



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 26, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Liberty Wireless
11910 Parklawn Drive, Suite U
Rockville MD 20852

Re: File No. EB-09-SE-179

Dear Sir or Madam:

This is an official **CITATION** issued to Liberty Wireless (“Liberty”),¹ a reseller of wireless services, pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),² 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”),³ and the public web site posting requirements set forth in section 20.19(h) of the rules.⁴ We also find that Liberty violated a Commission order by failing to respond to an Enforcement Bureau Letter of Inquiry (“LOI”) directing Liberty to provide certain information and documents concerning its compliance with the digital wireless handset hearing aid compatibility requirements. As explained below, future violations of the Commission’s rules in this regard may subject Liberty 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.⁵ 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.⁶ 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 interface⁷ that are compliant with the relevant

¹ Liberty is owned by Cozac Wireless, a subsidiary of APC Wireless. Each of the three entities lists the above address as its address.

² 47 U.S.C. § 503(b)(5).

³ 47 C.F.R. § 20.19(i)(1).

⁴ 47 C.F.R. § 20.19(h).

⁵ 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).

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁷ 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

standard if they did not come under the *de minimis* exception.⁸ 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 2008.⁹

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.¹⁰ 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).¹¹ 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, 2009.¹² The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹³ 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.¹⁴ 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.¹⁵

Liberty, a reseller of wireless service, did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred Liberty's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On December 1, 2009, the Spectrum Enforcement Division of the Commission's Enforcement Bureau ("Division") issued Liberty a

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).

⁸ 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).

⁹ 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).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

¹¹ *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).

¹² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹³ *Id.* ¶ 99.

¹⁴ *Id.* at 3450 ¶ 112.

¹⁵ *Id.*

Letter of Inquiry (“LOI”),¹⁶ to investigate whether Liberty violated the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the rules, and the public web site posting requirements set forth in section 20.19(h) of the rules. Liberty’s response to the LOI, which was due on December 16, 2009, has not yet been received.¹⁷ Additionally, according to the Commission’s records, Liberty also has not filed its hearing aid compatibility status report that was due January 15, 2010.

Sections 4(i), 4(j), and 403 of the Act¹⁸ afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”¹⁹ Section 4(j) states that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”²⁰ Section 403 grants the Commission “full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.”²¹

Pursuant to this authority, we sent Liberty’s attorney, Mr. Sellman, an LOI on December 1, 2009, directing Liberty to provide certain information and documents. The Postal Service certified mail receipt indicates that the LOI was received in Mr. Sellman’s office on December 2, 2009.²² However, the Commission has not received the information sought by the LOI. Accordingly, it appears that Liberty has violated a Commission order by failing to respond to Enforcement Bureau directives to provide certain information and documents.

A party may not ignore the directives in a Bureau inquiry letter.²³ You are again ordered, pursuant to sections 4(i), 4(j) and 403 of the Act, to provide the information originally sought by our LOI of December 1, 2009 (copy enclosed). Liberty must provide this information in the manner indicated therein within 20 days of the date of this citation.²⁴

¹⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to David S. Sellman, Esq., counsel to Liberty Wireless (December 1, 2009). On November 30, 2009, Mr. Sellman e-mailed Katherine Power, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to inform her that he was representing Liberty.

¹⁷ Ms. Power telephoned Mr. Sellman in January, February and March, 2010, and left messages which were not returned.

¹⁸ 47 U.S.C. §§ 154 (i), 154 (j), 403.

¹⁹ 47 U.S.C. § 154 (i).

²⁰ 47 U.S.C. § 154 (j).

²¹ 47 U.S.C. § 403.

²² See USPS receipt No. 7008114000280562224, showing that the December 1, 2009 LOI was signed by “K. Raymond,” on December 3, 2009.

²³ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002). In *SBC Communications*, the Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to an Enforcement Bureau letter of inquiry. The Commission stated: “[T]he order here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.” *Id.* at 7591.

²⁴ See 47 C.F.R. § 1.80(b)(3).

Furthermore, we find that, as a reseller of wireless services, Liberty is a service provider subject to the wireless handset hearing aid compatibility requirements.²⁵ Liberty resells prepaid wireless cards and services. The Commission has made clear that the hearing aid compatibility requirements apply to service providers such as resellers.²⁶ Thus, Liberty is a service provider subject to the wireless handset hearing aid compatibility requirements.²⁷ 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.²⁸ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether Liberty 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. Based on the record before us, we find that Liberty did not file the January 15, 2009 and January 15, 2010 reports. Accordingly, Liberty 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.²⁹ 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.³⁰ These web site postings provide consumers up-to-date hearing aid compatibility information. Based on our review of Liberty's web site, it failed to post the required information on its web site in violation of section 20.19(h) of the rules.

Liberty 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, Liberty violates the Communications Act or the Commission's rules or orders in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.³¹

Liberty 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. Liberty'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 Columbia District Office, in Columbia, Maryland. Please call Katherine Power at 202-418-1909 if Liberty wishes to schedule a

²⁵ According to its web site, Liberty sells prepaid telephones and airtime for those telephones. See <http://www.libertywireless.com> (last visited May 12, 2010).

²⁶ See e.g., *Hearing 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.").

²⁷ See *7-Eleven, Inc.*, Citation, 25 FCC Rcd 344, 346 (Enf. Bur., Spectrum Enf. Div. 2010).

²⁸ 47 C.F.R. § 20.19(i)(1).

²⁹ 47 C.F.R. § 20.19(h).

³⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

³¹ See 47 C.F.R. § 1.80(b)(3).

personal interview. Liberty should schedule any interview to take place within 30 days of the date of this letter. Liberty should send any written statement within 30 days of the date of this letter to:

Katherine Power
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-179
Federal Communications Commission
445 12th Street, S.W., Rm. 3-A365
Washington, D.C. 20554

Under the Privacy Act of 1974,³² we are informing Liberty that the Commission's staff will use all relevant material information before it, including information that Liberty discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure Liberty'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.³³

We thank Liberty in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Enclosure

cc: David S. Sellman, Esq.

³² See 5 U.S.C. § 552a(e)(3).

³³ See 18 U.S.C. § 1001.