

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

In the Matter of	)	
	)	
T-Mobile USA, Inc., a subsidiary of	)	File No.: EB-SED-13-00009310 <sup>1</sup>
T-Mobile US, Inc.	)	
	)	NAL/Acct. No.: 201232100024
	)	
	)	FRN: 0006945950

**FORFEITURE ORDER**

**Adopted: August 26, 2014**

**Released: August 27, 2014**

By the Commission:

**I. INTRODUCTION**

1. We enforce hearing aid compatibility requirements to ensure that consumers with hearing loss have access to advanced telecommunications services. In adopting the hearing aid compatibility rules, we underscored the strong and immediate need for such access, stressing that individuals with hearing loss should not be denied the public safety and convenience benefits of digital wireless telephony.<sup>2</sup> Moreover, the demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population. Although our wireless hearing aid compatibility rules have been in place for nearly a decade, T-Mobile USA, Inc. (T-Mobile or Company), a nationwide wireless carrier, failed to provide the minimum number of hearing aid-compatible handset models required under the rules during calendar years 2009 and 2010. To that end, we impose a penalty of \$819,000 against T-Mobile, for failing to offer to consumers the required number of hearing aid-compatible digital wireless handset models for nearly two years.

2. As discussed below, T-Mobile willfully and repeatedly violated Sections 20.19(c)(2) and 20.19(d)(2) of the Commission's rules (Rules).<sup>3</sup> In response to the Commission's 2012 *Notice of Apparent Liability for Forfeiture* against T-Mobile, the Company does not dispute this failure, but instead seeks only to reduce the proposed forfeiture.<sup>4</sup> We decline to do so.

**II. BACKGROUND**

3. T-Mobile is a Tier I carrier that provides nationwide wireless service over both the Global System for Mobile Communications (GSM) and Wideband Code Division Multiple Access (WCDMA) air interfaces. T-Mobile is now the principal operating subsidiary of T-Mobile US, Inc., which was formed on April 30, 2013 as a result of the business combination between T-Mobile and

<sup>1</sup> The investigation initiated under File No. EB-10-SE-127 was subsequently assigned File No. EB-SED-13-00009310. Any future correspondence with the Commission concerning this matter should reflect the new case number.

<sup>2</sup> See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, 16755, para. 4 (2003), Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*).

<sup>3</sup> 47 C.F.R. §§ 20.19(c)(2), (d)(2).

<sup>4</sup> See *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4405 (2012) (*T-Mobile NAL*); *T-Mobile USA, Inc.*, Response to Notice of Apparent Liability for Forfeiture (May 14, 2012) (NAL Response) (on file in EB-SED-13-00009310).

MetroPCS Communications, Inc. (MetroPCS).<sup>5</sup> Under the terms of the business combination, MetroPCS acquired all of the outstanding capital stock of T-Mobile beneficially owned by Deutsche Telekom AG in consideration for the issuance of shares of common stock representing approximately 74% of the fully diluted shares of the combined entity.<sup>6</sup> MetroPCS was subsequently renamed T-Mobile US, Inc., and the combined company provides service to approximately 47 million customers and reported more than \$24 billion dollars in total revenue for 2013<sup>7</sup> and \$3.44 billion dollars in total revenue for the first quarter of 2014.<sup>8</sup>

4. Beginning in 2003, the Commission adopted several measures to enhance the ability of individuals with hearing loss to use digital wireless telecommunications. In the *T-Mobile NAL*, the Commission explained in detail its regulatory framework in this area,<sup>9</sup> and we need not repeat it here. However, as summarized in the attached Technical Appendix, carriers must offer a certain, specified number of handset models that are compatible with each of the two hearing aid modes (acoustic coupling and inductive coupling), and these requirements must be met for each air interface over which a carrier offers service. The hearing aid-compatible handset deployment benchmarks have increased gradually over time. Table 1 of the Technical Appendix provides the specific requirements applicable to Tier 1 carriers like T-Mobile during the period at issue here.

5. On January 14, 2010, T-Mobile submitted a hearing aid compatibility status report covering the January 1, 2009, to December 31, 2009, reporting period.<sup>10</sup> T-Mobile identified each handset model it offered to consumers and specified the model's FCC Identification (FCC ID), as well as the hearing aid compatibility rating, if any. After a careful review of T-Mobile's submission, the Wireless Telecommunications Bureau referred this matter to the Enforcement Bureau (Bureau) for investigation and possible enforcement action. The Commission's investigation revealed a variety of inaccuracies in T-Mobile's hearing aid compatibility reports as to both its WCDMA and GSM handset offerings.<sup>11</sup>

6. On September 10, 2010, the Bureau issued a letter of inquiry (LOI) to T-Mobile, directing the company to submit a sworn written response to questions related to its compliance with Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.<sup>12</sup> T-Mobile responded to the LOI on September 30, 2010 (LOI Response).<sup>13</sup> In October 2010 (before its hearing aid compatibility status report for the 2010

<sup>5</sup> See T-Mobile US, Inc. SEC Form 10-K at 3–4 (filed Feb. 25, 2014) (2013 Annual Report).

<sup>6</sup> See T-Mobile US, Inc. Form 10-Q at 7 (filed Nov. 7, 2013). The Commission granted its consent to the merger of T-Mobile USA, Inc. and MetroPCS Communications, Inc. on March 12, 2013. See *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322 (WTB/IB 2013).

<sup>7</sup> See 2013 Annual Report at 4, 22.

<sup>8</sup> See T-Mobile US, Inc. SEC Form 10-Q at 6 (filed May 1, 2014).

<sup>9</sup> *T-Mobile NAL*, 27 FCC Rcd at 4405-07, paras. 2–4.

<sup>10</sup> See *T-Mobile USA, Inc.*, Hearing Aid Compatibility Status Report, Docket No. 07-250 (Jan. 14, 2010), available at [http://wireless.fcc.gov/hac\\_documents/100317/T-Mobile%20USA\\_164.PDF](http://wireless.fcc.gov/hac_documents/100317/T-Mobile%20USA_164.PDF) (2009 Report).

<sup>11</sup> For example, regarding certain handsets operating over the WCDMA air interface, T-Mobile's 2009 Report indicated that the Huawei Tap (FCC ID QISU7519) is rated M3 when Commission records show that the model is not rated for hearing aid compatibility. *T-Mobile NAL*, 27 FCC Rcd at 4408, para. 6 n.19.

<sup>12</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc. (Sept. 10, 2010) (on file in EB-SED-13-00009310) (LOI).

<sup>13</sup> See Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc., to Linda M. Nagel, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 30, 2010) (on file in EB-SED-

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reporting period was due), T-Mobile disclosed to the Commission possible hearing aid-compatible handset deployment violations during 2010. The Commission thus expanded its investigation to include potential violations during that year.<sup>14</sup>

7. On April 13, 2012, the Commission issued a *Notice of Apparent Liability for Forfeiture* against T-Mobile,<sup>15</sup> finding that T-Mobile apparently willfully and repeatedly violated Sections 20.19(c)(2) and 20.19(d)(2) of the Rules by failing to offer consumers the required number of M3- and T3-rated hearing aid-compatible digital wireless handset models during the 2009 and 2010 reporting periods.<sup>16</sup> Accordingly, the Commission found T-Mobile apparently liable for a forfeiture totaling \$819,000.<sup>17</sup> As explained more fully in the *T-Mobile NAL*, the Commission determined the base forfeiture amounts by multiplying \$15,000 times the number of hearing aid-compatible handset models that T-Mobile fell short of the minimum requirements for M3- and T-3 handsets for each month that T-Mobile remained out of compliance.<sup>18</sup> Because T-Mobile was short 38 M3-rated handset models and 14 T3-rated handset models from November 2009 through December 2010, the Commission assessed base forfeitures of \$570,000 (38 models x \$15,000) and \$210,000 (14 models x \$15,000), for a total of \$780,000 (\$570,000 + \$210,000).<sup>19</sup> In view of all the factual circumstances presented and after weighing the upward and downward adjustment factors (including T-Mobile's ability to pay as well as the Company's timely disclosure of certain of the violations),<sup>20</sup> the Commission proposed a total forfeiture of \$819,000 against T-Mobile.<sup>21</sup>

8. On May 14, 2012, T-Mobile filed a response to the *T-Mobile NAL* and urged the Commission to "substantially reduce" the \$819,000 proposed forfeiture.<sup>22</sup> In its NAL Response, T-Mobile does not challenge the Commission's conclusion that T-Mobile violated the Rules by falling short of the hearing aid-compatible handset deployment benchmarks during the 2009 and 2010 reporting

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13-00009310) (LOI Response). In response to follow-up questions regarding its corporate structure, T-Mobile filed a supplemental response on February 22, 2011. See Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc., to Linda M. Nagel, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 22, 2011) (on file in EB-SED-13-00009310).

<sup>14</sup> To permit a full and fair investigation, the Bureau and T-Mobile entered into agreements to toll the statute of limitations until April 15, 2012, for apparent violations that occurred after October 31, 2009. See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc. (Dec. 16, 2011) (on file in EB-SED-13-00009310).

<sup>15</sup> *T-Mobile NAL*, 27 FCC Rcd 4405, *supra* note 4.

<sup>16</sup> *Id.* at 4405, para. 1.

<sup>17</sup> *Id.* at 4416–17, para. 26.

<sup>18</sup> *Id.* at 4412–15, paras. 17–23.

<sup>19</sup> *Id.* at 4414–16, paras. 20–24.

<sup>20</sup> See, e.g., *Locus Telecomm., Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 26 FCC Rcd 17073, 17079–80, para. 13 (Enf. Bur. 2011) (upwardly adjusting the base forfeiture to reflect the carrier's noncompliance during the entire 2010 calendar year and the carrier's ability to pay); *Centennial Commc'ns Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9406, 9412–13, para. 13 (Enf. Bur. 2008) (emphasizing that large, highly profitable entities can expect forfeitures that are higher than the base amount) (forfeiture paid); *SunCom Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8681, 8688, para. 17 (Enf. Bur. 2008) (concluding that violations of the hearing aid compatibility handset requirements by Tier II carriers are more egregious and warrant higher forfeitures than those assessed against smaller Tier III carriers) (forfeiture paid).

<sup>21</sup> *T-Mobile NAL*, 27 FCC Rcd at 4417, para. 26.

<sup>22</sup> NAL Response at 1.

periods.<sup>23</sup> Instead, T-Mobile contends that the proposed forfeiture is “unduly punitive” and, therefore, should be reduced by approximately fifty percent based on three mitigating circumstances.<sup>24</sup> Specifically, T-Mobile argues that (1) it is “inequitable” for the Commission to apply retroactively to T-Mobile the new approach for assessing base forfeiture amounts for violations of the hearing aid-compatible handset deployment requirements;<sup>25</sup> (2) the Commission should take into consideration T-Mobile’s assertion that it is “a leader in the disabilities access arena”;<sup>26</sup> and (3) the Commission should also take into consideration that the company made a good faith effort to comply with the hearing aid-compatible handset deployment requirements prior to the Bureau’s initiation of the investigation in this proceeding.<sup>27</sup> Below, we address each of these assertions.

9. In addition, for the reasons discussed below, we dismiss without prejudice the third-party filing from the Blooston Rural Carriers in response to the *T-Mobile NAL*.<sup>28</sup> In its filing, the Blooston Rural Carriers request that the Commission clarify that the new approach for assessing base forfeiture amounts for violations of the hearing aid-compatible handset deployment requirements will be applied only to Tier I carriers or, in the alternative, applied to all carriers, but only prospectively.<sup>29</sup>

### III. DISCUSSION

10. T-Mobile does not challenge the Commission’s factual findings or legal conclusion that it willfully and repeatedly violated Sections 20.19(c)(2) and 20.19(d)(2) of the Rules by failing to offer the requisite number of hearing aid-compatible digital wireless handset models during the 2009 and 2010 reporting periods. The issue before us, therefore, is whether we should substantially reduce the \$819,000 proposed forfeiture, as T-Mobile requests. The Commission assessed the proposed forfeiture in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>30</sup> Section 1.80 of the Rules,<sup>31</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>32</sup> In examining T-Mobile’s NAL Response, 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>33</sup> After full consideration of T-Mobile’s response in light of these statutory factors, we deny T-Mobile’s request to reduce the forfeiture.

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<sup>23</sup> *Id.* at 1 (“T-Mobile has decided not to challenge the conclusions in the NAL that it fell short of full compliance with the Commission’s hearing aid compatibility . . . rules during the 2009-2010 period . . .”).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2, 13–16.

<sup>26</sup> *Id.* at 2, 3–7, 10.

<sup>27</sup> *Id.* at 2, 8–9, 11-13.

<sup>28</sup> *T-Mobile USA, Inc.*, Comments of The Blooston Rural Carriers (FCC 12-39) (May 14, 2013) (Blooston Comments).

<sup>29</sup> *See id.*

<sup>30</sup> 47 U.S.C. § 503(b).

<sup>31</sup> 47 C.F.R. § 1.80.

<sup>32</sup> *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 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>33</sup> *See* 47 U.S.C. § 503(b)(2)(E).

## A. The Forfeiture Proposed Against T-Mobile Is Warranted

### 1. The Forfeiture Methodology Applied Here is Appropriate

11. After careful consideration, the Commission concluded in the *T-Mobile NAL* that the prior approach—the so-called “highest handset shortfall” approach<sup>34</sup>—for calculating the base forfeiture amount for violations of the hearing aid-compatible handset deployment requirements did not adequately reflect the nature and scope of violations of the hearing aid compatibility rules.<sup>35</sup> Specifically, the Commission noted that by focusing only on the single month during the calendar year with the greatest handset shortfall, the highest handset shortfall approach did not capture all handset shortages during a calendar year and therefore could result in inappropriately low base forfeiture amounts.<sup>36</sup> In this regard, the Commission also observed that a company that had been out of compliance for an entire year could be assessed the same base forfeiture as a competitor who was fully compliant for all but one month.<sup>37</sup> The revised forfeiture methodology begins by multiplying \$15,000 times the number of hearing aid-compatible handset models by which the service provider fell short of the number required for the given category of handsets during *each* month the shortfall persists in that category, thus taking into account at the outset the continuing nature of the violation (as permitted by statute). This approach more accurately reflects the critical significance of the violation, and more forcefully deters future noncompliance.<sup>38</sup> The decision to modify our forfeiture methodology is consistent with our obligation to consider the nature and circumstances of each particular case and the other statutory factors in Section 503(b)(2)(E) of the Act.

12. T-Mobile does not challenge the Commission’s authority to revise the method for calculating the base forfeiture for violations of the hearing aid-compatible handset deployment

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<sup>34</sup> Under the highest handset shortfall approach, the Bureau multiplied \$15,000 times the number of handset models below the required minimum during the calendar month in which the service provider or manufacturer fell the furthest short of the required benchmark. *See, e.g., Epic Touch Co., Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2831 (Enf. Bur. 2008) (finding that the company apparently failed to offer the required two T3-rated handset models prior to the September 18, 2006 deadline and proposing a \$30,000 base forfeiture for the shortage), *consent decree ordered*, Order and Consent Decree, 27 FCC Rcd 2096 (Enf. Bur. 2012); *Corr Wireless Commc’ns, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567, 11569–70, para. 6 (Enf. Bur. 2008), *forfeiture ordered*, Forfeiture Order, 27 FCC Rcd 7386 (Enf. Bur. 2012) (finding that the company offered only one T3-rated handset model by September 18, 2006 rather than the required two models and proposing a \$15,000 base forfeiture for the shortage); *Indigo Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17821 (Enf. Bur. 2010) (finding that the company missed the M3 deployment benchmark by up to two handset models and assessing a base forfeiture of \$30,000 for such shortages).

<sup>35</sup> *T-Mobile NAL*, 27 FCC Rcd at 4413, para. 18.

<sup>36</sup> *Id.* at 4414, paras. 19–20.

<sup>37</sup> *Id.* at 4413–14, para. 19. *See also United States v. Daniels*, 418 F. Supp. 1074, 1081 (D.S.D. 1976), *cited in United States v. WIYN Radio, Inc.*, 614 F.2d 495, 497 (5<sup>th</sup> Cir. 1980) (each day of a continuing violation can be treated as a separate violation for purposes of determining whether a violation is “repeated” within the meaning of Section 503 of the Communications Act, 47 U.S.C. § 503).

<sup>38</sup> *T-Mobile NAL*, 27 FCC Rcd at 4415, para. 23. Since the Commission issued *T-Mobile NAL*, the Bureau has applied the new forfeiture methodology to other investigations implicating the hearing aid-compatible handset deployment requirements. *See, e.g., Puerto Rico Telephone Co., Inc. d/b/a Claro*, Consent Decree, 28 FCC Rcd 11783 (Enf. Bur. 2013); *TeleGuam Holdings, LLC, Successor-in-Interest to Pulse Mobile, LLC*, Consent Decree, 28 FCC Rcd 8831 (Enf. Bur. 2013); *Airadigm Commc’ns, Inc. d/b/a Airfire Mobile*, Consent Decree, 28 FCC Rcd 8842 (Enf. Bur. 2013).

requirements,<sup>39</sup> but instead asserts that applying the revised methodology here to T-Mobile is inequitably retroactive.<sup>40</sup> For several reasons, we reject this argument.

13. First, as the Supreme Court has explained, an “agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.”<sup>41</sup> “And of course, it is black-letter administrative law that adjudications are inherently retroactive.”<sup>42</sup> As the Commission explained in the *T-Mobile NAL*, the hearing aid compatibility rules “have been in place for almost a decade” and “carriers have had more than sufficient opportunity to structure compliance programs and ensure that they meet our requirements.”<sup>43</sup> In assessing the efficacy and propriety of the enforcement approach that it should apply to address the hearing aid compatibility rule violations before it—an issue presented to the Commission for the first time<sup>44</sup>—the Commission took into account all the available facts and circumstances of the case to craft and apply a methodology for calculating forfeiture amounts that would best serve the goals of the substantive hearing aid compatibility statute and regulations. Such facts and circumstances include not only those specific to T-Mobile, but also the more general conditions that are relevant to this enforcement action, such as whether the prior Bureau-level approach toward enforcing the rules was proving sufficiently effective as a deterrent (which we answered in the negative) and whether the approach accurately reflected the gravity of violations like those of T-Mobile, which continued over relatively long periods of time (also answered in the negative).<sup>45</sup> To the extent the approach adopted by the Commission was “retroactive,” it was entirely lawful — both as an evolving policy choice and as an inherent part of the adjudicative process.

14. Second, even if the Commission’s application of the *NAL*’s forfeiture calculation methodology could be regarded as a change of existing agency policy (which, under the principles of *Comcast*, *supra* note 44, it was not), T-Mobile would bear the burden of demonstrating that it relied on the alleged prior policy to its detriment.<sup>46</sup> Although T-Mobile asserts that it should be able to rely on the

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<sup>39</sup> See *NAL Response* at 13 (“T-Mobile recognizes that the Commission has flexibility to adjust the standards it uses for calculating forfeitures within the statutory maxima (as adjusted for inflation in the Commission’s rules).”).

<sup>40</sup> *Id.* at 2, 13-16.

<sup>41</sup> *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947).

<sup>42</sup> *Catholic Health Initiatives Iowa Corp. v. Sebelius*, 718 F.3d 914, 921 (D.C. Cir. 2013)(*Catholic Health Initiatives*).

<sup>43</sup> *T-Mobile NAL*, 27 FCC Rcd at 4415, para. 22.

<sup>44</sup> When decisions on an issue have been made solely at a subordinate level within the agency —as is the case here with respect to the forfeiture calculation methodology employed by the Enforcement Bureau prior to the Commission’s issuance of the *NAL*—the first case presented for decision to the agency’s highest authority is a case of first impression, and any prior unchallenged staff decisions are not considered Commission precedent. *Comcast v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (*Comcast*). As the *Comcast* court stated when it upheld a Commission denial of a waiver request despite a body of allegedly inconsistent Media Bureau cases, “in the absence of Commission action to the contrary, the Media Bureau decisions have the force of law. But this simply means that those rulings are binding on the parties to the proceeding. . . . [U]nchallenged staff decisions are not Commission precedent, and agency actions contrary to those decisions cannot be deemed arbitrary and capricious. Prior to Comcast’s application for a waiver, the full Commission had not granted a waiver to any similarly situated entity. Thus, we reject Comcast’s argument that the Commission’s denial of its waiver request was discriminatory or inconsistent with prior FCC policies.” *Id.*

<sup>45</sup> See *T-Mobile NAL*, 27 FCC Rcd at 4415, at para. 23.

<sup>46</sup> *Catholic Health Initiatives*, 718 F.3d at 922; *New England Tel. & Tel. v. FCC*, 826 F.2d 1101, 1110 (D.C. Cir. 1987) (holding that even if agency departed from previous clearly articulated enforcement remedy, petitioners would have no right to avoid application of “new” remedy, as petitioners failed to make a showing that they had

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prior forfeiture standard “without fear . . . of a new standard,”<sup>47</sup> the agency—on both the Commission and Bureau levels—has repeatedly stated that it retains the discretion to depart from existing guidelines and issue forfeitures on a case-by-case basis, pursuant to its general forfeiture authority contained in Section 503 of the Act.<sup>48</sup> The Enforcement Bureau has also specifically warned carriers that it would consider a more expansive view of its forfeiture authority in the context of the hearing aid compatibility rules.<sup>49</sup> T-Mobile was thus on notice that the agency would be taking a dynamic enforcement approach toward cases involving violations of these rules, in order to craft and apply forfeitures that would provide an effective remedy to the extent warranted by the facts of each case, within the applicable statutory limits. Under these circumstances, it cannot be said that T-Mobile could have reasonably relied on the expectation that the Commission would apply to T-Mobile’s hearing aid compatibility violations an enforcement approach that the Bureau had fashioned and used—without Commission review, endorsement or modification—in cases not involving T-Mobile.

15. Moreover, T-Mobile also fails to point out in its NAL Response any evidence that it relied to its detriment on the Bureau’s enforcement approach in developing and implementing its handset deployment strategy. T-Mobile does not suggest, for example, that because of its estimate of the potential penalties it might have faced under the Bureau’s approach, it chose to employ what has proven to be an ineffective level of diligence for ensuring its compliance with the handset compatibility requirements. Indeed, any such intent-based argument would not only exacerbate T-Mobile’s general culpability but also bolster our conclusion that the Bureau’s penalty methodology had been too lenient.

16. Indeed, the only instance of detrimental reliance of any sort that T-Mobile has touched on is its suggestion that it conducted its *post*-violation, settlement negotiation strategy under the assumption that the Commission would adopt the methodology used in earlier Bureau-level cases for calculating forfeitures for violations of the hearing aid compatibility rules.<sup>50</sup> As discussed in detail above, any reliance on this assumption—detrimental or not—was unreasonable.<sup>51</sup> Moreover, the courts have drawn a distinction between changes in remedy and changes in substantive rights and obligations, generally finding that the retroactive application of a remedy presents “much less potential for mischief than retroactive changes in the principles of liability,” and “often do not involve the same degree of

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detrimentally relied on any previous remedy, and the agency provided ample explanation of its source of authority and need to use it to address violations with use of new enforcement mechanism).

<sup>47</sup> NAL Response at 15.

<sup>48</sup> See *T-Mobile NAL*, 27 FCC Rcd at 4415, para. 23; *STI Telecom Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808, 12814, para. 16 (2011); *American Samoa Telecomms. Auth.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432, 16436, para. 9 (Enf. Bur. 2008), *forfeiture ordered*, Forfeiture Order, 27 FCC Rcd 13174 (Enf. Bur. 2012) (forfeiture paid). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–17101, paras. 22, 29; 47 C.F.R. § 1.80(b). “[T]he breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of . . . remedies and sanctions.” *American Telephone and Telegraph Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006), quoting *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

<sup>49</sup> See *South Canaan Cellular Commc’ns. Co., L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 25, para. 12 & n.33 (Enf. Bur. 2008) (forfeiture paid) (*South Canaan*) (cautioning carriers “that future enforcement actions may consider all failures to comply with our hearing aid compatibility rules . . . as continuing violations”).

<sup>50</sup> NAL Response at 14–15.

<sup>51</sup> See *supra* para. 14. As T-Mobile itself acknowledges (NAL Response at 13), the Commission has the authority, when circumstances warrant, to adjust the method it uses to calculate forfeitures—a possibility that the Bureau itself stressed specifically with respect to the hearing aid compatibility rules, in a case decided before T-Mobile committed its own violations of these rules. See *supra* note 49 (citing *South Canaan*).

unfairness.<sup>52</sup> As explained in *Hastings*, the courts are much more inclined to apply retroactively amendments of law that are directed at the remedy rather than at substantive rights because

[re]troactive modifications of remedy do not transform a legal act into an illegal act, or render one responsible to safeguard someone previously thought to act at his peril. Modification of remedy merely adjusts the extent, or method of enforcement, of liability in instances in which the possibility of liability previously was known. For this reason, absent contrary direction from Congress, courts are more inclined to apply retroactively changes in remedies than changes in liability.<sup>53</sup>

17. Notwithstanding the distinction between retroactive changes in *principles* of liability and changes in *remedies* for such liability application, we recognize the possibility that a retroactive change in remedy could nevertheless be regarded as unfair.<sup>54</sup> Such a possibility, however, does not pertain to the type of situation presented in this proceeding, where an agency uses a new enforcement approach or tool—drawn from its existing bundle of statutorily authorized options—and applies it without advance notice to remedy a party’s substantive rule violations.<sup>55</sup> T-Mobile does not argue that it was unaware of the Commission’s authority to impose monetary forfeitures for such violations, or of the Commission’s authority and practice of evaluating rule violations and determining the appropriate sanctions on an *ad hoc* basis. And, as indicated above, T-Mobile does not contend that it tailored its efforts to comply with the hearing aid compatibility rules based on the Enforcement Bureau’s use of its so-called “highest handset shortfall” approach in earlier enforcement cases. Rather, T-Mobile asserts that it relied on this approach only in connection with its formulation of a negotiation strategy for settlement. T-Mobile, however, has provided almost no explanation of the actual effects of such reliance on its strategy (*e.g.*, specific actions that were prejudicial to its case), and no factual or other bases upon which to assess the effects of any change of strategy, including some description of the specific acts it would have changed and of the different strategy it would have pursued, and whether such a strategy would have produced for it better results.<sup>56</sup> Accordingly, we cannot credit T-Mobile’s assertion that it relied during settlement

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<sup>52</sup> *Hastings v. Earth Satellite Corporation*, 628 F. 2d 85, 93 (D.C. Cir. 1980) (*Hastings*).

<sup>53</sup> *Id.* at 93-94 (footnotes omitted). See also *Landgraf v. USI Film Products*, 511 U.S. 244, 281-82 (1994) (*Landgraf*) (recognizing that applying a new penalty scheme to prior action that was unlawful at the time it occurred presents less troublesome retroactivity issues than applying a change in substantive law following an action that was legal when taken, given that the application of the penalty scheme “does not make unlawful conduct that was lawful when it occurred,” and acknowledging that concerns about lack of fair notice “are further muted” when similar remedies had already been established for violations of other substantive requirements covering the same type of behavior).

<sup>54</sup> See, *e.g.*, *Hastings*, 628 F.2d at 93 n.22.

<sup>55</sup> Thus, this proceeding does not involve the type of potential unfairness that could be triggered if a wholly new type of sanction were applied retroactively, such as the retroactive application of a new monetary liability for violations that had previously been sanctioned non-monetarily. See, *e.g.*, *Landgraf*, 511 U.S. at 282-83 (discussing significance of statutory amendments that imposed on certain employers new monetary liability for compensatory damages arising from discriminatory acts, where employers had not previously been subject to monetary damages). Nor does this proceeding involve the retroactive application of a statutory amendment that increases the potential maximum monetary liability for a violation. See, *e.g.*, *Hastings*, 628 F.2d at 93 n.22 (recognizing harm to insurers if statutory repeal of liability limit were given retroactive effect).

<sup>56</sup> *Cf. Long*, 117 F.3d at 1158-59 (rejecting petitioner Long’s due process argument that Board of Governors of the Federal Reserve System’s proposed assessment of \$300,000 for civil violations of bank law, culminating in a final assessment of over \$700,000, prejudiced him because of the effect it had on his litigation strategy, on the ground that Long had failed to demonstrate that the litigation choices he did make had operated to his detriment, citing Long’s failure to point to any “specific actions” that he took during the negotiations that “were prejudicial to his case,” or to provide anything concrete to demonstrate that the negotiations would have culminated in a better result had Long been aware of the potential amount scope of the final assessment).



negotiations on its assumption that the Commission would not adjust the Bureau's forfeiture methodology to account for all the relevant factors as applied to the facts of this case.

18. Third, T-Mobile argues that imposing a higher forfeiture against it “serves no deterrent purpose” because T-Mobile was in compliance with deployment requirements by January 2011, more than one year before the *T-Mobile NAL*.<sup>57</sup> This argument misunderstands both the general purpose of our forfeitures and, specifically, their deterrent function. Forfeitures are intended to serve both as a meaningful sanction to wrongdoers (in this case, T-Mobile) and an effective deterrent to others who must abide by the same requirements.<sup>58</sup>

19. Given the fundamental importance of providing consumers with hearing loss access to advanced telecommunications services, the severity of T-Mobile's violations, and the company's ability to pay, the proposed forfeiture of \$819,000 is equitable.<sup>59</sup> The Commission has previously stressed that individuals with hearing loss deserve the safety and convenience benefits of digital wireless telephony.<sup>60</sup> And the demand for hearing aid-compatible handsets is likely to increase with the population's growing reliance on wireless technology and increasing median age.<sup>61</sup> Furthermore, the uncontested duration and scope of T-Mobile's noncompliance with the handset deployment requirements belie T-Mobile's contention that the proposed forfeiture is unwarranted. As the undisputed record reflects, T-Mobile was out of compliance with the deployment benchmarks on the WCDMA air interface for 24 consecutive months, from January 2009 through December 2010.<sup>62</sup> Although T-Mobile acknowledges that the company identified potential handset deployment issues in early 2010,<sup>63</sup> the company did not become

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<sup>57</sup> NAL Response at 14.

<sup>58</sup> See, e.g., *RB Communications, Inc., d/b/a Starfone*, File No. EB-IHD-13-00011657, Forfeiture Order, FCC 14-67, 2014 WL 2158533, at \*5, para. 19 (2014) (“[a]lthough forfeiture penalties are imposed to address past violations of the Act and the Rules, such penalties are also intended to deter future violations”); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17096–97, para. 17 (noting “Congress's explicit intention that forfeitures serve as ‘a meaningful sanction to the wrongdoers and an effective deterrent to others’”) (citing Omnibus Budget Reconciliation Act of 1989, H.R. Conf. Rep. 386, 101st Cong., 1st Sess., 434 (1989)); *Hudson v. United States*, 522 U.S. 93, 105 (1997) (explaining that “money penalties” will “deter others from emulating petitioners' conduct” and will serve the goals of both civil and criminal laws).

<sup>59</sup> This amount also reflects a downward adjustment of the forfeiture. In this regard, as discussed in the *NAL*, the severity of the violations is somewhat mitigated by the fact that T-Mobile disclosed the 2010 handset deployment shortfall several months early, which assisted the Bureau in timely investigating this matter. *T-Mobile NAL*, 27 FCC Rcd at 4416, para. 25. The Commission stated that “but for T-Mobile's cooperation the upward adjustment would have been significantly higher.” *Id.*

<sup>60</sup> See *supra* note 2. See also *T-Mobile NAL*, 27 FCC Rcd at 4413, para. 18 (noting that “failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications”); *South Canaan*, 23 FCC Rcd at 24, para. 11 (finding that “a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications”).

<sup>61</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16756, para. 5 (noting that approximately one in ten Americans has some level of hearing loss and that the number of those affected will likely grow as the median age increases). See also *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements, 22 FCC Rcd 17709, 17719, para. 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was “at an all time high of 31 million people — with that number expected to reach approximately 40 million people at the end of [2010]”).

<sup>62</sup> See *T-Mobile NAL*, 27 FCC Rcd at 4409–10, paras. 9–10.

<sup>63</sup> See NAL Response at 8.

fully compliant until January 2011.<sup>64</sup> Thus, the egregiousness of T-Mobile's violations justifies the application of the revised methodology here,<sup>65</sup> and this approach should deter future noncompliance by both T-Mobile and others.<sup>66</sup> In sum, we reject T-Mobile's argument that the proposed forfeiture is inequitable.

## **2. T-Mobile's Asserted Leadership Efforts in the Disability Arena Do Not Mitigate Its Uncontested Violations**

20. We also decline to reduce the proposed forfeiture based on T-Mobile's asserted leadership role in the disability access arena and its active participation in efforts to improve the quality of service to the disabled.<sup>67</sup> Although T-Mobile's efforts in the disability access area may be laudable, they do not mitigate T-Mobile's violations, which speak to the most basic assistance a company like T-Mobile can provide to consumers with hearing disabilities—*i.e.*, to provide telephones that people with hearing loss can actually use. In addition, T-Mobile has failed to cite any precedent that would support a forfeiture reduction on this basis.

## **3. T-Mobile's Asserted Prior Efforts to Comply Do Not, Based on the Overall Record, Mitigate the Violations**

21. T-Mobile argues that its good faith efforts to comply with the hearing aid compatible handset deployment requirements warrant a downward adjustment of the proposed forfeiture.<sup>68</sup> In this regard, T-Mobile notes that it complied with the deployment benchmarks for handsets that operate on the GSM network, which, according to T-Mobile, carried the vast majority of its voice traffic.<sup>69</sup> We decline to downwardly adjust the proposed forfeiture based on T-Mobile's compliance with deployment benchmarks for handsets that operate on the GSM air interface. The handset deployment requirements independently apply to each air interface over which a service provider offers service.<sup>70</sup>

22. T-Mobile also asserts that in early 2010, before the Bureau began the underlying investigation, T-Mobile had discovered potential compliance issues in connection with its handset offerings on the WCDMA air interface, and that it had commenced efforts in April 2010 to increase the number of compatible handset models it offered for that air interface.<sup>71</sup> According to T-Mobile, the company came into compliance with the T3 deployment benchmark in September 2010, and with the M3 benchmark in January 2011.<sup>72</sup> The record indicates that T-Mobile increased—albeit modestly—its offerings of M3-rated and T3-rated handset models beginning in September 2010.<sup>73</sup> T-Mobile did not,

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<sup>64</sup> See *id.* at 14.

<sup>65</sup> As the Commission found in the *T-Mobile NAL*: “T-Mobile was aware, or should have been aware, of its compliance problems when it submitted the 2009 wireless hearing aid compatibility status report. Rather than addressing the handset shortages, however, it continued to violate the rules for an additional year. In fact, T-Mobile's compliance with the deployment benchmarks not only failed to improve in 2010, but significantly worsened with respect to its M3-rated handset offerings.” *T-Mobile NAL*, 27 FCC Rcd at 4414, para 21.

<sup>66</sup> See *id.* at 4414, para. 20 (“If the existing base forfeiture approach — using the highest handset shortfall — were applied to the facts and circumstances of this case, the resulting base forfeiture amount would be inadequate to deter continuing noncompliance.”).

<sup>67</sup> See NAL Response at 2, 3-7, 10.

<sup>68</sup> *Id.* at 2, 8, 11-13.

<sup>69</sup> *Id.* at 11.

<sup>70</sup> See Technical Appendix, *infra*.

<sup>71</sup> NAL Response at 11.

<sup>72</sup> *Id.*

<sup>73</sup> See *T-Mobile NAL*, 27 FCC Rcd at 4420-22, Appendices B, D.

however, become fully compliant with the handset deployment benchmarks until January 2011, approximately eight months after T-Mobile's asserted remedial efforts began.<sup>74</sup> While T-Mobile asserts that it faced certain challenges in obtaining hearing aid-compatible handsets that operate on the WCDMA air interface, as a sophisticated Tier I carrier with substantial financial resources, those asserted challenges do not justify T-Mobile's substantial delay in coming into full compliance after the discovery of its violations.<sup>75</sup>

23. After considering the facts, applicable law, and T-Mobile's response to the NAL, we conclude that T-Mobile willfully<sup>76</sup> and repeatedly<sup>77</sup> violated Sections 20.19(c)(2) and 20.19(d)(2) of the Rules, and we affirm the proposed forfeiture of \$819,000.

### **B. The Blooston Rural Carriers' Filing is Dismissed**

24. Finally, we dismiss the "Comments" filed by the Blooston Rural Carriers, whom the Commission did not name or address in the *T-Mobile NAL*. The Blooston Rural Carriers state that they are small, Tier III wireless service providers, and their submission presents questions concerning the Commission's methodology for calculating forfeitures in circumstances that are not present here. In particular, the Blooston submission contends that the Commission should not apply the approach discussed in the *T-Mobile NAL* (which was issued to T-Mobile, a Tier 1 provider) to any Tier III

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<sup>74</sup> See *Liability of Guy Gannett Publ'g Co.*, 5 FCC Rcd 7688, 7689, para. 12 (1990) (recognizing that "the Commission generally considers prompt and effective remedial action" by a licensee as a mitigating factor in determining the appropriate sanction level in an enforcement proceeding, but finding in that case that no significant downward adjustment to sanction was warranted because close to two months had elapsed between the broadcast under review and the licensee's initial remedial actions.)

<sup>75</sup> T-Mobile argues that its effort to achieve compliance on the WCDMA air interface was made more difficult because there were no 3G hearing aid-compatible handsets in manufacturers' production pipelines during the early portion of 2010, and because manufacturers did not have extensive experience with the difficult technical issues associated with handsets that operate in the AWS-1 spectrum (1710-1755 MHz). See NAL Response at 12. T-Mobile also asserts that because the 1900 MHz GSM spectrum capability lies between the 1700 MHz WCDMA receive frequencies and the 2100 MHz WCDMA transmit frequencies, handsets manufactured for T-Mobile "needed to emanate WCDMA power in such a way that they skip over and protect the 1900 MHz band . . ." *Id.* at 13. We find T-Mobile's arguments largely unconvincing. At the outset, we find it somewhat implausible that there were no hearing-aid compatible handset models that operated in the AWS-1 spectrum being developed or in the pipeline during this period in light of the number of new handset models introduced during the latter part of 2010. In addition, because GSM and WCDMA transmitters do not operate simultaneously in a handset, we are not persuaded that the technical challenges identified by T-Mobile justify T-Mobile's delayed compliance. Moreover, we note that T-Mobile could have requested a waiver of the applicable deployment benchmark based on the asserted lack of availability of hearing aid-compatible handsets that operate in the AWS-1 spectrum, but elected not to do so.

<sup>76</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 both Sections 312 and 503 of the Act, H.R. Conf. Rep. No. 97-765 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (*Southern California*); see also *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237, para. 12 (2008); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

<sup>77</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated' . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (forfeiture paid); *Southern California*, 6 FCC Rcd at 4388, para. 5.

providers.<sup>78</sup> We decline to address the merits of the Blooston submission in this adjudicative proceeding, which is limited to considering T-Mobile's compliance with our hearing aid compatibility rules. We thus dismiss the Blooston submission without prejudice, leaving the Blooston Rural Carriers the option of filing a petition for declaratory ruling on the issues they raise here.<sup>79</sup> Alternatively, if in another adjudicative proceeding the Commission considers whether to apply the approach used here to the Blooston Rural Carriers, those carriers may raise their arguments in any such adjudication.<sup>80</sup>

#### IV. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b)<sup>81</sup> of the Act and Section 1.80 of the Rules,<sup>82</sup> T-Mobile USA, Inc., a subsidiary of T-Mobile US, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight hundred nineteen thousand dollars (\$819,000) for willful and repeated violation of Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.<sup>83</sup>

26. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>84</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>85</sup> T-Mobile USA, Inc. shall send electronic notification of payment to Pamera Hairston at Pamera.Hairston@fcc.gov, Linda Nagel at Linda.Nagel@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

27. 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.<sup>86</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 T-Mobile USA, Inc., should follow based on the form of payment it selects:

- 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.

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<sup>78</sup> Blooston Comments at 1.

<sup>79</sup> To the extent the Blooston Comments were intended as a petition for reconsideration, they are premature. A Notice of Apparent Liability is not a "final Commission action," which is a predicate for filing a petition for reconsideration under Section 1.106 of the Rules. *See* 47 C.F.R. § 1.106(a)(1). Therefore, if construed as a petition for reconsideration, the Blooston Rural Carriers' filing would also be dismissed.

<sup>80</sup> *See generally Conference Group, LLC v. FCC*, 750 F.3d 957 (D.C. Cir. 2013) (recognizing that, while entities lack standing to challenge the merits of an FCC adjudication that does not involve their services, the entities can present their substantive arguments in their own adjudications if the Commission applies its rule of decision to them).

<sup>81</sup> 47 U.S.C. § 503(b).

<sup>82</sup> 47 C.F.R. § 1.80.

<sup>83</sup> *Id.* §§ 20.19(c)(2), (d)(2).

<sup>84</sup> *See id.* § 1.80.

<sup>85</sup> 47 U.S.C. § 504(a).

<sup>86</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

28. Any request for making full payment over time 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.<sup>87</sup> If T-Mobile USA, Inc. has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

29. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail return receipt requested, to Kathleen O'Brien Ham, Vice President, Regulatory Affairs, T-Mobile USA, Inc., 601 Pennsylvania Avenue, N.W., Washington, DC 20004, and to David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc., 2300 N Street, N.W., Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>87</sup> See 47 C.F.R. § 1.1914.

## TECHNICAL APPENDIX

**Hearing Aid Compatibility — Wireless Handset Deployment Requirements**

**A. Applicable statute and regulations for technical standards.** Under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710 of the Communications Act of 1934, as amended, 47 U.S.C. § 610, the Commission in 2003 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. *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) (*Hearing Aid Compatibility Order*); *see also* Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005); 47 C.F.R. §§ 20.19(b)(1) - (2).

**B. Two modes for hearing aids: acoustic coupling and inductive (telecoil) coupling.** “In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.” *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16763, para. 22.

**C. Different standards for acoustic and coupling modes: M3 and T3 ratings.** The Commission adopted one standard for radio frequency interference (the M3 rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the T3 rating) to enable inductive coupling with hearing aids operating in telecoil mode. Section 20.19(b)(1) of the Commission's rules provides that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at a minimum, it meets the M3 rating associated with the technical standard set forth in the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2007 (June 8, 2007) (ANSI C63.19-2007), except that grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard set forth in ANSI C63.19-2007, except that grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(2). A recently adopted further amendment to Section 20.19(b) permits manufacturers to test handsets for hearing aid compatibility using the 2011 version of the ANSI standard (ANSI C63.19-2011) as an alternative to ANSI C63.19-2007. *See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732 (WTB/OET 2012).

**D. Air interfaces.** 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 Global System for Mobile Communications (GSM), Wideband Code Division Multiple Access (WCDMA) (a.k.a. Universal Mobile Telecommunications System (UMTS)), Code Division Multiple Access (CDMA), and Integrated Digital Enhanced Network (iDEN).

**E. Compliance deadlines.** In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established various deadlines between 2008 and 2011 by which manufacturers and

service providers must offer specified numbers of digital wireless handset models rated hearing aid-compatible. *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3419, paras. 35–36 (2008) (*Hearing Aid Compatibility First Report and Order*), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3413, para. 20; 47 C.F.R. § 20.19(e).

**F. Handset requirements.** The handset deployment requirements apply to *each* air interface over which the service provider offers service. *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd 3406, 3419, paras. 35–36. In addition, the number of digital wireless handset models that each company must offer depends on the applicable compatibility standard (M rating or T rating), and the deployment schedule is tailored to the size of the service provider as measured by its number of subscribers. Specifically, Tier I carriers were required to offer the following minimum numbers of hearing aid-compatible handsets during the 2009 and 2010 reporting periods:

**Table 1: Hearing Aid-Compatible Handset Deployment Requirements for Tier 1 Carriers**

Dates	M3 – Acoustic Coupling	T3 – Inductive Coupling
	Number of wireless handset models per digital air interface that must be rated M3 or higher	Number of wireless handset models per digital air interface that must be rated T3 or higher
Effective date of rules to February 14, 2009	At least 50% of the models offered or, at a minimum, at least 8 handset models (whichever is less)	At least 1/3 of the models offered or, at a minimum, at least 3 handset models (whichever is less)
February 15, 2009 to February 14, 2010	At least 50% of the models offered or, at a minimum, at least 9 handset models (whichever is less)	At least 1/3 of the models offered or, at a minimum, at least 5 handset models (whichever is less)
February 15, 2010 to December 31, 2010	At least 50% of the models offered or, at a minimum, at least 10 handset models (whichever is less)	At least 1/3 of the models offered or, at a minimum, at least 7 handset models (whichever is less)

See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3418–20, paras. 35–36; 47 C.F.R. §§ 20.19(c)(2), (d)(2).