

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Locus Telecommunications, Inc.) File No.: EB-SED-13-000094861
) NAL/Acct. No.: 201232100017
) FRN: 0010729515

ORDER

Adopted: April 2, 2015

Released: April 2, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Locus Telecommunications, Inc. (Locus) failed to offer the requisite number of digital wireless hearing aid-compatible handset models during the 2010 reporting period. The Commission enforces hearing aid compatibility requirements to ensure that consumers with hearing loss have access to the full range of benefits made possible by advanced telecommunications services. To settle this matter, Locus admits that it failed to offer the minimum required number of digital wireless hearing aid-compatible handset models during the 2010 reporting period, and agrees to implement a compliance plan and pay a \$23,000 civil penalty.

2. 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 resolving the Notice of Apparent Liability for Forfeiture and Admonishment (NAL&A)2 regarding Locus’s compliance with hearing aid-compatible digital wireless handset deployment requirements set forth in Sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Commission’s rules (Rules) during the 2010 reporting period.3

3. 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 Locus possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,4 and the authority delegated by Sections 0.111 and 0.311 of the Rules,5 the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 The investigation initiated under File No. EB-11-SE-104 was subsequently assigned File No. EB-SED-13-00009486. Any future correspondence with the FCC concerning this matter should reflect the new case number.

2 Locus Telecommunications, Inc., Notice of Apparent Liability for Forfeiture and Admonishment, 26 FCC Rcd 17073 (Enf. Bur. 2011).

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

4 47 U.S.C. §§ 154(i), 503(b).

5 47 C.F.R §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL&A **IS CANCELED**.

6. **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 Nelson Gomez, Vice President, Locus Telecommunications, Inc., 2200 Fletcher Avenue, 6th Floor, Fort Lee, NJ 07024, and to Linda McReynolds, Esq., Marashlian & Donahue, LLC, 1420 Spring Hill Road, Suite 401, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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Locus Telecommunications, Inc.)	File No.: EB-SED-13-00009486 ¹
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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Locus Telecommunications, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Locus violated Sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Commission's rules in connection with its deployment of digital wireless hearing aid-compatible handsets during the 2010 reporting period.²

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.³
 - (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) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Locus is subject by virtue of its business activities, including but not limited to the Hearing Aid Compatibility Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
 - (g) "Covered Employees" means all employees and agents of Locus who perform, or supervise, oversee, or manage the performance of, duties that relate to Locus's responsibilities under the Communications Laws, including the Hearing Aid Compatibility Rules.
 - (h) "Effective Date" means the date by which both the Bureau and Locus have signed the Consent Decree.
 - (i) "Hearing Aid Compatibility Rules" means Section 20.19 of the Rules and other provisions of the Act, the Rules, and Commission orders related to the design,

¹ The investigation initiated under File No. EB-11-SE-104 was subsequently assigned File No. EB-SED-13-00009486. Any future correspondence with the FCC concerning this matter should reflect the new case number.

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

³ 47 U.S.C. § 151 *et seq.*

selection, or acquisition of wireless handsets and the marketing or distribution of such handsets to consumers within the United States and its territories.⁴

- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-13-00009486 regarding whether Locus violated the Hearing Aid Compatibility Rules, culminating in the release of the NAL&A against Locus.
- (k) “Locus” means Locus Telecommunications, Inc. and its affiliates, subsidiaries, predecessors-in-interest and successors-in-interest.
- (l) “NAL&A” means the Notice of Apparent Liability for Forfeiture and Admonishment issued to Locus on December 29, 2011 proposing a \$25,500 forfeiture and admonishing Locus for apparent violations of the Hearing Aid Compatibility Rules.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Locus to implement the Compliance Plan.
- (n) “Parties” means Locus and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. 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.⁵ The Commission adopted separate standards for radio frequency interference to enable acoustic coupling (the M3 rating) and inductive coupling (the T3 rating) of digital wireless handset models with hearing aids.⁶ The Commission further established deadlines for each standard by which digital wireless service providers and digital wireless handset manufacturers were required to offer specified numbers or percentages of digital wireless hearing aid-compatible handset models.⁷

4. On December 29, 2011, the Bureau released the NAL&A proposing a \$25,500 forfeiture against Locus for its apparent willful and repeated violation of Section 20.19(c)(3)(ii) of the Rules and admonishing Locus for its apparent willful and repeated violation of Section 20.19(d)(3)(ii) of the Rules.⁸ Specifically, the Bureau proposed a \$25,500 against Locus for its failure to offer the number of M3-rated models required by Section 20.19(c)(3)(ii) of the Rules over the entire 2010 reporting period.⁹ The

⁴ See 47 C.F.R. § 20.19.

⁵ The Commission adopted these requirements for digital wireless handsets 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. §§ 609, 610, 610 note). *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) (*Hearing Aid Compatibility Reconsideration Order*).

⁶ See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238, n.118; NAL&A, 26 FCC Rcd 17073, 17073–74, at para. 2 (Enf. Bur. 2011).

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; see also 47 C.F.R. § 20.19(c)–(d) (2006).

⁸ See NAL&A, 26 FCC Rcd at 17080, paras. 15, 17; see also 47 C.F.R. § 20.19(c)(3)(ii), (d)(3)(ii). The NAL&A provides a more complete recitation of the history and applicable law in the case and is incorporated herein by reference.

⁹ See *id.* at 17079–80, para. 13.

Bureau also admonished Locus for failing offer the minimum number of T3-rated models required by Section 20.19(d)(3)(ii) of the Rules from January through June in the 2010 reporting period.¹⁰

III. TERMS OF AGREEMENT

5. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **Jurisdiction**. Locus 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.

7. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **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, Locus agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the 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 Locus 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 the 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 Locus with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

9. **Admission of Liability**. Locus admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions with respect to the offering of digital wireless hearing aid-compatible handset models during the 2010 reporting year as referenced herein violated the Commission's Hearing Aid Compatibility Rules.

10. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, Locus shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a 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 Locus 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 or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules prior to assuming his/her duties.

11. **Compliance Plan**. For purposes of settling the matters set forth herein, Locus agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Hearing Aid Compatibility Rules, Locus will implement, at a minimum, the following procedures:

- (a) **Operating Procedures**. Within sixty (60) calendar days after the Effective Date, Locus shall establish Operating Procedures that all Covered Employees must follow to help ensure Locus's compliance with the Hearing Aid Compatibility Rules.

¹⁰ See *id.* at 17080, para. 14. The Bureau did not impose a forfeiture against Locus for its apparent violation of Section 20.19(d)(3)(ii) because it fell outside the Commission's one-year statute of limitations for proposing forfeiture liability. See 47 U.S.C. § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(4).

Locus's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Locus offers the number or percentage of digital wireless hearing aid-compatible handset models to consumers required by the Hearing Aid Compatibility Rules and accurately reports its handset offerings in its annual hearing aid compatibility status reports. Locus 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 model offering, complies with the Hearing Aid Compatibility Rules. At a minimum, the Compliance Checklist shall require Covered Employees to verify the hearing aid compatibility rating of each existing and proposed handset model offering using the Commission's equipment authorization database.

- (b) **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 Locus's compliance with the Hearing Aid Compatibility Rules. Locus shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Locus shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Locus 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 Locus's obligation to report any noncompliance with the Hearing Aid Compatibility Rules under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance 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 initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Locus shall repeat 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.

12. **Reporting Noncompliance.** Locus shall report any noncompliance 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 noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Locus has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Locus has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

13. **Compliance Reports.** Locus 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.

- (a) Each Compliance Report shall include a detailed description of Locus'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 Locus, stating that the Compliance Officer has personal knowledge that Locus (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 noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall 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.¹¹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Locus, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Locus has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Locus has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Civil Penalty.** Locus will pay a civil penalty to the United States Treasury in the amount of twenty-three thousand dollars (\$23,000) within thirty (30) calendar days of the Effective Date. Locus shall send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Pamera Hairston at Pamera.Hairston@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹² 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 that should be followed based on the form of payment selected:

- 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

¹¹ 47 C.F.R. § 1.16.

¹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** As of the Effective Date, Locus 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. Locus 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 Consent Decree or the Adopting Order, neither Locus nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Locus shall waive any statutory right to a trial *de novo*. Locus hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹³ relating to the matters addressed in this Consent Decree.

17. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. **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.

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

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

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

23. **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.

24. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

¹³ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

25. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

William Davenport
Deputy Chief
Enforcement Bureau

Date

Nelson Gomez
Vice President
Locus Telecommunications, Inc.

Date