

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

In the Matter of	)	File No.: EB-SED-12-00005491
	)	
Kyocera Communications, Inc.	)	NAL/Acct. No.: 201332100003
Kyocera Corporation	)	FRNs: 0004265831, 0017617366

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 1, 2013**

**Released: May 1, 2013**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we propose a forfeiture in the amount of twelve thousand dollars (\$12,000) against Kyocera Communications, Inc. and its corporate parent, Kyocera Corporation (collectively, Kyocera).<sup>1</sup> As detailed herein, we find that Kyocera apparently willfully and repeatedly violated 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).<sup>2</sup>

**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.<sup>3</sup> 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.<sup>4</sup> Specifically, the Commission adopted a standard for radio frequency interference (the M3 rating) to

<sup>1</sup> Kyocera Communications, Inc. is a subsidiary of Kyocera Corporation. See Kyocera Corporation, *Corporate Profile*, [http://global.kyocera.com/company/download/pdf/all\\_en.pdf](http://global.kyocera.com/company/download/pdf/all_en.pdf) (last visited Apr. 12, 2012). Kyocera Corporation manufactures mobile telephones and other electronic devices. *Id.* Kyocera Communications, Inc. "is the sales, marketing and service headquarters for Kyocera - and Sanyo-branded wireless products and accessories in the Americas." Kyocera Communications, Inc., *Kyocera Corporate Overview*, <http://www.kyocera-wireless.com/company-information/overview.htm> (last visited Apr. 12, 2013).

<sup>2</sup> 47 C.F.R. § 20.19(i)(1).

<sup>3</sup> See *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), Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Order*). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, Pub. L. No. 100-394, 102 Stat. 976 (codified at 47 U.S.C. § 610).

<sup>4</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777, 16779, paras. 56, 63; see also 47 C.F.R. § 20.19(b)(1), (2).

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.<sup>5</sup> In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established various deadlines commencing in 2008 by which manufacturers and service providers were required to offer specified numbers of digital wireless handset models rated hearing aid-compatible.<sup>6</sup>

3. The Commission also adopted reporting requirements to ensure that it could monitor the availability of hearing aid-compatible handsets and to provide valuable information to the public concerning the technical testing and commercial availability of these handsets.<sup>7</sup> 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, and then annually thereafter through the fifth year of implementation.<sup>8</sup> In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open-ended basis.<sup>9</sup>

4. Kyocera failed to timely file its hearing aid compatibility status report for the period July 1, 2011 through June 30, 2012. The required report was due to be filed on July 16, 2012.<sup>10</sup> Staff from the Commission's Wireless Telecommunications Bureau (Wireless Bureau) notified Kyocera of its failure to file the status report on July 24, 2012. The Wireless Bureau reopened the filing window on September 10, 2012, at which time Kyocera filed its status report for the reporting period ending June 30, 2012.<sup>11</sup> The Wireless Bureau subsequently referred Kyocera's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for investigation and possible enforcement action.

### III. DISCUSSION

#### A. Failure to Timely File Hearing Aid Compatibility Status Report

5. Section 20.19(i)(1) of the Rules requires handset manufacturers to file hearing aid compatibility status reports.<sup>12</sup> These reports are necessary to enable the Commission to perform its

<sup>5</sup> See 47 C.F.R. §20.19(b).

<sup>6</sup> See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3418–20, paras. 35–36 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008) (*Hearing Aid Compatibility First Report and Order*).

<sup>7</sup> See *id.* at 3443, para. 91; see also 47 C.F.R. § 20.19(i).

<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 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).

<sup>9</sup> See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3444–46, paras. 97–99, 101. The extensions of these reporting requirements became effective on December 13, 2011. See 76 Fed. Reg. 77,415 (Dec. 13, 2011). The Commission also made clear that these reporting requirements apply to manufacturers and service providers that meet the *de minimis* exception. See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3446, para. 99.

<sup>10</sup> Manufacturers are required to file their hearing aid compatibility status reports on July 15<sup>th</sup> of each year. See 47 C.F.R. § 20.19(i)(1). However, because July 15, 2012 fell on a Sunday, the report was due the next business day, July 16, 2012. See *id.* § 1.4(e)(1) (defining “holiday” to include Sunday); *Id.* § 1.4(j) (when a deadline falls on a holiday, the deadline is extended until the next business day); see also *Hearing Aid Compatibility Status Reporting*, <http://wireless.fcc.gov/hac>.

<sup>11</sup> See *Kyocera Communications, Inc.*, Hearing Aid Compatibility Report (Sept. 10, 2012), [http://wireless.fcc.gov/hac\\_documents/120928/7058833\\_23.PDF](http://wireless.fcc.gov/hac_documents/120928/7058833_23.PDF).

<sup>12</sup> See 47 C.F.R. § 20.19(i)(1).

enforcement function and to evaluate whether Kyocera 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. In addition, accurate reporting of a handset model's hearing aid compatibility rating by the handset manufacturer may assist service providers in complying with the hearing aid compatibility rules.<sup>13</sup> Kyocera failed to timely file the hearing aid compatibility status report due on July 16, 2012 in apparent willful<sup>14</sup> and repeated<sup>15</sup> violation of Section 20.19(i)(1) of the Rules.<sup>16</sup>

### B. Proposed Forfeiture

6. Under Section 503(b)(1)(B) of the Communications Act of 1934, as amended (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.<sup>17</sup> To impose such a forfeiture penalty, the Commission must first 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.<sup>18</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or the Rules.<sup>19</sup> We conclude that Kyocera is apparently liable for a forfeiture for its failure to timely file the required hearing aid compatibility status report in apparent willful and repeated violation of Section 20.19(i)(1) of the Rules.<sup>20</sup>

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<sup>13</sup> See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3446, para. 98 (stating that a handset model's hearing aid compatibility rating, among other relevant information, "should be readily available to service providers either from the manufacturer's previous reports to the Commission, from the manufacturer's own website, or from the manufacturer directly."). We note, however, that the Commission's Equipment Authorization System is the most reliable source for information on a handset's hearing aid compatibility rating. The Equipment Authorization System is an electronic database of all equipment certified under Commission authority. The database identifies the hearing aid compatibility rating of each handset by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization or of any modification to such authorization. See <http://transition.fcc.gov/oet/ea/fccid/>.

<sup>14</sup> 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 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. See *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*).

<sup>15</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] 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 also *Southern California*, 6 FCC Rcd at 4388, para. 5.

<sup>16</sup> 47 C.F.R. § 20.19(i)(1).

<sup>17</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a).

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>19</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

<sup>20</sup> 47 C.F.R. § 20.19(i)(1).

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules set a base forfeiture amount of \$3,000 for the failure to file required forms or information.<sup>21</sup> While the base forfeiture requirements are guidelines lending some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis under its general forfeiture authority contained in Section 503 of the Act.<sup>22</sup>

8. We have exercised our discretion to set a higher base forfeiture amount for violations of the wireless hearing aid compatibility reporting requirements. In *ASTCA*, we found that the status reports are essential to the implementation and enforcement of the hearing aid compatibility rules.<sup>23</sup> The Commission relies on these reports to provide consumers with information regarding the technical specifications and commercial availability of hearing aid-compatible digital wireless handsets and to ensure that the digital wireless industry meets the needs of the increasing number of consumers with hearing loss.<sup>24</sup> In an analogous context, we noted that when setting an \$8,000 base forfeiture for violations of the hearing aid-compatible handset labeling requirements, the Commission emphasized that consumers with hearing loss could only take advantage of critically important public safety benefits of digital wireless services if they had access to accurate information regarding hearing aid compatibility features of handsets.<sup>25</sup> We also noted that the Commission has adjusted the base forfeiture upward when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.<sup>26</sup> Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we exercised our discretionary authority and established a base forfeiture amount of \$6,000 for failure to file a hearing aid compatibility report.<sup>27</sup> Consistent with *ASTCA*, we believe the established \$6,000 base forfeiture for violation of the hearing aid compatibility reporting requirement should apply here, for a proposed base forfeiture of \$6,000.

9. The \$6,000 base forfeiture, however, is subject to adjustment. In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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."<sup>28</sup> Failure to file this report, as is the case here, can have an adverse impact on the Commission's ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets, to the detriment of consumers. Furthermore, as we noted in *ASTCA*, the failure to file a hearing aid compatibility status report constitutes a continuing violation that continues until the violation is cured.<sup>29</sup> Consequently, we do not believe that the circumstances presented warrant any downward adjustment of the proposed forfeiture amount.

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<sup>21</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113, Appendix A, Section I, *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. § 1.80.

<sup>22</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, 17101, paras. 22, 29; see also 47 C.F.R. § 1.80.

<sup>23</sup> See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432, 16436–37, para. 10 (Enf. Bur. 2008), *forfeiture ordered*, Forfeiture Order, 27 FCC Rcd 13174 (Enf. Bur. 2012) (forfeiture paid) (*ASTCA*).

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>29</sup> See *ASTCA*, 23 FCC Rcd at 16437, para. 11; see also *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138, para. 29 (2008) (determining that failure to file Telecommunications Reporting (continued....))

10. Given the totality of the circumstances and having considered the statutory factors enumerated above, we conclude that an upward adjustment is warranted. Specifically, we take into account Kyocera's high revenues and ability to pay a forfeiture in determining the appropriate forfeiture amount. As the Commission made clear in the *Forfeiture Policy Statement*, companies with higher revenues, such as Kyocera,<sup>30</sup> could expect forfeitures higher than those reflected in the base amounts.<sup>31</sup> Accordingly, we propose a forfeiture of \$12,000 against Kyocera for failing to timely file its hearing aid compatibility status report for the period ending June 30, 2012 by the July 16, 2012 deadline in apparent willful and repeated violation of Section 20.19(i)(1) of the Rules.<sup>32</sup>

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's rules,<sup>33</sup> Kyocera Communications, Inc. and Kyocera Corporation **ARE NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of Section 20.19(i)(1) of the Commission's rules.<sup>34</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days after the release date of this Notice of Apparent Liability for Forfeiture, Kyocera Communications, Inc. and Kyocera Corporation **SHALL PAY** the full amount of the proposed forfeiture, for which they are jointly and severally liable, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 15 below.

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Kyocera Communications, Inc. and Kyocera Corporation shall send electronic notification of payment to Pamela Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov), Jason Koslofsky at [Jason.Koslofsky@fcc.gov](mailto:Jason.Koslofsky@fcc.gov), and Samantha Peoples at [Sam.Peoples@fcc.gov](mailto:Sam.Peoples@fcc.gov) on the date said payment is made. Regardless of the form of payment, a

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Worksheets was a continuing violation); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (determining that failure to file Form 497 was a continuing violation).

<sup>30</sup> Kyocera Communications, Inc. is a subsidiary of Kyocera Corporation. *See supra* note 1. Kyocera Corporation has significant gross revenues based on its reported net sales of approximately \$14.5 billion for the fiscal year ending March 2012. *See* News Release, *KYOCERA Honored as "Device Vendor of the Year" by RadioShack* (Nov. 1, 2012), [http://americas.kyocera.com/news/news\\_detail.cfm?key=2198](http://americas.kyocera.com/news/news_detail.cfm?key=2198).

<sup>31</sup> Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violators, we recognize that for large or highly profitable communications entities, the base forfeiture amounts . . . are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level. For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts . . . we intend to take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

*Forfeiture Policy Statement*, 12 FCC Rcd at 17099–100, para. 24.

<sup>32</sup> 47 C.F.R. § 20.19(i)(1).

<sup>33</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>34</sup> 47 C.F.R. § 20.19(i)(1).

completed FCC Form 159 (Remittance Advice) must be submitted.<sup>35</sup> 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

15. 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 Commission’s rules.<sup>36</sup> 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. The statement must also be emailed to Pamela Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov) and to Jason Koslofsky at [Jason.Koslofsky@fcc.gov](mailto:Jason.Koslofsky@fcc.gov). 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; 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.

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<sup>35</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>36</sup> 47 C.F.R. §§ 1.80(f)(3), 1.16.

16. **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 Yasuhiro Oishi, President, Kyocera Communications, Inc., 9520 Towne Centre Drive, San Diego, CA 92121, and to Goro Yamaguchi, President, Kyocera Corporation, 9520 Towne Centre Drive, San Diego, CA 29121.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau