all of the required information concerning the ratings and levels of functionality of its hearing aid-compatible handset models. The Wireless Telecommunications Bureau referred STi Prepaid's apparent violation of the reporting and web site requirements to the Enforcement Bureau for possible enforcement action.

6. On November 23, 2009, the Spectrum Enforcement Division of the Enforcement Bureau ("Bureau") issued STi Prepaid a letter of inquiry ("LOI").¹⁹ STi Prepaid responded to the LOI on December 8, 2009, noting that "STi Mobile is an operating division of STi Prepaid, which provides interstate and international prepaid telecommunications services."²⁰ STi Prepaid states that it is a mobile virtual network operator ("MVNO"), and that it relies on Sprint Nextel for all of its underlying network services and handsets.²¹ STi Prepaid admits that it failed to file the service provider report due January 15, 2009, but claims that such failure was "[d]ue to an administrative oversight."²² Given that it obtains all of its underlying network services and handsets via its contractual relationship with Sprint Nextel, STi Prepaid also asserts that it "was not aware that it had an independent obligation to file the report."²³ STi

¹³ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

¹⁴ *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).

¹⁵ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹⁶ *Id.* at ¶ 99.

¹⁷ *Id.* at 3450 ¶ 112.

¹⁸ *Id.*

¹⁹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Sam Tawfik, Chief Executive Officer, STi Mobile (November 23, 2009).

²⁰ See Letter from Richard Rebeti, Chief Technical Officer, STi Prepaid, LLC, to Katherine Power, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 8, 2009) ("Response").

²¹ *Id.* at 1.

²² *Id.* at 2.

²³ *Id.*

Prepaid further claims that because it currently offers only three handsets all within the same air interface (CDMA), it falls within the *de minimis* exception and is only required to offer one handset model that meets the “hearing aid and [sic] acoustic coupling standards.”²⁴ In addition, STi Prepaid argues that it is in “substantial” compliance with the web posting requirements in section 20.19(h) of the Rules, noting that it posted the user guide for the M3-rated LG LX-225 handset model²⁵ on its website and that the user guide explains the difference between the M3 and M4 ratings. STi Prepaid acknowledged, however, that the user guide “does not contain information on the inductive coupling rating for that handset.”²⁶ As to the reporting requirements, STi Prepaid also stated that it would file the report originally due January 15, 2009 as soon as electronically possible, and that it will timely file all future reports.²⁷ The record reflects that STi Prepaid filed its 2008 report eleven months late,²⁸ and that it timely filed its 2009 report.²⁹

III. DISCUSSION

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

7. We find that STi Prepaid failed to offer the required number of hearing aid-compatible handsets that met or exceeded the T3 rating for 18 months, *i.e.*, during the entire 2008 and 2009 reporting periods. As noted above, section 20.19(e)(2) of the Rules establishes a *de minimis* exception, requiring service providers that offer three digital wireless handset models per air interface to ensure that at least one handset model meets or exceeds the M3 rating for acoustic coupling and at least one handset model meets or exceeds the T3 rating for inductive coupling.³⁰ STi Prepaid asserts that it falls within the *de minimis* exception and is only required to offer one handset model that meets the “hearing aid and [sic] acoustic coupling standards.”³¹ Based on STi Prepaid’s response to the LOI and its hearing aid

²⁴ *Id.* at 1-2. Specifically, STi Prepaid states that it currently offers the following three handset models: LG LX-225, Sanyo SCP-200, and Samsung SPH-A660. *Id.* at 1. Commission records indicate that the LG LX-225 handset (FCC ID BEJLX125) and the Sanyo SCP-200 handset (FCC ID AEZSCP-02H) both meet an M3 rating for acoustic coupling but do not meet at least a T3 rating for inductive coupling. The Samsung SPH-A660 handset (FCC ID A3LSPHA660) does not meet either the M3 or T3 rating.

²⁵ Response at 2. *See also* <http://www.stimobile.com/lg225-user-manual.pdf>, pp. 185-6. (last visited December 30, 2010).

²⁶ Response at 2.

²⁷ *Id.*

²⁸ STi Prepaid filed the report for the period July 1, 2008 through December 31, 2008 (originally due on January 15, 2009) on December 30, 2009. *See* STi Prepaid Hearing Aid Compatibility Status Report (filed December 30, 2009) at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020355066> (“2008 Report”). This report indicates that STi Prepaid offered only three handset models during the 2008 reporting period: the LG LX-225, the Sanyo SCP-200, and the Samsung SPH-A660.

²⁹ STi Prepaid timely filed the report for the period January 1, 2009 through December 31, 2009 on January 14, 2010. *See* STi Prepaid Hearing Aid Compatibility Status Report (filed January 14, 2010) at http://wireless.fcc.gov/hac_documents/100317/STi%20Prepaid,%20LLC%20on%20_95.PDF (“2009 Report”). The 2009 Report indicated that STi Prepaid only offered the same three handset models during the 2009 reporting period as it did during the 2008 reporting period: the LG LX-225, the Sanyo SCP-200, and the Samsung SPH-A660.2009.

³⁰ 47 C.F.R. § 20.19(e)(2) (“service providers that offer three digital wireless handset models in an air interface must offer at least one handset model compliant with paragraphs (b)(1) and (b)(2) of this section in that air interface.”); *see also* 47 C.F.R. § 20.19(b)(1), (b)(2).

³¹ Response at 1, 2.

compatibility reports for the 2008 and 2009 reporting periods, STi Prepaid only offered three handsets, which qualifies the company for the *de minimis* exception.³² Contrary to its assertions about the number of required hearing aid-compatible handsets under this exception, however, STi Prepaid was required to offer at least one M3-rated handset model *and* at least one T3-rated handset model. Although two of the three handsets offered by STi Prepaid are M3-rated for acoustic coupling, none of the three handsets meet the T3 rating for inductive coupling.³³ Accordingly, we conclude that STi Prepaid apparently willfully³⁴ and repeatedly³⁵ failed to comply with section 20.19(e)(2) of the Rules by failing during the 2008 and 2009 reporting periods to offer at least one handset model that met or exceeded the T3 rating for inductive coupling.

B. Failure to File Timely Hearing Aid Compatibility Status Report

8. Section 20.19(i)(1) of the Rules required service providers to submit hearing aid compatibility status reports on January 15, 2009 (covering the six month period ending December 31, 2008) and then annually thereafter.³⁶ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether STi Prepaid is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. As the Commission has noted, the reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.³⁷ STi Prepaid admitted that it did not timely file the 2008 Report; indeed, the record indicates that this Report was filed eleven months late.³⁸ Accordingly, we find that STi Prepaid failed to timely file the hearing aid compatibility status report due on January 15, 2009 in apparent willful violation of the requirements set forth in section 20.19(i)(1) of the Rules.³⁹

³² See *supra* notes 24, 29, and 30 and accompanying text.

³³ *Id.*

³⁴ 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*”); 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).

³⁵ 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.

³⁶ 47 C.F.R. § 20.19(i)(1).

³⁷ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

³⁸ Response at 2; see *supra* notes 28 and 29 and accompanying text.

³⁹ 47 C.F.R. § 20.19(i)(1).

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

9. Section 20.19(h) of the Rules requires that, beginning January 15, 2009, each service provider that maintains a publicly-accessible web site make available on its web site a list of all hearing aid-compatible handset models it currently offers, the ratings of those models, and an explanation of the rating system. Section 20.19(h) also requires service providers to post on their web sites the level of functionality of each model and an explanation of the service provider's methodology for designating levels of functionality. In addition, the Commission has stated that any changes to a service provider's offerings must be reflected on its public web site listing within 30 days of the change.⁴⁰ These web site postings provide consumers up-to-date hearing aid compatibility information.

10. While STi Prepaid did not directly comply with these web posting requirements, it claims "substantial" compliance based on the information contained in the user guide for the LG LX-225 handset model posted on its web site.⁴¹ As an initial matter, we are concerned that the difficulty of finding the hearing aid compatibility rating information in the approximately 200-page user manual for the LG LX-225 model undercuts the clear intent of section 20.19(h) of the Rules, which is to make such information readily accessible to consumers.⁴² In any event, we find that the user manual for the LG LX-225 model fails to provide all of the information required under section 20.19(h) of the Rules. We note that the user guide provides general information about hearing aid compatibility and ratings, including general information with respect to the qualitative difference between the M3 and M4 ratings, and also specifies the rating for the LG LX-225. However, the user manual fails to specify the handset's level of functionality or to provide an explanation of the service provider's methodology for designating levels of functionality. In addition, STi Prepaid apparently failed to provide any rating information regarding the Sanyo SCP-200 handset model on its web site.⁴³ Accordingly, we find that STi Prepaid failed to meet the public web site posting requirements in apparent willful and repeated violation of section 20.19(h) of the Rules.⁴⁴

C. D. Proposed Forfeiture

11. 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.⁴⁵ 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

⁴⁰ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

⁴¹ Response at 2.

⁴² See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3448-9, 3450 ¶¶ 109, 112 (noting generally that "[t]he idea that consumers should be able to access as much information as possible through *easily accessible* connections to relevant material is a fundamental" and "find[ing] it essential to the proper functioning of our hearing aid compatibility rules that manufacturers and service providers make certain limited categories of up-to-date information available on their websites") (*emphasis added*).

⁴³ While STi Prepaid does not indicate in its LOI response what, if any, rating information it provided on its web site for the Sanyo SCP-200 handset, we note that the user guide for this handset posted on the STi Prepaid website, does not include any hearing aid compatibility rating information. See <http://www.stimobile.com/s200-userguide.pdf> (last visited December 30, 2010).

⁴⁴ 47 C.F.R. § 20.19(h).

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

penalty should be imposed.⁴⁶ 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.⁴⁷ Under this standard, we conclude that STi Prepaid is apparently liable for a forfeiture for its apparent willful and repeated violations of sections 20.19(e)(2) and 20.19(h) of the Rules, and its apparent willful violation of section 20.19(i)(1) of the Rules.

12. 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, and up to a maximum of \$1,500,000 for a single act or failure to act.⁴⁸ In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁴⁹

13. The Commission’s *Forfeiture Policy Statement*⁵⁰ and section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset deployment 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.”⁵¹ 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.⁵²

14. 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 individuals with hearing disabilities have access to digital wireless telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and

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

⁴⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

⁴⁸ 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. STi Prepaid’s apparent violations occurred after September 2, 2008, and therefore are subject to the new forfeiture limits.

⁴⁹ 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.

⁵⁰ 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*”).

⁵¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

⁵² *Id.*

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.⁵³ 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.⁵⁴

15. Our recent decisions established a base forfeiture amount of \$15,000 per handset for violations of the hearing aid-compatible handset deployment requirements.⁵⁵ In establishing this base forfeiture amount, we determined that violations of the hearing aid-compatible handset deployment requirements warranted a significantly higher forfeiture than violations of the labeling requirements for wireless hearing aid-compatible handsets.⁵⁶ We found that a violation of the labeling requirements, while serious because it deprives hearing aid users of the ability to make informed choices, is less egregious than a violation of the deployment requirements, where a failure to make compliant handsets available actually prevents hearing aid users from accessing digital wireless communications.⁵⁷

16. The record establishes that STi Prepaid failed to include in its handset offerings at least one handset that met or exceeded the T3 rating for inductive coupling, as required by section 20.19(e)(2) of the Rules.⁵⁸ Accordingly, STi Prepaid is apparently liable for a forfeiture of \$15,000 for failing to offer the required number of hearing aid-compatible handset models in willful and repeated violation of section 20.19(e)(2) of the Rules.

17. Having considered the statutory factors enumerated above, we conclude that an upward adjustment is warranted. We note, in this regard, that STi Prepaid was out of compliance with the hearing aid-compatible handset deployment requirements for 18 months, during the entire 2008 and 2009 reporting periods. In view of the particularly lengthy duration of the violation and the potentially

⁵³ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

⁵⁴ *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”).

⁵⁵ *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*.

⁵⁶ 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).

⁵⁷ *See supra* note 50.

⁵⁸ 47 C.F.R. § 20.19(e)(2).

significant impact on consumers with hearing loss, we find that a significant upward adjustment of the base forfeiture amount is warranted.⁵⁹ We therefore propose a \$22,500 forfeiture against STi Prepaid for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in section 20.19(e)(2) of the Rules.

18. The *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.⁶⁰ While the base forfeiture requirements are guidelines lending some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.⁶¹

19. 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 the status reports are essential to the implementation and enforcement of the hearing aid compatibility rules.⁶² 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 ensure that the digital wireless industry meets the needs of the increasing number of consumers with hearing loss.⁶³ In an analogous context, we noted that when setting an \$8,000 base forfeiture for violations of the hearing aid-compatible handset labeling requirements, the Commission emphasized that consumers with hearing loss 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.⁶⁴ We also noted that the Commission has adjusted the base forfeiture upward when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.⁶⁵ 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 a hearing aid compatibility report.⁶⁶ Consistent with *ASTCA*, we believe the established \$6,000 base forfeiture for each violation of the hearing aid compatibility reporting requirement should apply here, for a proposed forfeiture of \$6,000.

⁵⁹ While 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, we may consider the fact that STi Prepaid's misconduct occurred over an extended period to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000). The forfeiture amount we propose herein relates only to STi Prepaid's apparent violations that occurred within the past year.

⁶⁰ 47 C.F.R. § 1.80(b).

⁶¹ 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*).

⁶² See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending* ("*ASTCA*").

⁶³ See *ASTCA*, 23 FCC Rcd at 16436-7 ¶ 10.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

20. 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.⁶⁷ STi Prepaid's failure to file the report on time had a continuing adverse impact on the Commission's ability to 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. STi Prepaid maintains that its failure to timely file the report was due to administrative oversight and that it was not aware that it had an independent obligation to file the report, given its contractual relationship with Sprint Nextel. It is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.⁶⁸ Likewise, a violator's lack of knowledge or erroneous beliefs is not a mitigating factor warranting reduction of a forfeiture.⁶⁹ Accordingly, we propose a forfeiture of \$6,000 against STi Prepaid for apparently willfully failing to timely file the January 15, 2009 hearing aid compatibility status report in violation of section 20.19(i)(1) of the Rules.⁷⁰

21. We have also 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 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.⁷¹ In particular, we found that a 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.⁷² We further found that the web site postings, which must be updated

⁶⁷ *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).

⁶⁸ See *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

⁶⁹ See, e.g., *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993) (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.*, 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.*, 15 FCC Rcd 12933, 12935 ¶ 7 (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.*, 8 FCC Rcd 784, 784 ¶ 2 (Mass Med. Bur. 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).

⁷⁰ 47 C.F.R. § 20.19(i)(1).

⁷¹ 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).

⁷² *Locus*, 25 FCC Rcd at 335 ¶ 14.

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.⁷³

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.⁷⁴ We therefore established \$6,000 as the base forfeiture for violation of section 20.19(h).⁷⁵

22. As noted above, despite STi Prepaid's claims that posting a 200-page user manual on its website constituted "substantial" compliance with section 20.19(h) of the Rules, the record indicates that even this manual did not include all the required information about the company's hearing aid-compatible handset models. STi Prepaid also presents no mitigating factors in its LOI Response justifying a downward adjustment to the \$6,000 base forfeiture. Accordingly, we propose a forfeiture of \$6,000 against STi Prepaid for apparently willfully and repeatedly⁷⁶ 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.⁷⁷

23. Thus, we propose an aggregate forfeiture of \$34,500 against STi Prepaid for its apparent willful and repeated violations of sections 20.19(e)(2) and 20.19(h) of the Rules, and its apparent willful violation of section 20.19(i)(1) of the Rules.

IV. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and section 1.80 of the Rules, STi Prepaid **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty- four thousand five hundred dollars (\$34,500) for its apparent willful and repeated violations of sections 20.19(e)(2) and 20.19(h) of the Rules, and its apparent willful violation of section 20.19(i) of the Rules.

25. **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*, STi Prepaid **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

26. 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

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ 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.

⁷⁷ 47 C.F.R. § 20.19(h).

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. STi Prepaid must also send electronic notification on the date said payment is made to Katherine.Power@fcc.gov and Pamera.Hairston@fcc.gov.

27. 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 Number referenced in the caption. The statement must also be emailed to Katherine Power at Katherine.Power@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

28. 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.

29. **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 Mr. Richard Rebetti, Chief Technical Officer, STi Prepaid, LLC, 1250 Broadway, 26th Floor, New York, New York 10001.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Division
Enforcement Bureau