

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

In the Matter of)	File No.: EB-11-SE-057
)	
Missouri RSA 5 Partnership d/b/a)	NAL/Acct. No.: 201232100002
Chariton Valley Wireless Services)	
)	FRN: 002535532

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 28, 2011

Released: October 28, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we propose a forfeiture in the amount of eighty two thousand five hundred dollars (\$82,500) against Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services (“Chariton Valley”).¹ As detailed herein, we find that Chariton Valley apparently willfully and repeatedly violated sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Commission’s rules (“Rules”).² We further find that some of the apparent misconduct continued for 10 of the 12 months in the 2010 reporting period. Specifically, Chariton Valley apparently failed to offer to consumers the required number or percentage of hearing aid-compatible digital wireless handset models as set forth in the Rules. The hearing aid compatibility requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services.

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.³ The

¹ Chariton Valley is a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier serving northeast Missouri. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. 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).

² 47 C.F.R. § 20.19(c)(3)(ii), (d)(3)(ii).

³ *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).

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 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.⁵

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 that are rated as hearing aid-compatible.⁶ The number or percentage of digital wireless handset models required to be offered to consumers by each deadline depends on the applicable interference standard (“M” rating or “T” rating), and the deployment schedule is tailored to the size of the service provider as measured by its

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

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. 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.

⁵ As subsequently amended, section 20.19(b)(1) provides that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at a minimum, it meets the M3 rating associated with the technical standard set forth in the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI 63.19-2007 (June 8, 2007) (“ANSI 63.19-2007”), except that grants of certification issued before January 1, 2010 under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning 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 set forth in ANSI 63.19-2007, except that grants of certification issued before January 1, 2010 under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(2).

⁶ These handset deployment 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). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or mobile service providers that do not meet the definition of a “small entity” beginning two years after their initial offerings. 47 C.F.R. § 20.19(e)(1)(ii); see also *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-11189 ¶¶ 35-59 (2010) (“*Hearing Aid Compatibility Second Report and Order*”).

number of subscribers. Specifically, 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,⁷ or at least 50% of the models offered per digital air interface, met or exceeded the M3 rating,⁸ and that at least five handset models per digital air interface, or at least one-third of the models offered per digital air interface, met or exceeded the T3 rating.⁹ Beginning May 15, 2010, non-Tier I service providers were required to offer to consumers at least ten handset models per digital air interface, or at least 50% of the models offered per digital air interface, that met or exceeded the M3 rating.¹⁰ Similarly, between May 15, 2010 and May 14, 2011, non-Tier I service providers were required to offer at least seven handset models per digital air interface, or at least one-third of the models offered per digital air interface, that met or exceeded the T3 rating.¹¹ 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.¹²

4. On January 13, 2010, Chariton Valley submitted its Hearing Aid Compatibility Status Report for the 2010 reporting period (“2010 Report”).¹³ The 2010 Report identified each handset model offered by Chariton Valley during the 2010 reporting period by its FCC Identification (“FCC ID”), as well as the handset model’s hearing aid compatibility rating, if any. After a careful review of the 2010 Report, the Wireless Telecommunications Bureau referred this matter to the Enforcement Bureau (“Bureau”) for investigation and possible enforcement action. As part of its investigation, the Bureau compared the hearing aid compatibility rating for each handset model with the rating information contained in the FCC Office of Engineering and Technology Equipment Authorization System.¹⁴ This review revealed apparent inconsistencies between the hearing aid compatibility ratings for certain handset models listed in Chariton Valley’s 2010 Report and the ratings specified in the Commission’s equipment

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 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 First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

¹⁰ See *supra* note 8.

¹¹ See *supra* note 9.

¹² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91. 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. *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99. The Commission also made clear that these reporting requirements apply to manufacturers and service providers that qualify for the *de minimis* exception. *Id.* at 3446 ¶ 99; see also *Hearing Aid Compatibility Second Report and Order*, 25 FCC Rcd at 11180-11189 ¶¶ 35-59 (2010).

¹³ Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services, Hearing Aid Compatibility Status Report (filed January 13, 2011), available at http://wireless.fcc.gov/hac_documents/100317/Missouri%20RSA%205%20Partn_193.PDF.

¹⁴ The FCC Office of Engineering and Technology Equipment Authorization System (“EAS”) is an electronic database of all equipment certified under FCC authority. The EAS identifies the hearing aid compatibility rating of each device by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization. See <http://transition.fcc.gov/oet/ea/fccid/>.

authorizations for those models.¹⁵ Taking these apparent inconsistencies into account, we conclude that Chariton Valley apparently failed to offer, for extended periods during the 2010 reporting period, the required number or percentage of handset models that met or exceeded the M3 rating and the T3 rating.¹⁶

III. DISCUSSION

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

5. *Acoustic Coupling* (“M3” or higher rating). We find that Chariton Valley apparently failed to offer to consumers the required number or percentage of hearing aid-compatible handset models that met or exceeded the M3 rating. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets. Between January 1, 2010 and May 14, 2010, Chariton Valley was required to offer at least *eight* M3 or higher rated handset models per air interface—significantly less than the 15 to 16 handset models it made available to consumers without hearing loss.¹⁷ As set forth in greater detail in Appendix A, Chariton Valley apparently failed to meet this standard, falling short by one handset model for three consecutive months.¹⁸ During the latter part of the 2010 reporting period (between May 15, 2010 and December 31, 2010), the handset deployment benchmarks for non-Tier 1 digital wireless service providers increased, requiring Chariton Valley to offer between *eight* and *ten* handset models with a minimum M3 rating per air interface—approximately half of the 16 to 23 handset models it made available to non-hearing aid users.¹⁹ Chariton Valley also apparently failed to meet this standard, again repeatedly falling short by one handset model.²⁰ Accordingly, we find

¹⁵ Specifically, Chariton Valley’s 2010 Report indicated that the Motorola ROKR Z6 handset model (FCC ID IHDT56GG1) has a M3/T3 rating when in fact Commission records show that the handset model is not rated for hearing aid compatibility; that the HTC Wildfire handset model (FCC ID IHDP56KC1) is not rated for hearing aid compatibility when in fact Commission records show that the handset model has a M3/T3 rating; that the Acer A1 handset model (FCC ID HLZSHS100) has a M3 rating when in fact Commission records show that the handset model has a M3/T3 rating; and that the Nokia 3610 handset model (FCC ID QMNRM-429) has a M3/T3 rating when in fact Commission records show that the handset model has a M3 rating.

¹⁶ See 2010 Report.

¹⁷ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii) (requiring non-Tier 1 digital wireless service providers to ensure that between May 15, 2009 and May 14, 2010, either at least 50% of the handset models offered, or at least nine 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 Chariton Valley’s handset models for the 2010 reporting period operated over the GSM air interface.

¹⁸ See Appendix A, Chariton Valley Hearing Aid-Compatible Handset Offerings (M3 or higher rating) (indicating that between March 1, 2010 and May 14, 2010, Chariton Valley offered 15 or 16 handset models, only seven of which had a minimum M3 rating).

¹⁹ See 47 C.F.R. § 20.19(c)(3)(ii) (requiring non-Tier 1 digital wireless service providers to ensure that, beginning May 15, 2010, either at least 50% of the handset models offered, or at least ten handset models, met or exceeded the M3 rating for radio frequency interference).

²⁰ See Appendix A (indicating that from May 15, 2010 until August 31, 2010, Chariton Valley offered between 16 and 22 handset models, only seven to nine of which had a minimum M3 rating, and that in October 2010, Chariton Valley offered 20 handset models, only nine of which had a minimum M3 rating).

that Chariton Valley apparently willfully²¹ and repeatedly²² violated section 20.19(c)(3)(ii) of the Rules by failing to offer to consumers the required number or percentage of digital wireless handset models that met or exceeded the M3 rating. We further find that this apparent misconduct continued for seven months.

6. *Inductive Coupling (“T3” or higher rating).* We also find that Chariton Valley apparently failed to offer to consumers the required number or percentage of hearing aid-compatible handset models that met or exceeded the T3 rating. Between January 1, 2010 and May 14, 2010, Chariton Valley was required to offer at least *five* handset models with a minimum T3 rating per air interface, approximately one-third of the 15 to 16 handset models it made available to consumers without hearing loss.²³ As set forth in greater detail in Appendix B, Chariton Valley apparently failed to meet this standard by offering only four handset models with a minimum T3 rating from March 1, 2010 through May 14, 2010.²⁴ During the latter part of the reporting period (between May 15, 2010 and December 31, 2010), Chariton Valley was required to offer at least *six* or *seven* handset models with a minimum T3 rating per digital air interface, again significantly less than the 16 to 23 handset models it made available to non-hearing aid users.²⁵ Chariton Valley also apparently failed to meet this standard by offering as few as four and no more than six handset models with a minimum T3 rating from May 15, 2010 through December 2010.²⁶ Accordingly, we find that Chariton Valley apparently willfully and repeatedly violated section 20.19(d)(3)(ii) of the Rules by failing to offer to consumers the required number or percentage of digital wireless handset models that met or exceeded the T3 rating. We also find that this apparent misconduct continued for 10 consecutive months.

²¹ 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 ¶ 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) (forfeiture paid); *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).

²² 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 ¶ 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

²³ *See Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii) (requiring non-Tier 1 digital wireless service providers to ensure that between May 15, 2009 and May 14, 2010, either at least one-third of the handset models offered, or at least five handset models, met or exceeded the T3 rating for inductive coupling).

²⁴ *See Appendix B, Chariton Valley Hearing Aid-Compatible Handset Offerings (T3 or higher rating)* (indicating that between March 1, 2010 and May 14, 2010, Chariton Valley repeatedly fell short of the hearing aid-compatible handset requirements by one handset model).

²⁵ *See 47 C.F.R. § 20.19(d)(3)(ii)* (requiring non-Tier 1 digital wireless service providers to ensure that between May 15, 2010 and May 14, 2011, at least one-third of the handset models they offered, or at least seven handset models, met or exceeded the T3 rating for inductive coupling capability).

²⁶ *See Appendix B* (indicating that between May 15, 2010 and December 31, 2010, Chariton Valley repeatedly fell short of the hearing aid-compatible handset requirements by one to three handset models).

B. Proposed Forfeiture

7. 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.²⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability for forfeiture 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.²⁸ 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.²⁹ We conclude under this standard that Chariton Valley is apparently liable for a forfeiture for its apparent willful and repeated violations of section 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Rules.

8. 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.³⁰ 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.”³¹

9. The Commission’s *Forfeiture Policy Statement* 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.³² The fact that the *Forfeiture Policy Statement* does not specify a base amount no way suggests that a forfeiture should not 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.”³³ 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.³⁴

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

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

²⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

³⁰ 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.

³¹ 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.

³² 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*”); 47 C.F.R. §§ 1.80, 20.19.

³³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

³⁴ *Id.*

10. 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 advanced 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.³⁵ Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the public's growing reliance on wireless technology and with the increasing median age of our population.³⁶

11. We have previously determined that violations of the hearing aid-compatible handset deployment requirements are serious in nature because failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications.³⁷ As such, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.³⁸ We have applied the \$15,000 base forfeiture on a per handset model basis (*i.e.*, for each handset model below the minimum number of hearing aid-compatible models required by the Rules).³⁹ We also impose separate base forfeitures for the apparent M3-related and T3-related violations.

12. For purposes of calculating the base forfeiture amount for the M3-related violations, we focus on Chariton Valley's apparent failure to offer to consumers the requisite number or percentage of handset models with a minimum M3 rating in October 2010, when Chariton Valley missed the benchmark by one handset model.⁴⁰ Accordingly, and consistent with section 503(b)(6) of the Act, Chariton Valley is apparently liable for a base forfeiture of \$15,000 for failing to offer to consumers the required number or percentage of M3-rated handset models in willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.

³⁵ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

³⁶ *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, or 28 million Americans, 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 [2010]").

³⁷ *See South Canaan Cellular Communications Company, L.P.*, 23 FCC Rcd 20, 24 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid) ("*South Canaan*") (finding that "a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications."). *See also, e.g., NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009) (forfeiture paid) ("*NEP Cellcorp*"); *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *consent decree ordered*, Order and Consent Decree, 24 FCC Rcd 2951 (Enf. Bur., Spectrum Enf. Div. 2009) ("*Pinpoint Wireless*"); *Smith Bagley, Inc.*, 24 FCC Rcd 14113, 14118 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009), *response pending* ("*Smith Bagley*").

³⁸ *See, e.g., NEP Cellcorp*, 24 FCC Rcd at 13 ¶ 11; *Pinpoint Wireless*, 23 FCC Rcd at 9295 ¶ 11; *Smith Bagley*, 24 FCC Rcd at 14118 ¶ 11; *South Canaan*, 23 FCC Rcd at 24 ¶ 11.

³⁹ *See supra* n.38.

⁴⁰ *See supra* para. 5.

13. Similarly, the record establishes that Chariton Valley apparently failed to offer the requisite number or percentage of handset models with a minimum T3 rating from October through December 2010, missing the benchmark by as many as three handset models during this period.⁴¹ Accordingly, and consistent with section 503(b)(6) of the Act, Chariton Valley is apparently liable for a base forfeiture of \$45,000 (three T3-rated handset models x \$15,000) for failing to offer to consumers the required number or percentage of T3-rated handset models in willful and repeated violation of section 20.19(d)(3)(ii) of the Rules.

14. These base forfeiture amounts are, however, subject to upward adjustment. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the \$60,000 total base forfeiture amount is warranted. In this regard, we take into account that Chariton Valley was out of compliance with the hearing aid compatibility handset deployment requirements for most of the 12 month reporting period—failing to offer to consumers the requisite number or percentage of handset models with a minimum M3 rating for seven months and failing to offer the requisite number or percentage of handset models with a minimum T3 rating for ten consecutive months.⁴² Therefore, based on all the factors and evidence, including the duration of the violation and the potentially significant impact on consumers with hearing loss, we propose a forfeiture of \$82,500 against Chariton Valley for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Rules.⁴³

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,⁴⁴ Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighty two thousand five hundred dollars (\$82,500) for apparent willful and repeated violation of section 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Rules.⁴⁵

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,⁴⁶ within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Missouri RSA 5 Partnership

⁴¹ See *supra* para. 6.

⁴² 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). 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 Chariton Valley’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 ¶ 8 (2000); *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302 n.24 (Enf. Bur., Spectrum Enf. Div. 2010); *Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74, 76 n.23 (Enf. Bur., Spectrum Enf. Div. 2011). The forfeiture amount we propose herein relates only to Chariton Valley’s apparent violations that have occurred within the past year.

⁴³ 47 C.F.R. § 20.19(c)(3)(ii), (d)(3)(ii).

⁴⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴⁵ 47 C.F.R. § 20.19(c)(3)(ii), (d)(3)(ii).

⁴⁶ 47 C.F.R. § 1.80.

d/b/a Chariton Valley Wireless Services **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 the 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 e-mail ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Chariton Valley must also send electronic notification to Pamera Hairston at Pamera.Hairston@fcc.gov and Paul Noone at Paul.Noone@fcc.gov on the date said payment is made.

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.⁴⁷ 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. This statement also must be emailed to Pamera Hairston at Pamera.Hairston@fcc.gov and Paul Noone at Paul.Noone@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 (“GAAP”); 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 James Simon, General Manager, Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services, 1213 East Briggs Drive, Macon, Missouri 63522.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

⁴⁷ 47 C.F.R. §§ 1.80(f)(3), 1.16.

APPENDIX A
Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services Hearing Aid-Compatible
Handset Model Offerings
(M3 or higher rating)

Period	Total Handset Models Offered	M3-rated Handset Models Offered	M3-rated Handset Models Required	M3 Compliance?
January 2010	16	8	At least 50% of the total number of handset models offered or at least 9 handset models (1/1/10 - 5/14/10)	Yes
February 2010	16	8		Yes
March 2010	15	7		No
April 2010	16	7		No
May 1-14, 2010	16	7		No
May 15-31, 2010	16	7	At least 50% of the total number of handset models offered or at least 10 handset models (5/15/10 – 12/31/10)	No
June 2010	17	8		No
July 2010	17	8		No
August 2010	22	9		No
September 2010	23	11		Yes
October 2010	20	9		No
November 2010	22	11		Yes
December 2010	23	12		Yes

APPENDIX B
Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services Hearing Aid-Compatible
Handset Model Offerings
(T3 or higher rating)

Period	Total Handset Models Offered	T3-rated Handset Models Offered	T3-rated Handset Models Required	T3 Compliance?
January 2010	16	5	At least 1/3 of the total number of handset models offered or at least 5 handset models (1/1/10 – 5/14/10)	Yes
February 2010	16	5		Yes
March 2010	15	4		No
April 2010	16	4		No
May 1-14, 2010	16	4		No
May 15-31, 2010	16	4	At least 1/3 of the total number of handset models offered or at least 7 handset models (5/15/10 – 12/31/10)	No
June 2010	17	5		No
July 2010	17	4		No
August 2010	22	5		No
September 2010	23	5		No
October 2010	20	4		No
November 2010	22	5		No
December 2010	23	6		No