

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

In the Matter of)	File No.: EB-09-SE-149
)	
HTC America, Inc.; HTC Corporation)	Acct. No.: 201232100038
)	
)	FRN: 0018941682

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, HTC America, Inc., a subsidiary of HTC Corporation, and HTC Corporation by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into possible violations of Sections 20.19(c)(1) and 20.19(d)(1) of the Commission’s rules¹ pertaining to the deployment of digital wireless hearing aid-compatible handset models.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which HTC 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 and compliance program described in this Consent Decree at paragraph 8.
 - (g) “Covered Employees” means all employees and agents of HTC who perform, or supervise, oversee, or manage the performance of, duties that relate to HTC’s responsibilities under the Hearing Aid Compatibility Rules, but excludes those employees or agents of HTC who perform factory labor associated with the manufacture and assembly of digital wireless handsets, those solely involved in the sales and marketing of digital wireless handsets for distribution outside the United States and its territories, and those agents, if any, who perform independent testing of HTC’s digital wireless handsets.

¹ 47 C.F.R. § 20.19(c)(1), (d)(1).

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Hearing Aid Compatibility Rules” means section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid-compatibility, such as the Rules governing the design, selection, or acquisition of wireless handsets and the marketing or distribution of such handsets within the United States and its territories.
- (j) “HTC” means HTC America, Inc. and HTC Corporation, as well as their predecessors-in-interest and successors-in-interest.
- (k) “Investigation” means the investigation initiated by the Bureau in response to a referral from the Wireless Telecommunications Bureau regarding possible violations of Sections 20.19(c)(1) and 20.19(d)(1) of the Rules.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by HTC to implement the Compliance Plan.
- (m) “Parties” means HTC and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.² The Commission established technical standards for radio frequency interference (the M rating) and inductive coupling (the T rating)³ 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

² 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 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, 16787, para. 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

³ As subsequently amended, Section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI C63.19-2007 (June 8, 2007). Beginning January 1, 2010, a newly certified handset must meet at least an M3 rating under ANSI C63.19-2007 to be considered hearing aid-compatible for radio frequency interference. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified 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 C63.19-2006 or ANSI C63.19-2007, and beginning January 1, 2010, it is deemed hearing aid-compatible for inductive coupling if it meets at least a T3 rating under ANSI C63.19-2007. See *id.* § 20.19(b)(2). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. A recently adopted further amendment to Section 20.19(b) will permit 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 (2012).

providers must offer specified numbers or percentages of digital wireless handsets per air interface⁴ that are compliant with the relevant standard.⁵ 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 benchmarks beginning in 2008.⁶

3. HTC Corporation designs and manufacturers handheld wireless telecommunications devices, including digital wireless handsets. HTC America, Inc., a wholly-owned subsidiary of HTC Corporation, represents that it controls the sales and marketing of such digital wireless handsets in the United States. HTC Corporation's hearing aid compatibility status report covering the period July 1, 2008 through December 31, 2008 was filed on January 15, 2009.⁷ HTC Corporation's hearing aid compatibility status report covering the period January 1, 2009 through June 30, 2009 was filed on July 15, 2009.⁸ On November 25, 2009, the Wireless Telecommunications Bureau referred HTC's apparent hearing aid-compatible handset deployment violations to the Bureau's Spectrum Enforcement Division (Division) for investigation and possible enforcement action. HTC Corporation's hearing aid compatibility status report for the period covering July 1, 2009 through June 30, 2010 was filed on July 15, 2010.⁹ HTC Corporation's hearing aid compatibility status report for the period covering July 1, 2010 through June 30, 2011 was filed on July 14, 2011.¹⁰ HTC asserts that the company is now fully compliant with the hearing aid-compatible handset deployment requirements and that, as of June 2012, all handset models offered by HTC met or exceeded both the M3 and T3 rating for hearing aid compatibility.¹¹ The

⁴ 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).

⁵ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; 47 C.F.R. § 20.19(c), (d).

⁶ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These handset deployment requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. 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 requirements, and manufacturers or 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 mobile 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 also *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 paras. 35-59 (2010).

⁷ HTC Corporation, Hearing Aid Compatibility Status Report (filed Jan. 15, 2009) available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520193732>.

⁸ HTC Corporation, Hearing Aid Compatibility Status Report (filed July 15, 2009) available at http://wireless.fcc.gov/hac_documents/090721/HTC%20Corporation_16.PDF.

⁹ HTC Corporation, Hearing Aid Compatibility Status Report (filed July 15, 2010) available at http://wireless.fcc.gov/hac_documents/100720/HTC%20Corporation_22.PDF.

¹⁰ HTC Corporation, Hearing Aid Compatibility Status Report (filed July 14, 2011) available at http://wireless.fcc.gov/hac_documents/110720/6229629_4.PDF.

¹¹ See Letter from Amy Wolverson, Executive Director of Public Policy and Government Affairs, HTC America, Inc., to John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (July 29, 2012) (on file in EB-09-SE-149).

Bureau and HTC entered into tolling agreements to toll the statute of limitations,¹² and negotiated the terms of this Consent Decree.¹³

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** HTC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, HTC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in 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 HTC 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 HTC with respect to HTC's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, HTC agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan to help ensure future compliance with the Communications Laws, including the Hearing Aid Compatibility Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

¹² See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Amy Wolverton, Executive Director of Public Policy and Government Affairs, HTC America, Inc. (July 20, 2012) (on file in EB-09-SE-149).

¹³ The Bureau analyzed HTC's possible violations of Sections 20.19(c)(1) and 20.19(d)(1) of the Rules consistent with the new base forfeiture calculation methodology set forth in the Commission's recent T-Mobile decision (see *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4405 (2012)) and applied the statutory factors set forth in Section 503(b)(2)(E) of the Act. We also took into consideration the fact that the Parties had engaged in lengthy and productive settlement negotiations over the terms of this Consent Decree and were nearing agreement prior to the release of the T-Mobile decision.

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, HTC shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as 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 HTC 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/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.
- (b) **Operating Procedures on Hearing Aid Compatibility.** Within sixty (60) calendar days after the Effective Date, HTC shall establish Operating Procedures that all Covered Employees must follow to help ensure HTC's compliance with the Hearing Aid Compatibility Rules. HTC's Operating Procedures shall include internal procedures and policies specifically designed to ensure that HTC offers the requisite number or percentage of hearing aid-compatible digital wireless handset models as required by the Hearing Aid Compatibility Rules. HTC 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, will not result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements. At a minimum, the Compliance Checklist shall require the Compliance Officer and those Covered Employees responsible for the selection of digital wireless handset models to be marketed for use in the United States or its territories to verify the hearing aid compatibility rating of each existing and proposed handset offering using the Commission's equipment authorization database.
- (c) **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 HTC's compliance with the Hearing Aid Compatibility Rules. HTC shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. HTC shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** HTC 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 HTC's obligation to report any noncompliance with the Hearing Aid Compatibility Rules under paragraph 10 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 Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. HTC shall repeat the 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.

9. **Outreach Program on Hearing Aid Compatibility.** As part of its efforts to comply with the Hearing Aid Compatibility Rules and to consider the needs of the hearing disabled community early in the product design process, HTC shall, within sixty (60) calendar days after the Effective Date, establish and implement a comprehensive hearing aid compatibility outreach program to individuals with hearing disabilities and to a wide range of organizations that represent the hearing disabled. The purpose of the outreach program will be to gain insight into the mobile handset communications needs of individuals with hearing disabilities and how HTC can address those needs in the design of its digital wireless handset models. HTC shall conduct these hearing aid compatibility outreach efforts on at least a quarterly basis during the term of this Consent Decree. HTC's hearing aid compatibility outreach program shall include outreach efforts such as focus groups, surveys, consultations, and other appropriate contacts with disability group leaders, individuals with hearing disabilities and/or their representatives.

10. **Reporting Noncompliance.** HTC 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 HTC 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 HTC 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, D.C. 20554, with a copy submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Pamela Hairston at Pamela.Hairston@fcc.gov.

11. **Compliance Reports.** HTC shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of HTC'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 HTC, stating that the Compliance Officer has personal knowledge that HTC (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; (iii) has established and implemented the outreach program described in paragraph 9 of this Consent Decree; and (iv) 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 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules¹⁴ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of HTC, 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 HTC 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 HTC has taken or will take to prevent the recurrence of

¹⁴ 47 C.F.R. § 1.16.

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, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Linda Nagel at Linda.Nagel@fcc.gov and to Pamela Hairston at Pamela.Hairston@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 8 through 11 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

13. **Voluntary Contribution.** HTC agrees that it will make a voluntary contribution to the United States Treasury in the amount of five hundred and fifteen thousand dollars (\$515,000) within thirty (30) calendar days after the Effective Date. HTC shall also send electronic notification of payment to Linda Nagel at Linda.Nagel@fcc.gov, Pamela Hairston at Pamela.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.¹⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

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

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **Waivers.** HTC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. HTC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither HTC nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and HTC shall waive any statutory right to a

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

trial *de novo*. HTC hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁶ relating to the matters addressed in this Consent Decree.

15. **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.

16. **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 HTC does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

18. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

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

20. **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.

21. **Authorized Representative**. The individual signing this Consent Decree on behalf of HTC represents and warrants that he is authorized by HTC to execute this Consent Decree and to bind HTC to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

¹⁶ Equal Access to Justice Act, Pub L. No 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Brooks Larsen
Vice President & Associate General Counsel
HTC America, Inc.,
on behalf of and as authorized by HTC America,
Inc. and HTC Corporation

Date