

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

In the matter of)	
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)	
Pantech Wireless, Inc., a U.S.-based subsidiary)	File No.: EB-09-SE-156
of Pantech Co., Ltd.)	Acct. No.: 201132100024
)	FRN.: 0019483593

ORDER

Adopted: February 17, 2011

Released: February 17, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Pantech Co., Ltd. and its wholly owned U.S.-based subsidiary, Pantech Wireless, Inc. (together “Pantech”). The Consent Decree terminates an investigation initiated by the Bureau regarding Pantech’s compliance with sections 20.19(h) and (i) of the Commission’s rules¹ concerning the wireless handset hearing aid compatibility web site posting and hearing aid compatibility status reporting requirements, and sections 20.19(c)(1) and (d)(1) of the Commission’s rules² pertaining to the hearing aid-compatible digital wireless handset deployment requirements.

2. The Bureau and Pantech have negotiated the terms of a Consent Decree that would resolve this matter. A copy of the Consent Decree is attached hereto and incorporated 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 Pantech 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 section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 20.19(h), (i).

² 47 C.F.R. § 20.19(c)(1), (d)(1).

³ 47 U.S.C. § 154(i).

⁴ 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 counsel for Pantech Wireless, Inc., W. Dennis Summers, Esq., McGuireWoods LLP, 1170 Peachtree St., NE, Suite 2100, Atlanta, Georgia 30309, Kathy Jones, Secretary, Pantech Wireless, Inc., 5607 Glenridge Drive, Suite 500, Atlanta, Georgia 30342, and DooHyun Yoon, CFO, Pantech Co., Ltd., Pantech R&D Center, I-2, DMC, Sangam-dong, Mapo-gu, Seoul, 121-790, Korea.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, Pantech Wireless, Inc., and Pantech Co., Ltd. by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible violations of sections 20.19(h) and (i) of the Commission's rules¹ pertaining to wireless handset hearing aid compatibility web site posting and hearing aid compatibility status reporting requirements, and sections 20.19(c)(1) and (d)(1) of the Commission's rules² pertaining to wireless hearing aid-compatible handset deployment requirements.

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) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation commenced by the Bureau's October 9, 2009 and November 18, 2009 letters of inquiry to PWI regarding possible violations by Pantech of sections 20.19(h) and (i) of the Rules,³ which was later expanded to include possible violations of sections 20.19(c)(1) and (d)(1) of the Rules.

¹ 47 C.F.R. § 20.19(h), (i).

² 47 C.F.R. § 20.19(c)(1), (d)(1).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Patrick Beattie, Vice President, Pantech Wireless, Inc. (October 9, 2009).

- (h) “Pantech” means Pantech Wireless, Inc. and Pantech Co., Ltd. as well as their predecessors-in-interest and successors-in-interest.
- (i) “PWI” means Pantech Wireless, Inc., a U.S.-based subsidiary of Pantech Co., Ltd. which distributes Pantech handsets in the United States, as well as its predecessors-in-interest and successors-in-interest.
- (j) “Parties” means Pantech and the Bureau, and each a “Party.”
- (k) “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 individuals with hearing disabilities to access digital wireless telecommunications.⁴ 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 2008.⁵ Sections 20.19(c)(1) and (d)(1) of the Rules establish specific deployment benchmarks for manufacturers of wireless handsets relating to radio frequency interference and inductive coupling capability, respectively.⁶ In addition, section 20.19(h) of the Rules requires that each manufacturer of wireless handsets that maintains 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, an explanation of the rating system, and related information. Each manufacturer of wireless handsets must also update its public web site within 30 calendar days of any changes in its handset offerings.⁷ Section 20.19(i) of the Rules further requires manufacturers of wireless handsets to submit reports to the Commission on its efforts towards compliance with the Commission’s requirements for hearing aid compatibility, such as compliance with hearing aid-compatible handset deployment benchmarks and technical requirements.⁸

3. On October 9, 2009, the Bureau issued a letter of inquiry (“LOI”) to PWI, a U.S.-based subsidiary of Pantech Co., Ltd, which distributes Pantech handsets in the United States.⁹ The LOI

⁴ 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).

⁵ 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).

⁶ 47 C.F.R. § 20.19(c)(1), (d)(1). See also *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3417-20 ¶¶ 34-37.

⁷ 47 C.F.R. § 20.19(h). See also *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

⁸ 47 C.F.R. § 20.19(i). See also *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3444-46 ¶¶ 95-101.

⁹ See LOI *supra* note 3. PWI, based in Atlanta, Georgia, is the United States subsidiary of Pantech Co., Ltd., a mobile handset manufacturer based in Korea. See Independent Auditors’ Report from PK LLP to The Board of Directors, Pantech Wireless, Inc., January 26, 2010.

directed PWI to submit a sworn written response to a series of questions relating to Pantech's compliance with the hearing aid compatibility regulations pertaining to certain wireless handsets. On November 18, 2009, having received no response, the Spectrum Enforcement Division re-sent the LOI to PWI.¹⁰ PWI responded to the Second LOI on December 18, 2009.¹¹ PWI stated that it updated its website to comply with the Rules upon learning of the requirement from the LOI.¹² PWI also filed the required Hearing Aid Compatibility Report for the period January 1, 2009 – June 30, 2009 (due July 15, 2009) on February 4, 2010, and for the period July 1, 2008 – December 31, 2008 (due January 15, 2009) on March 29, 2010.

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 without change, addition, modification, or deletion.

5. **Jurisdiction.** Pantech agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and 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. Upon release, 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 said Investigation, Pantech 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 Pantech 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 Pantech with respect to Pantech'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, Pantech agrees to (i) implement within sixty (60) calendar days after the Effective Date a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders, and (ii) establish operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, section 20.19 of the Rules, and other Rules, Commission Orders or statutory requirements governing wireless hearing aid-

¹⁰ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jim Berridge, National Retail Sales Manager, Pantech Wireless, Inc. (Nov. 18, 2009) ("Second LOI").

¹¹ See *LOI Response*. The Bureau granted PWI extensions of time, until December 18, 2009, to file its response.

¹² See *id* at 2.

compatible handsets, and (iii) describe such operating procedures in its Compliance Manual pursuant to paragraph 8(b) below. The compliance plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Pantech shall designate a senior corporate manager to serve as a Compliance Officer. The Compliance Officer shall be responsible for administering the Compliance Plan and shall be familiar with the FCC's hearing aid compatibility regulations and other relevant rules.
- (b) **Compliance Manual.** The Compliance Officer shall develop and distribute a Compliance Manual to employees of Pantech and others who perform duties that trigger or may trigger compliance-related responsibilities. The Compliance Manual shall describe the Commission's handset deployment, reporting, and other wireless hearing aid compatibility requirements, as well as the operating procedures referenced above. Pantech shall update the Compliance Manual in accordance with any changes and/or additions to sections of the Act, Rules, and related Commission Orders governing wireless hearing aid-compatible handsets.
- (c) **Training.** Within sixty (60) calendar days after the Effective Date, Pantech shall train and provide educational materials on section 20.19 of the Rules and the terms of this Consent Decree to its management employees who are involved in the development and/or marketing of wireless handsets imported, marketed, or sold by Pantech in the United States. Such training shall be repeated annually during the term of this Consent Decree. Pantech shall also train and provide materials to any new or re-assigned management employees of Pantech involved in the development and/or marketing of wireless handsets imported, marketed, or sold by Pantech in the United States within thirty (30) calendar days of their employment or re-assignment. Finally, Pantech shall update any training and educational materials to reflect changes and/or additions to sections of the Act, Rules, and related Commission Orders governing wireless hearing aid-compatible handsets, and promptly provide these materials to management employees as set forth above.
- (d) **Reporting Non-Compliance.** Pantech shall report any non-compliance with this Consent Decree and/or with sections of the Act, Rules, and related Commission Orders governing wireless hearing aid-compatible handsets to the Enforcement Bureau within fifteen (15) calendar days after the discovery of such non-compliance.
- (e) **Compliance Reports.** Pantech shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Pantech, stating that the Compliance Officer has personal knowledge that Pantech (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, with section 20.19 of the Rules, and other Rules, Commission Orders, or statutory requirements governing wireless hearing aid-compatible handsets, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; (iii) has filed the required annual Hearing Aid Compatibility Report and updated its public website in a timely manner consistent with the Rules; and (iv) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be

subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Pantech, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, (ii) the steps that Pantech has taken or will take to remedy each instance of non-compliance and ensure future compliance, and (iii) the schedule on which proposed remedial actions will be taken. 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 Jennifer.Burton@fcc.gov and JoAnn.Lucanik@fcc.gov.

- (f) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree shall expire thirty-six (36) months after the Effective Date.

9. **Voluntary Contribution.** Pantech agrees that it will make a voluntary contribution to the United States Treasury in the amount of fifty thousand dollars (\$50,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar 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). Pantech must also send electronic notification to Jennifer.Burton@fcc.gov and JoAnn.Lucanik@fcc.gov on the date said payment is made.

10. **Waivers.** Pantech 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 adopting the Consent Decree without change, addition, modification, or deletion. Pantech 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 Pantech nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Pantech shall waive any statutory right to a trial *de novo*. Pantech 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.

11. **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.

12. **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 Pantech does not expressly consent) that provision will be superseded by such Rule or Order.

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

14. **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 or the Rules and Commission's orders.

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

16. **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.

17. **Authorized Representative.** The individuals signing this Consent Decree on behalf of PWI and Pantech Co., Ltd. represent and warrant that they are authorized by PWI and Pantech Co., Ltd. to execute this Consent Decree and to bind these companies 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.

18. **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

Kathy Jones
Secretary, Pantech Wireless, Inc.

Date

DooHyun Yoon
CFO, Pantech Co., Ltd.

Date