

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Assist Wireless, LLC)	File No.: EB-SED-14-00013385
)	NAL/Acct. No.: 201432100012
)	FRN: 0020277489

FORFEITURE ORDER

Adopted: June 1, 2015

Released: June 2, 2015

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$6,000 against Assist Wireless, LLC (Assist Wireless) for failing to timely file its digital wireless handset hearing aid compatibility status report due by January 15, 2013. These reports are essential to implement and enforce the hearing aid compatibility rules. Assist Wireless does not deny the violations, but requests that we cancel or reduce the proposed forfeiture because of its good faith efforts and history of compliance. As discussed below, we reject this request. After reviewing the Assist Wireless response to the *NAL*, we find no reason to cancel withdraw, or reduce the proposed penalty, and therefore affirm the \$6,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. Assist Wireless failed to timely file its hearing aid compatibility status report for the period January 1, 2012, through December 31, 2012 (2012 Status Report), which was due to be filed on January 15, 2013.¹ As explained more fully in the *NAL*, the Commission's Wireless Telecommunications Bureau (Wireless Bureau) created two additional filing windows for Assist Wireless after Assist Wireless failed to file its 2012 Status Report by the January 15, 2013 filing deadline. Assist Wireless finally filed its 2012 Status Report on March 20, 2013² and the Wireless Bureau subsequently referred Assist Wireless's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau (Bureau).

3. The Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI)³ and supplemental inquiry⁴ to Assist Wireless, directing the company to submit a sworn written response

¹ Service providers are required to file their hearing aid compatibility status reports on January 15th of each year. See 47 C.F.R. § 20.19(i)(1).

² See *Assist Wireless, LLC*, Hearing Aid Compatibility Report (Mar. 20, 2013), http://wireless.fcc.gov/hac_documents/130411/7444149_322.PDF.

³ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Byron Young, Chief Executive Officer, Assist Wireless, LLC (Dec. 11, 2013) (on file in EB-SED-14-00013385). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1687 (Enf. Bur. 2014) (*NAL*). Assist Wireless responded to the LOI on January 8, 2014. See Letter from Byron Young, Chief Executive Officer, Assist Wireless, LLC, to Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 8, 2014) (on file in EB-SED-14-00013385).

to a series of questions related to its compliance with the hearing aid compatibility reporting requirement. In response to the supplemental inquiry, Assist Wireless asserted that its agent, Visi Consulting Services, LLC, had requested from the Wireless Bureau an extension of time to file its 2012 Status Report, and suggested that by opening a subsequent filing window, the Wireless Bureau had granted that request.⁵

4. On February 18, 2014, the Bureau issued the *NAL* proposing a \$6,000 forfeiture against Assist Wireless for its apparent willful⁶ and repeated⁷ violation of Section 20.19(i)(1) of the Commission's rules (Rules)⁸ by failing to timely file its hearing aid compatibility status report for the period January 1, 2012, through December 31, 2012 (2012 Status Report), which was due to be filed on January 15, 2013.

5. On March 20, 2014, Assist Wireless filed a response to the *NAL*.⁹ Assist Wireless makes a number of arguments as to why the *NAL* should be reduced or canceled, arguing that its violation was not willful or repeated, but was self-disclosed and promptly corrected.¹⁰ Assist Wireless also asserts that it has a history of compliance and has implemented measures to ensure that future hearing aid compatibility status reports are timely filed.¹¹

III. DISCUSSION

6. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹² Section 1.80 of the Commission's rules,¹³ and the Commission's *Forfeiture Policy Statement*.¹⁴ When we assess forfeitures, Section 503(b)(2)(E) 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."¹⁵ As discussed below, we have fully considered the Assist Wireless
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⁴ See E-mail from Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Byron Young, President and Chief Executive Officer, Assist Wireless, LLC (Feb. 28, 2014, 18:06 EDT) (on file in EB-SED-14-00013385).

⁵ See Letter from Byron Young, Chief Executive Officer, Assist Wireless, LLC, to Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 30, 2014) (on file in EB-SED-14-00013385).

⁶ 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. *Id.* § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, *see So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991) (*So. Cal.*), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁷ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2); *see also So. Cal.*, 6 FCC Rcd at 4388, para. 5.

⁸ 47 C.F.R. § 20.19(i)(1).

⁹ See Assist Wireless, LLC, Response to Notice of Apparent Liability for Forfeiture (Mar. 20, 2014) (on file in EB-SED-14-00013385) (NAL Response).

¹⁰ See NAL Response at 2.

¹¹ See *id.*

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80.

¹⁴ *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) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁵ 47 U.S.C. § 503(b)(2)(E).

response to the *NAL*, but we find none of the arguments persuasive. We therefore affirm the \$6,000 forfeiture proposed in the *NAL*.

A. The *NAL* Correctly Found that the Assist Wireless Violation was Willful and Repeated

7. In its *NAL* Response, Assist Wireless does not dispute that it filed its 2012 Status Report late. Assist Wireless argues that the nature and circumstances of this case demonstrate that it did not act willfully or repeatedly in failing to file its 2012 Status Report by the January 15, 2013 deadline.¹⁶ We disagree. In the context of a forfeiture action, the term “willful” means that the violator knew it was taking (or not taking) the action in question, irrespective of any intent to violate the law.¹⁷ Thus, a willfulness determination does not require a finding that the rule violation was intentional.¹⁸ We also reject Assist Wireless’s contention that its violation of Section 20.19(i)(1) was not repeated as that term is contemplated by Section 503(b) of the Act.¹⁹ As we have previously stated, the failure to file a hearing aid compatibility status report constitutes a continuing violation that persists until the violation is cured.²⁰ In this case, it is undisputed that the Assist Wireless report was filed after the deadline. Accordingly, we find that the violation was willful and repeated.

B. Assist Wireless Has Provided No Basis to Reduce the Forfeiture

8. We decline to reduce the forfeiture based on the Assist Wireless assertion that the violation in this instance was self-disclosed and corrected prior to the Commission’s investigation.²¹ Assist Wireless had to disclose in order to request the Wireless Bureau to open a late-filing window. Moreover, the Assist Wireless claim that it was granted an extension of the hearing aid compatibility status report filing deadline was fully considered and properly rejected in the *NAL*.²²

9. We decline to reduce based on the Assist Wireless contention that it made a good faith attempt to file its 2012 Status Report during the February 2013 filing window and it should not be penalized for the delayed filing in March that was out of its control²³ due to the technical filing difficulties encountered with the FCC’s website in February.²⁴ According to Assist Wireless, absent this system

¹⁶ See *NAL* Response at 3–4.

¹⁷ See, e.g., *American Samoa Telecommunications Auth.*, Forfeiture Order, 27 FCC Rcd 13174, 13180, para. 8 (Enf. Bur. 2012) (forfeiture paid) (*ASTCA*) (emphasizing that a violation is “willful” if the violator knew it was taking or failing to take the action in question, irrespective of any intent to violate the Rules); *Saga Radio Networks, LLC*, Forfeiture Order, 24 FCC Rcd 3852, 3855, para. 10 (Enf. Bur. 2009) (same), *recon. denied*, Memorandum Opinion and Order, 28 FCC Rcd 6875 (Enf. Bur. 2009); *Alacca Bible Conf., Inc.*, Forfeiture Order, 25 FCC Rcd 2584, 2585, para. 5 (Med. Bur. 2009) (same); see also *supra* note 8 (defining “willful” for the purposes of Section 312 and 503(b) of the Act); H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.) (“[W]illful” means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”).

¹⁸ See, e.g., *So. Cal.*, 6 FCC Rcd at 4387–88, para. 5 (finding that, consistent with the congressional record accompanying the 1982 amendments to the Act, a “willful” violation need not be intentional).

¹⁹ See *NAL* Response at 3–4.

²⁰ See *ASTCA*, 27 FCC Rcd at 13182, para. 13. See also *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138, para. 29 (2008) (finding that failures to file are continuing violations that toll the statute of limitations for forfeiture until the violations are cured); *Telrite*, 23 FCC Rcd at 7244, para. 30 (same); *VCI Co.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (same).

²¹ See *NAL* Response at 4–5.

²² See *id.* at 1690, para. 7.

²³ See *NAL* Response at 5.

²⁴ *NAL*, 29 FCC Rcd at 1689, n.17. See also *NAL* Response at 5.

issue, Assist Wireless's 2012 Status Report would have been filed just over a month after the January 15, 2013 filing deadline.²⁵ Contrary to Assist Wireless's assertions, Assist Wireless was not penalized for the delay between the February 2013 filing window and the March 2013 filing window. Here, the forfeiture amount is no more than the base amount for violation of the wireless hearing aid compatibility reporting requirements and does not include any upward adjustment of the base amount for the delay between the February 2013 filing window and the March 2013 filing window. Assist Wireless also avers that it would be unjust for the Bureau to impose a forfeiture of the same amount here as it imposed in *ASTCA*.²⁶ Although Assist Wireless contends that it should not have been assessed the same forfeiture amount as the Bureau assessed in *ASTCA*, we note that the Bureau has found the \$6,000 base forfeiture amount to be appropriate for violations of the hearing aid compatibility reporting requirements.²⁷

10. We reject Assist Wireless's contention that its history of compliance warrants reduction or cancellation of the proposed forfeiture amount.²⁸ Assist Wireless was issued a *Notice of Apparent Liability for Forfeiture* for its apparent violations of Sections 54.407, 54.409, and 54.410 of the Rules by requesting and receiving support from the Lifeline program of the Universal Service Fund for 428 ineligible consumers for the month of September 2012.²⁹ We believe that the prior violations of Sections 54.407, 54.409, and 54.410 of the Rules evidence a pattern of noncompliance and disregard for the Rules. We therefore find that Assist Wireless does not have a history of compliance and decline to reduce the forfeiture on this basis.

11. We also decline to reduce the forfeiture based on the assertion by Assist Wireless that it took "a series of actions" to ensure future compliance with the Rules.³⁰ While the compliance efforts by Assist Wireless are laudable, the Commission has long held that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.³¹ Accordingly, we decline to reduce the forfeiture on this basis.

IV. CONCLUSION

12. Based on the record before us and in light of the applicable statutory factors, we conclude that Assist Wireless willfully and repeatedly violated Section 20.19(i)(1) of the Commission's rules³² by failing to file its hearing aid compatibility status report for the period ending December 31,

²⁵ See *id.* at 5.

²⁶ See *id.* at 4–5 (citing *ASTCA* 27 FCC Rcd at 13180-82, paras. 9–13 (imposing forfeiture where hearing aid compatibility status report was filed more than five months after the filing deadline and company had also failed to file six preceding hearing aid compatibility status reports)).

²⁷ See, e.g., *Long Lines Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2722, 12726–27, paras. 9–10 (Enf. Bur. 2014) (proposing the base forfeiture of \$6,000 for failing to timely file the hearing aid compatibility status report) (forfeiture paid); *Air Voice Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1251, 1255, paras. 9–10 (Enf. Bur. 2014) (same) (forfeiture paid); *Kyocera Communications, Inc., Kyocera Corporation*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5987, 5990–91, paras. 8–10 (Enf. Bur. 2013) (proposing the base forfeiture amount for failing to timely file the hearing aid compatibility status report and an upward adjustment for high revenues and ability to pay a forfeiture), *consent decree ordered*, Order and Consent Decree, 29 FCC Rcd 3494 (Enf. Bur. 2014).

²⁸ See NAL Response at 5.

²⁹ *Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14456 (2013).

³⁰ See NAL Response at 5.

³¹ See, e.g., *Behringer USA, Inc.*, Forfeiture Order, 22 FCC Rcd 10451, 10459, para. 19 (2007) (forfeiture paid).

³² 47 C.F.R. § 20.19(i)(1).

2012 by the January 15, 2013 deadline. We decline to cancel or reduce the \$6,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,³³ and Section 1.80 of the Rules,³⁴ Assist Wireless, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully and repeatedly violating Section 20.19(i)(1) of the Rules.

14. 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 of this Forfeiture Order.³⁵ 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.³⁶

15. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Assist Wireless shall send electronic notification of payment to Pamera Hairston at Pamera.Hairston@fcc.gov, Kathy Harvey at Kathy.Harvey@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁷ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

16. 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

³³ 47 U.S.C. § 503(b).

³⁴ 47 C.F.R. § 1.80.

³⁵ *Id.*

³⁶ 47 U.S.C. § 504(a).

³⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, SW, Room 1-A625, Washington, DC 20554.³⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. **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 Byron Young, Chief Executive Officer, Assist Wireless, LLC, 2402 Gravel Drive, Fort Worth, TX 76118, and to John J. Heitmann, Esq., Kelley Dye & Warren LLP, Washington Harbour, 3050 K Street, NW, Suite 400, Washington, DC 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

Bruce D. Jacobs
Chief
Spectrum Enforcement Division
Enforcement Bureau

³⁸ See 47 C.F.R. § 1.1914.