

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

In the Matter of)	File No.: EB-10-SE-115
)	
)	Acct. No.: 201232100003
OTZ Telecommunications, Inc.)	
)	FRN: 0004334538

ORDER

Adopted: November 8, 2011

Released: November 9, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission and OTZ Telecommunications, Inc. (“OTZ”). The Consent Decree resolves and terminates the Bureau’s investigation into OTZ’s compliance with section 20.19(d)(3)(ii) of the Commission’s rules¹ concerning the deployment of digital wireless hearing aid-compatible handsets. These hearing aid compatibility requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services.

2. The Bureau and OTZ have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether OTZ possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 20.19(d)(3)(ii).

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Carl Weisner, Operations Manager, and Susan L. Hardenbergh, Consulting Manager, OTZ Telecommunications, Inc., 346 Tundra Way, Kotzebue, AK 99752.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and OTZ Telecommunications, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of section 20.19(d)(3)(ii) of the Commission's rules¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which OTZ is subject by virtue of its business activities, including but not limited to, the Hearing Aid Compatibility Rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (g) "Covered Employees" means all employees and agents of OTZ who perform, or supervise, oversee, or manage the performance of, duties that relate to OTZ's responsibilities under the Hearing Aid Compatibility Rules.
 - (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 C.F.R. § 20.19(d)(3)(ii).

- (i) “Hearing Aid Compatibility Rules” means section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid compatibility, such as the Rules governing the design, selection, or acquisition of wireless handsets and the marketing or distribution of such handsets to consumers in the United States.
- (j) “Investigation” means the investigation commenced by the Bureau’s September 17, 2010 letter of inquiry² regarding OTZ’s deployment of digital wireless hearing aid-compatible handsets.
- (k) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by OTZ to implement the Compliance Plan.
- (l) “OTZ” means OTZ Telecommunications, Inc., its predecessors-in-interest and successors-in-interest.
- (m) “Parties” means OTZ and the Bureau, each of which is a “Party”.
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

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 Commission established technical standards for radio frequency interference (the “M” rating) and inductive coupling (the “T” rating)⁴ that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, respectively. For each of these standards, the Commission further established deadlines by which manufacturers and

² Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Carl Weisner, Operations Manager, OTZ Telecommunications, Inc. (Sept. 17, 2010) (“LOI”).

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 Act, 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).

⁴ As subsequently amended, section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI C63.19-2007 (June 8, 2007). Beginning January 1, 2010, a newly certified handset must meet at least an M3 rating under ANSI C63.19-2007 to be considered hearing aid-compatible for radio frequency interference. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in ANSI C63.19-2006 or ANSI C63.19-2007, and beginning January 1, 2010, it is deemed hearing aid-compatible for inductive coupling if it meets at least a T3 rating under ANSI C63.19-2007. 47 C.F.R. § 20.19(b)(2). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard unless the *de minimis* exception applies.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

3. On January 15, 2010, OTZ submitted its annual hearing aid compatibility status report for the January 1, 2009 to December 31, 2009 reporting period.⁸ On September 16, 2010, the Wireless Telecommunications Bureau referred OTZ's apparent hearing aid-compatible handset deployment violations to the Bureau's Spectrum Enforcement Division ("Division") for investigation and possible enforcement action. On September 17, 2010, the Division issued the LOI to OTZ, which directed the company to submit a sworn written response to a series of questions related to its compliance with section 20.19(c)(3)(ii).⁹ OTZ responded to the LOI on September 23, 2010.¹⁰ The Bureau and OTZ entered into tolling agreements on November 15, 2010,¹¹ March 16, 2011, and June 23, 2011¹² to toll the statute of limitations.

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

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). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or 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 *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).

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 *OTZ Telecommunications, Inc.* Hearing Aid Compatibility Report, Docket No. 07-250 (Jan. 15, 2010) available at http://wireless.fcc.gov/hac_documents/100317/OTZ%20Telecommunicatio_122.PDF.

⁹ See *supra* note 2.

¹⁰ See Letter from Carl Weisner, Operations Manager, OTZ Telecommunications, Inc., to Jacqueline Ellington, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Sept. 23, 2010).

¹¹ Tolling Agreement, File No. EB-10-SE-115, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Carl Weisner, Operations Manager, OTZ Telecommunications, Inc. (Nov. 15, 2010).

¹² Tolling Agreement Extension, File No. EB-10-SE-115, executed by and between Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Susan L. Hardenbergh, Senior Utility Consulting Manager (Mar. 16, 2011); Tolling Agreement Extension, File No. EB-10-SE-115, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Susan L. Hardenbergh, Senior Utility Consulting Manager (June 23, 2011).

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** OTZ agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, OTZ agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against OTZ concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against OTZ with respect to OTZ's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, OTZ agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan to help ensure future compliance with the Communications Laws, including the Hearing Aid Compatibility Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, OTZ shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that OTZ complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this agreement, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules prior to assuming his/her duties.
- (b) **Operating Procedures on Hearing Aid Compatibility.** Within sixty (60) calendar days after the Effective Date, OTZ shall establish Operating Procedures that all

Covered Employees must follow to help ensure OTZ's compliance with the Hearing Aid Compatibility Rules. OTZ's Operating Procedures shall include internal procedures and policies specifically designed to ensure that OTZ offers the requisite number or percentage of hearing aid-compatible digital wireless handsets to consumers as required by the Hearing Aid Compatibility Rules. OTZ also shall develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that the inclusion of a new handset model, or discontinuance of an existing handset offering, will not result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements. At a minimum, the Compliance Checklist shall require Covered Employees to verify the hearing aid compatibility rating of each existing and proposed handset offering using the Commission's equipment authorization database.

- (c) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Hearing Aid Compatibility Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure OTZ's compliance with the Hearing Aid Compatibility Rules. OTZ shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. OTZ shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** OTZ shall establish and implement a Compliance Training Program on compliance with the Hearing Aid Compatibility Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of OTZ's obligation to report any non-compliance with the Hearing Aid Compatibility Rules under paragraph 9 of this Consent Decree and shall be instructed on how to disclose non-compliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. OTZ shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

9. **Reporting Non-Compliance.** OTZ shall report any non-compliance with the Hearing Aid Compatibility Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that OTZ has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that OTZ has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Katherine Power at Katherine.Power@fcc.gov and to Pamera

Hairston at Pamera.Hairston@fcc.gov. The reporting obligations set forth in this paragraph 9 shall expire twenty-four (24) months after the Effective Date.

10. **Compliance Reports.** OTZ shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of OTZ's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Hearing Aid Compatibility Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of OTZ, stating that the Compliance Officer has personal knowledge that OTZ (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 9 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules¹³ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of OTZ, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of non-compliance; (ii) the steps that OTZ has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that OTZ has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Katherine Power at Katherine.Power@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

11. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against OTZ or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by OTZ with the Act, Rules, or Commission orders.

12. **Voluntary Contribution.** OTZ agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirteen thousand dollars (\$13,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar

¹³ 47 C.F.R. § 1.16.

instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. 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 Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). OTZ shall also send electronic notification to Katherine Power at Katherine.Power@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov on the date said payment is made.

13. **Waivers.** OTZ waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. OTZ shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither OTZ nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and OTZ shall waive any statutory right to a trial *de novo*. OTZ hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

14. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which OTZ does not expressly consent) that provision will be superseded by such Rule or Commission order.

16. **Successors and Assigns.** OTZ agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act, the Rules, or Commission’s orders.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** The individual signing this Consent Decree on behalf of OTZ represents and warrants that he is authorized by OTZ to execute this Consent Decree and to bind

OTZ to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Carl Weisner
Operations Manager
OTZ Telecommunications, Inc.

Date