



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 14, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE AT 972 828 1014

Mr. Thomas R. Hennen, Esq.
Senior Counsel for
7-Eleven, Inc.
Store Support Center, One Arts Plaza
1722 Routh Street, Suite 1000
Dallas, Texas 75201-2506

Re: File No. EB-09-SE-167

Dear Mr. Hennen:

This is an official **CITATION**, issued to 7-Eleven, Inc. (“7-Eleven”) pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ for violating the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Commission’s Rules (“Rules”), and the public web site posting requirements set forth in section 20.19(h) of the Rules.² As explained below, future violations of the Commission’s rules in this regard may subject 7-Eleven to monetary forfeitures.

In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. §§ 20.19(i)(1), 20.19(h).

³ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”).

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. §§ 20.19(b)(1), (2).

⁵ 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 Dispatch Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

standard if they did not come under the *de minimis* exception.⁶ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁷

Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁸ 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).⁹ 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, 2009.¹⁰ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹¹ In addition, the Commission instituted a requirement that manufacturers and service providers with publicly-accessible web sites maintain a list of hearing aid-compatible handset models and certain information regarding those models on their web sites.¹² The web site postings, which must be updated within 30 days of a change in a manufacturer's or service provider's offerings, will enable consumers to obtain up-to-date hearing aid compatibility information from their service providers.¹³

7-Eleven, which offers prepaid wireless service under its SPEAK OUT WIRELESS[®] ("SPEAK OUT") program, did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred 7-Eleven's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On November 3, 2009, the Enforcement Bureau's Spectrum Enforcement Division issued 7-Eleven a Letter of Inquiry ("LOI").¹⁴ 7-Eleven responded to the

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁸ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

⁹ *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).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹¹ *Id.* ¶ 99.

¹² *Id.* at 3450 ¶ 112.

¹³ *Id.*

¹⁴ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Joseph M. DePinto, President/CEO, 7-Eleven, Inc. (November 3, 2009).

LOI on November 12, 2009.¹⁵ In its response, 7-Eleven states that it does not believe it is a telecommunications service provider or a Mobile Virtual Network Operator (“MVNO”), but states that it resells private label prepaid wireless telephones and cards to customers under its SPEAK OUT brand. It further states that it “purchases phones directly from various phone manufacturers and the prepaid wireless cards and services from Ztar Mobile, Inc. (“Ztar”).”¹⁶ 7-Eleven states that it understands from Ztar that Ztar is considered to be an MVNO.

We find that, as a reseller, 7-Eleven is a service provider subject to the wireless hearing aid compatibility handset requirements. 7-Eleven purchases prepaid wireless cards and services from Ztar and resells the cards and services to customers under its SPEAK OUT brand. The Commission has made clear that the hearing aid compatibility handset requirements apply to service providers such as resellers.¹⁷ Thus, 7-Eleven is a service provider subject to the wireless hearing aid compatibility handset requirements. Under section 20.19(i)(1) of the Rules, service providers must file hearing aid compatibility status reports initially on January 15, 2009, and annually thereafter.¹⁸ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether 7-Eleven is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. 7-Eleven did not file the January 15, 2009 report. Accordingly, 7-Eleven violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules.

Section 20.19(h) of the Rules requires that, beginning January 15, 2009, each manufacturer and service provider that operates a publicly-accessible web site make available on its web site a list of all hearing aid-compatible handset models currently offered, the ratings of those models, and an explanation of the rating system.¹⁹ In addition, the Commission has stated that any changes to a manufacturer’s or service provider’s offerings must be reflected on its public web site listing within 30 days.²⁰ These web site postings provide consumers up-to-date hearing aid compatibility information. Based on our review of 7-Eleven’s web site,²¹ it failed to post the required information on its web site in violation of section 20.19(h) of the Rules.

7-Eleven should take prompt action to ensure that it does not continue to violate the Commission’s wireless hearing aid compatibility rules. If, after receipt of this Citation, 7-Eleven violates the Communications Act or the Commission’s rules or orders in any manner

¹⁵ See Letter from Thomas R. Hennen, Senior Counsel, 7-Eleven, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (November 11, 2009).

¹⁶ *Id.*

¹⁷ See e.g., *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3424 ¶ 46 (concluding that a three-month extension of deadlines for meeting the handset deployment benchmarks is appropriate with regard to “service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and *other service providers such as resellers and MVNOs.*”).

¹⁸ 47 C.F.R. § 20.19(i)(1).

¹⁹ 47 C.F.R. § 20.19(h).

²⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

²¹ We note that 7-Eleven’s web site promotes four handset models for use with its SPEAK OUT program: the Sanyo 2400, LG5225, Nokia 1600 and Motorola C139. See <http://www.7-eleven.com/NewsRoom/NewsRoom2008/7ElevenMakesPrepaidWirelessMoreCompetitive>. Thus, it does not appear that 7-Eleven falls within the *de minimis* exception. See 47 C.F.R. § 20.19(e).

described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.²²

7-Eleven may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. 7-Eleven's response should specify the actions that it is taking to ensure that it does not violate the Commission's rules governing the filing of hearing aid compatibility status reports in the future.

The nearest Commission field office appears to be the Dallas District Office, in Dallas, Texas. Please call Jacqueline Johnson at 202-418-2871, if 7-Eleven wishes to schedule a personal interview. 7-Eleven should schedule any interview to take place within 30 days of the date of this letter. 7-Eleven should send any written statement within 30 days of the date of this letter to:

Jacqueline Johnson
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-167
Federal Communications Commission
445 12th Street, S.W., Rm. 4-A431
Washington, D.C. 20554

Under the Privacy Act of 1974,²³ we are informing 7-Eleven that the Commission's staff will use all relevant material information before it, including information that 7-Eleven discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure 7-Eleven's compliance with the Communications Act and the Commission's rules and orders.

The knowing and willful making of any false statement, or the concealment of any material fact, in response to this citation is punishable by fine or imprisonment.²⁴

We thank 7-Eleven in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²² See 47 C.F.R. § 1.80(b)(3).

²³ See 5 U.S.C. § 552a(e)(3).

²⁴ See 18 U.S.C. § 1001.