

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

In the Matter of)	
)	File No.: EB-11-SE-052
Kaplan Telephone Company, Inc. d/b/a Pace Communications)	NAL/Acct. No.: 201132100036
)	FRN: 0001714146

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 28, 2011

Released: September 28, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we propose a forfeiture of nineteen thousand five hundred dollars (\$19,500) against Kaplan Telephone Company, Inc. d/b/a Pace Communications (“Pace”),¹ a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier,² serving Vermilion Parish, Louisiana. As detailed herein, we find that Pace apparently willfully and repeatedly violated section 20.19(d)(3)(ii) of the Commission’s rules (“Rules”)³ by failing to offer to consumers the required number or percentage of digital wireless handset models that met or exceeded the radio frequency interference standards for hearing aid compatibility set forth in section 20.19(b)(1) of the Rules, and that this apparent misconduct continued for seven consecutive months in 2010.

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.⁴ The

¹ The official website of the Louisiana Secretary of State indicates that Kaplan Telephone Company, Inc. registered the trade name “Pace Communications of Vermilion” on October 20, 1989. See www.sos.la.gov. Although that trade name registration expired on October 20, 2009, the evidence indicates that Pace remains a trade name of Kaplan Telephone Company, Inc. and is not a separate entity. In this regard, we note that Pace’s hearing aid compatibility status report for the 2010 reporting period was filed under the name “Kaplan Telephone Company, Inc. d/b/a Pace Communications.” See *infra* n.14.

² Tier III carriers are non-Nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-24 (2002).

³ 47 C.F.R. § 20.19(d)(3)(ii).

⁴ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at section 710(b)(2)(C) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (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).

Commission established technical standards for radio frequency interference (the “M” rating) and inductive coupling (the “T” rating)⁵ that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, respectively. For each of these standards, the Commission further established deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard unless the *de minimis* exception applies.⁷

3. In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new hearing aid-compatible handset deployment deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of hearing aid-compatible digital wireless handset models beginning in 2008.⁸ The number or percentage of digital wireless handset models required to be offered to consumers by each deadline is based on several factors, including the applicable interference standard and air interface, and is tailored to the size of the provider and the number of subscribers. Under this standard, smaller providers are required to offer fewer compatible handsets than larger carriers. Specifically, between May 15, 2009 and May 14, 2010, non-Tier I service providers were required to offer to consumers at least nine handset models per digital air interface, or at least 50% of the models offered per digital air interface, that met or exceeded the M3 rating,⁹ and at least five handset models per digital air interface, or at least one-third of the models offered per digital air interface, that met or exceeded the T3 rating.¹⁰ Between May 15, 2010 and May 14, 2011, non-Tier I service providers were

⁵ As subsequently amended, section 20.19(b)(1) 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 63.19-2007 (June 8, 2007) (“ANSI 63.19-2007”), 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 as set forth in ANSI 63.19-2007, 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).

⁶ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or service providers that do not meet the definition of a “small entity” beginning two years after their initial offerings. 47 C.F.R. § 20.19(e)(1)(ii); see *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-11189 ¶¶ 35-59 (2010) (“*Hearing Aid Compatibility Second Report and Order*”).

⁸ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

required to offer to consumers at least ten handset models per digital air interface, or at least 50% of the models offered per digital air interface, that met or exceeded the M3 rating,¹¹ and at least seven handset models per digital air interface, or at least one-third of the models offered per digital air interface, that met or exceeded the T3 rating.¹² The Commission also adopted reporting requirements to ensure that the Commission can accurately monitor the availability of these handsets, and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.¹³

4. On January 12, 2011, Pace submitted its hearing aid compatibility status report for the 2010 reporting period.¹⁴ After a careful review of the 2010 Report, the Wireless Telecommunications Bureau (“WTB”) referred this matter to the Enforcement Bureau (“Bureau”) for investigation. As part of its investigation, the Bureau compared the handset models Pace listed in its 2010 Report with the FCC Office of Engineering and Technology Equipment Authorization database, which identifies the ratings of each wireless handset, as reported by the handset manufacturer in test reports submitted to the Commission at the time of the equipment authorization.¹⁵ This review revealed apparent inconsistencies between the hearing aid compatibility ratings for certain handsets listed in Pace’s 2010 Report and the ratings specified in the Commission’s equipment authorizations for those handsets.¹⁶ Taking these apparent inconsistencies into account, and after coordinating the Bureau’s findings with WTB, we conclude that Pace’s 2010 Report reflects an apparent failure to offer the required number or percentage of handsets with a minimum T3 rating between March 1, 2010 and September 30, 2010.¹⁷

III. DISCUSSION

A. Failure to Comply with Hearing Aid-Compatible Handset Deployment Requirements

5. We find that Pace apparently failed to ensure that it offered to consumers the required number or percentage of hearing aid-compatible handsets that met or exceeded the T3 rating for seven months during the 2010 reporting period. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets. As set forth in greater detail in the Appendix, between March and September 2010, Pace offered its consumers three handset models.

¹¹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

¹² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

¹³ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91. In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open-ended basis, beginning January 15, 2009. *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99. The Commission also made clear that the reporting requirements apply to manufacturers and service providers that qualify for the *de minimis* exception. *Id.* at 3446 ¶ 99; see also *Hearing Aid Compatibility Second Report and Order*, 25 FCC Rcd at 11180-11189 ¶¶ 35-59 (2010).

¹⁴ See Kaplan Telephone Company, Inc. d/b/a Pace Communications Hearing Aid Compatibility Status Report (filed January 12, 2011), available at http://wireless.fcc.gov/hac_documents/110210/5927850_80.PDF (“2010 Report”).

¹⁵ See <http://transition.fcc.gov/oet/ea/fccid/>.

¹⁶ Specifically, Pace’s 2010 Report listed both the Nokia E75 handset (FCC ID PYARM-413) and the Samsung Omnia II handset (FCC ID A3LSCHI920) as M3/T3 rated, but Commission records indicate that the Nokia E75 has only an M3 rating, and the Samsung Omnia II has only an M4 rating for hearing aid compatibility. Additionally, Pace’s 2010 Report indicated that the Nokia N97 Mini (FCC ID QVVRM-553) has an M3 rating, but Commission records do not show any hearing aid compatibility rating for this handset. See 2010 Report.

¹⁷ *Id.*

Therefore, Pace was obligated, at a minimum, to offer at least one handset model that met or exceeded the T3 rating.¹⁸ Pace apparently failed to meet this standard because it did not offer any hearing aid-compatible handsets with a minimum T3 rating during this period.¹⁹ Accordingly, we conclude that Pace apparently willfully²⁰ and repeatedly²¹ violated section 20.19(d)(3)(ii) of the Rules by failing to make available any wireless hearing aid-compatible handsets that met or exceeded the T3 rating. We also find that this apparent misconduct continued for seven months of the 12-month reporting period.

B. Proposed Forfeiture

6. Under section 503(b)(1)(B) of the 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.²² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability 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.²³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁴ We conclude under this standard that Pace is apparently liable for a forfeiture for its apparent willful and repeated violations of section 20.19(d)(3)(ii) of the Rules.

7. Section 503(b)(2)(B) of the Act authorizes a forfeiture assessment against a common carrier up to \$150,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,500,000 for a single act or failure to act.²⁵ In exercising such authority, we are required to take into

¹⁸ See 47 C.F.R. § 20.19(d)(3)(ii) (requiring non-Tier 1 digital wireless service providers to ensure that between May 15, 2009 and May 14, 2010, at least one-third of the handset models offered, or at least five handset models, meet or exceed the T3 rating for inductive coupling capability, and that between May 15, 2010 and May 14, 2011, at least one-third of the handset models offered, or at least seven handset models, meet or exceed the T3 rating for inductive coupling capability). These requirements applied to each air interface for which service providers offered handsets to consumers. All of Pace's handsets for the 2010 reporting period operated only over the GSM air interface.

¹⁹ See Appendix.

²⁰ 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(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*"); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042 ¶ 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

²¹ 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 Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²⁵ 47 U.S.C. § 503(b)(2)(B). The Commission has amended section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. The most recent inflation adjustment

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.”²⁶

8. The Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in section 20.19 of the Rules.²⁷ The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”²⁸ The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.²⁹

9. In determining the appropriate forfeiture amount for violation of the hearing aid-compatible handset deployment requirements, we take into account that these requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services. In adopting the hearing aid compatibility rules, the Commission 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.³⁰ Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the public’s growing reliance on wireless technology and with the increasing median age of our population.³¹

10. We have previously determined that violations of the hearing aid-compatible handset deployment requirements are serious in nature because failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications.³² As

took effect September 2, 2008 and applies to violations that occur after that date. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000); 73 Fed. Reg. 44663-5.

²⁶ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. §§ 1.80, 20.19.

²⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

²⁹ *Id.*

³⁰ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

³¹ *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, or 28 million Americans, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). *See also Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 ¶ 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 – with that number expected to reach approximately 40 million at the end of this decade”).

³² *Compare, e.g., South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251, 19255-56 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a forfeiture of \$8,000 for a violation of the labeling requirements), *response pending*; *Pine Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9205, 9210 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2007) (same), *consent decree ordered*, Order and Consent Decree, 23 FCC Rcd 4485 (Enf. Bur. 2008).

such, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.³³ We have applied the \$15,000 base forfeiture on a per handset model basis (*i.e.*, for each handset model below the minimum number of hearing aid-compatible models required by the Rules).³⁴

11. The record establishes that Pace was required to offer to consumers at least one handset model with a minimum T3 rating between March and September 2010,³⁵ but apparently failed to do so. As a consequence, during that time period Pace's wireless customers had no access through their chosen wireless provider to telecoil-mode, hearing aid-compatible phones. Accordingly, and consistent with section 503(b)(6) of the Act,³⁶ Pace is apparently liable for a base forfeiture of \$15,000 for failing to offer to consumers the required number or percentage of hearing aid-compatible handset models in willful and repeated violation of section 20.19(d)(3)(ii) of the Rules.³⁷

12. This base forfeiture amount is, however, subject to upward adjustment. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the \$15,000 base forfeiture is warranted. In this regard, we take into account that Pace failed to offer to consumers the requisite number or percentage of hearing aid-compatible handsets with a minimum T3 rating for seven of the 12 months during the 2010 reporting period.³⁸ Therefore, based on all the factors and evidence, including the duration of the deployment violation, we propose a \$19,500

³³ See, e.g., *Epic Touch Co., Inc.*, Notice of Apparent Liability for Forfeiture 25, FCC Rcd 17848,17854 ¶12 (Enf. Bur. 2010), *response pending*; *Indigo Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC 17821; *Oklahoma Independent RSA 5 Partnership*, Notice of Apparent Liability for Forfeiture, DA 10-1654 ¶ 11 (Enf. Bur. rel. August 30, 2010), *response pending*; *OK-5 Licensee Co., LLC*, Notice of Apparent Liability for Forfeiture, DA 10-1659 ¶ 11 (Enf. Bur. rel. August 30, 2010), *response pending*; *TX-10 Licensee, LLC dba Cellular One*, Notice of Apparent Liability for Forfeiture, DA 10-1657 ¶ 11 (Enf. Bur. rel. August 30, 2010), *response pending*; *SLO Cellular, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3990, 3996-97 ¶ 14 (Enf. Bur. 2008), *response pending*; *NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009); *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567, 11571 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9403 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008); *Iowa Wireless Services, LLC d/b/a i Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4735, 4739 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706, 4711-12 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*.

³⁴ *Id.*

³⁵ See *supra* paragraph 5.

³⁶ See 47 U.S.C. § 503(b)(6).

³⁷ 47 C.F.R. § 20.19(d)(3)(ii).

³⁸ While section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Pace's misconduct occurred over an extended period (from March to September 2010) to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000). See also *BASF Corporation NAL*, 25 FCC Rcd 17300, 17302 (Enf. Bur., Spectrum Enf. Div. 2010); *Call Mobile*, 26 FCC Rcd 74, 76 (Enf. Bur., Spectrum Enf. Div. 2011). The forfeiture amount we propose herein relates only to Pace's apparent violations that have occurred within the past year.

forfeiture against Pace for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in section 20.19(d)(3)(ii) of the Rules.³⁹

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, and 1.80 of the Rules,⁴⁰ Pace **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nineteen thousand five hundred dollars (\$19,500) for apparent willful and repeated violation of section 20.19(d)(3)(ii) of the Rules.⁴¹

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,⁴² within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Pace **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or email arinquiries@fcc.gov with any questions regarding payment procedures. Pace must also send electronic notification on the date said payment is made to Pamera Hairston at Pamera.Hairston@fcc.gov and Katherine Power at Katherine.Power@fcc.gov.

16. 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 Rules.⁴³ 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 Pamera Hairston at Pamera.Hairston@fcc.gov and Katherine Power at Katherine.Power@fcc.gov

17. 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

³⁹ 47 C.F.R. § 20.19(d)(3)(ii).

⁴⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴¹ 47 C.F.R. § 20.19(d)(3)(ii).

⁴² 47 C.F.R. § 1.80.

⁴³ 47 C.F.R. §§ 1.16, 1.80(f)(3).

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **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 Bryan Matthews, Kaplan Telephone Company, Inc., d/b/a Pace Communications, 118 North Irving Avenue, Kaplan, Louisiana, 70548.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

APPENDIX
Pace Hearing Aid-Compatible Handset Offerings (T3 Rating)

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (T3 rating)	Hearing Aid-Compatible Handsets Required (T3 rating)	Compliance?
January 2010	1	Exempted per 20.19(e)	At least one-third of the total number of handset models offered or at least 5 handset models (January 1, 2010 – May 14, 2010)	n/a
February 2010	1	Exempted per 20.19(e)		n/a
March 2010	3	0		No
April 2010	3	0		No
May 2010	3	0	At least one-third of the total number of handset models offered or at least 7 handset models (May 15, 2010 – December 31, 2010)	No
June 2010	3	0		No
July 2010	3	0		No
August 2010	3	0		No
September 2010	3	0		No
October 2010	5	2		Yes
November 2010	7	3		Yes
December 2010	7	3		Yes