

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

In the matter of	)	
	)	File No.: EB-10-SE-111
Epic Touch Co., Inc.	)	
	)	NAL/Acct. No.: 201132100020
	)	
	)	FRN: 0005599634

**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 nineteen thousand five hundred dollars (\$19,500) against Epic Touch Co., Inc. (“Epic Touch”), a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier,<sup>1</sup> serving parts of Kansas and Oklahoma. As detailed herein, we find that Epic Touch 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 for nine months 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.

**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>3</sup> The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>4</sup>

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<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> *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 (“the Act”), 47 U.S.C. § 610(b)(2)(C).

<sup>4</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling modes as follows:

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>5</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>6</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>7</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>8</sup> and that at least five handset models per digital air interface, or at least one-third of the models

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

*Id.* at 16763 ¶ 22.

<sup>5</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>6</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, FCC 10-145 ¶¶ 35-59 (rel. Aug. 5, 2010).

<sup>7</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>8</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>9</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>10</sup>

4. On January 15, 2010, Epic Touch submitted its hearing aid compatibility status report for the 2009 reporting period.<sup>11</sup> A review of Epic Touch's 2009 Report revealed apparent inconsistencies between the hearing aid compatibility ratings for certain handsets listed in Epic Touch's 2009 Report and the ratings for those handsets specified in the Commission's equipment authorizations for those handsets.<sup>12</sup> Taking these apparent inconsistencies into account, Epic Touch's 2009 Report indicated that between April 1, 2009 and December 31, 2009, it did not offer the required number or percentage of handsets that met or exceeded the M3 rating.<sup>13</sup>

5. The Wireless Telecommunications Bureau subsequently referred Epic Touch's apparent violation of the hearing aid-compatible handset requirements to the Enforcement Bureau ("Bureau") for possible enforcement action. On September 7, 2010, the Bureau issued a letter of inquiry ("LOI") to Epic Touch.<sup>14</sup> Epic Touch responded to the LOI on September 17, 2010.<sup>15</sup> In its LOI Response, Epic Touch explained that one of its employees was responsible for ordering an appropriate set of handsets with a mix of capabilities, including M3-rated phones that would appeal to its customer base, while at the same time complying with the FCC's hearing aid compatibility requirements.<sup>16</sup> In order to verify the hearing aid compatibility ratings of the handsets it offered, Epic Touch stated that it utilized information on the

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<sup>9</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>10</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>11</sup> See Epic Touch Co., Inc. Hearing Aid Compatibility Status Report (filed January 15, 2010) ("2009 Report"), at [http://wireless.fcc.gov/hac\\_documents/100317/EpicTouchCo\\_86.PDF](http://wireless.fcc.gov/hac_documents/100317/EpicTouchCo_86.PDF).

<sup>12</sup> Specifically, Epic Touch's 2009 Report indicated that the Nokia 3610 handset (FCC ID QMNRM-429) has an M3/T3 rating. See 2009 Report. Commission records, however, show that this handset has only a M3 rating for hearing aid compatibility. In addition, Epic Touch's 2009 Report indicated that the Motorola V306 handset (FCC ID IHDT56HJ1) has not been rated for hearing aid compatibility; the Motorola A45EcoMurano (FCC ID IHDP56KH1) has not been rated for hearing aid compatibility; and the Motorola EM330 (FCC ID IHDP56JJ1) has an M3 rating. See 2009 Report. Commission records indicate that the Motorola V306 handset has an M3/T3 rating; the Motorola A45EcoMurano has an M3 rating; and the Motorola EM330 has an M3/T3 rating.

<sup>13</sup> See 2009 Report. Epic Touch's 2009 Report indicates that it offered the required number of T3-rated handsets during the 2009 reporting period. *Id.*

<sup>14</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Robert Boaldin, President, Epic Touch Co., Inc. (September 7, 2010).

<sup>15</sup> See Letter from Robert Boaldin, President, Epic Touch Co., Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 17, 2010) ("LOI Response").

<sup>16</sup> *Id.* at 2.

Phonescoop.com web site, which includes a link to the FCC's equipment authorization database.<sup>17</sup> Epic Touch asserted that its personnel accessed the Phonescoop.com web site and used the links to the relevant FCC database to verify the hearing aid compatibility rating for the handsets it offered.<sup>18</sup> Epic Touch also indicated that it had again reviewed the information submitted in its 2009 Report and identified only two typographical errors.<sup>19</sup> Finally, Epic Touch claimed that it complied with the requirements set forth in section 20.19(c)(3)(ii) of the Rules regarding the number of M3-rated handsets it was required to offer between January 1, 2009 and December 31, 2009 because it offered a total of nine handsets that met the M3 rating during the relevant time periods.<sup>20</sup>

### III. DISCUSSION

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

6. We find that Epic Touch failed to offer the required number of hearing aid-compatible handsets that met or exceeded the M3 rating for nine months during the 2009 reporting period. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets. As set forth in greater detail in the Appendix, between January 1, 2009 and May 14, 2009, Epic Touch was obligated to offer at least *eight* hearing aid-compatible handset models – less than half of the 19 handsets the company offered to consumers without hearing loss.<sup>21</sup> Epic Touch failed to meet this standard, offering only seven M3-rated hearing aid-compatible handsets during April and the first half of May of 2009. In addition, during the latter part of the reporting period (between May 15, 2009 and December 2009), the handset deployment benchmarks for non-Tier I digital wireless service providers increased.<sup>22</sup> While Epic Touch was thus required to offer at least *nine* M3-rated hearing aid-compatible handsets during this period – significantly less than the 19 to 27 handsets offered to non-hearing aid users – the company again failed to offer the requisite number of hearing-aid compatible handsets, repeatedly falling short by one to two models.<sup>23</sup>

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<sup>17</sup> *Id.*

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

<sup>19</sup> LOI Response at 1. Epic Touch attributed the discrepancy between the handset rating noted in its 2009 Report for the Nokia 3610 handset and the rating specified in the Commission's records for this handset to a typographical error. Epic Touch also noted that during the course of preparing its LOI Response, it discovered an additional typographical error. Specifically, with regard to the Sony Ericsson W580i handset (FCC ID PY7A1052402), Epic Touch stated that handset was available at least through September 2009, rather than May 2009, as specified in its 2009 Report. *Id.* at 1-2. The handset figures which form the basis for this NAL include the Sony Ericsson W580i through September 2009.

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

<sup>21</sup> See Appendix, Epic Touch Hearing Aid-Compatible Handset Offerings; see also 47 C.F.R. § 20.19(c)(3)(ii) (requiring non-Tier 1 digital wireless service providers to ensure that between September 7, 2009 and May 14, 2009, at least 50% of the handset models they offered, or at least *eight* handset models, met or exceeded the M3 rating for radio frequency interference). These requirements applied to each air interface for which service providers offered handsets to consumers. All of Epic Touch's handsets for the 2009 reporting period operated only over the GSM air interface.

<sup>22</sup> Non-Tier I digital wireless service providers are required to ensure that between May 15, 2009 and May 14, 2010, 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. 47 C.F.R. § 20.19(c)(3)(ii).

<sup>23</sup> See Appendix (indicating that between May 15, 2009 and December 31, 2009, Epic Touch offered between 19 and 27 total handsets, only 7-8 of which were hearing-aid compatible).

7. Notwithstanding this evidence, Epic Touch claimed that it offered the required number of M3-rated handsets between January 1, 2009 and December 31, 2009 because it offered nine handsets that met the M3 rating during the relevant time periods.<sup>24</sup> We are unpersuaded by this assertion. While Epic Touch may have offered a total of nine different M3-rated handset models over the course of the period beginning on January 1, 2009 through May 14, 2009, and a total of 11 different M3-rated handset models<sup>25</sup> over the course of the period beginning May 15, 2009 through December 31, 2009, its 2009 Report (as clarified in the LOI Response) establishes that it did not offer the required number of M3-rated handsets *at all times* throughout these periods.<sup>26</sup> As set forth above, Epic Touch offered only seven M3-rated handsets at all times between April and July of 2009, and Epic Touch offered only eight M3-rated handsets at all times between August and December of 2009.<sup>27</sup> The only reasonable reading of our hearing aid compatibility rules is that the required number of handsets must be available at all times; otherwise, a company could, for example, offer nine M3-rated handsets for a very short subset of the reporting period and still be in compliance. Such an interpretation is not supported by the plain language of the rules or their underlying intent, which is to ensure that consumers have substantial and increasing choices of hearing aid-compatible handsets, and such rationale has never been used by the Commission to determine compliance with these vitally important rules.<sup>28</sup> Accordingly, we conclude that Epic Touch apparently willfully<sup>29</sup> and repeatedly<sup>30</sup> violated section 20.19(c)(3)(ii) of the Rules for nine months of the 12-month reporting period.

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<sup>24</sup> Specifically, Epic Touch stated that during the period beginning on January 1, 2009 through May 14, 2009, it offered the following nine M3-rated handsets: Motorola W510, Motorola V8, Motorola W230, Nokia 2760, Nokia 3610, Nokia N76, Samsung t219, Samsung SGH-T439, Sony Ericsson W580i. Epic Touch stated that during the period beginning on May 15, 2009 through December 31, 2009, it offered the following nine M3-rated handsets: Motorola W510, Motorola V8, Motorola W230, Motorola EM330, Nokia 2720, Nokia 2760, Nokia 3610, Samsung SGH-T439, and Sony Ericsson W580i. LOI Response at 3.

<sup>25</sup> In this regard, we note that in two instances the inconsistencies in the ratings information provided in Epic Touch's 2009 Report were resolved favorably to Epic Touch. Specifically, in addition to the nine M3-rated handsets listed by Epic Touch, we have concluded it also offered during this period the Motorola V306 and the Motorola A45 EcoMurano, both of which are M3-rated. See note 14 *supra*.

<sup>26</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3444 ¶ 96 (clarifying that manufacturers and service providers must provide the dates on which they began and ended offering specific models during the past 12 months in order to demonstrate compliance over time and noting that the revised reporting requirements will enable the Commission to verify compliance with all of the hearing aid compatibility rules *at all relevant times*).

<sup>27</sup> Epic Touch was required to offer at least eight M3-rated handsets at all times between April 1, 2009 and May 14, 2009, and at least nine M3-rated handsets at all times between May 15, 2009 and December 31, 2009. See 47 C.F.R. § 20.19(c)(3)(ii).

<sup>28</sup> Section 20.19(c)(3)(ii) provides, in relevant part, that a non-Tier I service provider must “ensure that it offers, at a minimum, the following specified number of handset models that comply with paragraph (b)(1) of this section ... [b]eginning May 15, 2009, at least nine (9) handset models.” See 47 C.F.R. § 20.19(c)(3)(ii). See also *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3415-24 ¶¶ 26-46.

<sup>29</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *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), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).



## 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>31</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>32</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>33</sup> We conclude under this standard that Epic Touch 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>34</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, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>35</sup>

10. The Commission’s *Forfeiture Policy Statement*<sup>36</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>37</sup> The Commission

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<sup>30</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>31</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>32</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>33</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>34</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.

<sup>35</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>36</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>37</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

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>38</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>39</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>40</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>41</sup> As such, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.<sup>42</sup> We have also applied the \$15,000 base forfeiture on a per handset basis (*i.e.*, for each handset below the minimum number of hearing aid-compatible models required by the rules).<sup>43</sup>

13. The record establishes that Epic Touch failed to offer the required number of M3-rated handsets between April 1, 2009 and December 31, 2009,<sup>44</sup> missing the benchmark by one to two handsets.

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<sup>38</sup> *Id.*

<sup>39</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>40</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>41</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>42</sup> *See, e.g.*, *Oklahoma Independent RSA 5 Partnership*, Notice of Apparent Liability for Forfeiture, DA 10-1654 ¶ 11 (Enf. Bur. rel. August 30, 2010), *response pending*; *OK-5 Licensee Co., LLC*, Notice of Apparent Liability for Forfeiture, DA 10-1659 ¶ 11 (Enf. Bur. rel. August 30, 2010), *response pending*; *TX-10 Licensee, LLC dba Cellular One*, Notice of Apparent Liability for Forfeiture, DA 10-1657 ¶ 11 (Enf. Bur. rel. August 30, 2010), *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>43</sup> *See id.*

<sup>44</sup> *See* paragraph 6 *supra*.

Accordingly, and consistent with section 503(b)(6) of the Act, Epic Touch is apparently liable for a base forfeiture of \$15,000 for failing to offer to consumers the required number or percentage of hearing aid-compatible handset models in willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.

14. This base forfeiture amount is, however, subject to upward adjustment. We note, in this regard, that Epic Touch was out of compliance with the hearing aid-compatible handset deployment requirements for nine of the 12 months that constitute the 2009 reporting period. In view of the extended duration of the violation and the potentially significant impact on consumers with hearing loss,<sup>45</sup> we find that a significant upward adjustment of the base forfeiture amount from \$15,000 to \$19,500 is warranted.<sup>46</sup> We therefore propose a \$19,500 forfeiture against Epic Touch 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.

#### IV. ORDERING CLAUSES

15. 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>47</sup> Epic Touch Co., Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nineteen thousand five hundred dollars (\$19,500) for willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.

16. **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*, Epic Touch Co., Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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: [arinquiries@fcc.gov](mailto:arinquiries@fcc.gov) with any questions regarding payment procedures. Epic Touch Co., Inc. must also send electronic notification on the date said payment is made to JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and Pamera Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov).

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<sup>45</sup> See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section II. Adjustment Criteria for Section 503 Forfeitures* (establishing “repeated or continuous violation” as an upward adjustment factor).

<sup>46</sup> 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 Epic Touch’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 Epic Touch’s apparent violations that have occurred within the past year.

<sup>47</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.



18. 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 JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Pamera Hairston at Pamera.Hairston@fcc.gov.

19. 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.

20. **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 Robert Boaldin, President, Epic Touch Co., Inc., 610 South Cosmos, Elkhart, KS 67950.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

**APPENDIX**  
**Epic Touch Hearing Aid-Compatible Handset Offerings (M3 Rating)**

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (M3 rating)	Hearing Aid-Compatible Handsets Required (M3 rating)	Compliance?
January 2009	7	14	<b>At least 50% or at least 8 of the total number of handsets offered</b> (April 1, 2009 – May 14, 2009)	Yes
February 2009	9	20		Yes
March 2009	8	21		Yes
April 2009	19	7		No
May 1-14, 2009	19	7		No
May 15-31, 2009	19	7	<b>At least 50% or at least 9 of the total number of handsets offered</b> (May 15, 2009 – December 31, 2009)	No
June 2009	19	7		No
July 2009	20	7		No
August 2009	22	8		No
September 2009	25	8		No
October 2009	26	8		No
November 2009	27	8		No
December 2009	26	8	No	