

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

In the Matter of
Indigo Wireless, Inc.
File No.: EB-SED-13-00009306
NAL/Acct. No.: 201132100018
FRN: 0009120999

MEMORANDUM OPINION AND ORDER

Adopted: November 5, 2014

Released: November 6, 2014

By the Commission:

1. We deny the Application for Review filed by Indigo Wireless, Inc. (Indigo Wireless) challenging the Enforcement Bureau’s assessment of a \$39,000 forfeiture for Indigo Wireless’s failure to offer consumers the required number or percentage of digital wireless handset models that met or exceeded the radio frequency interference standards for hearing aid compatibility in 2009.

2. On June 20, 2014, the Enforcement Bureau (Bureau) issued a Forfeiture Order against Indigo Wireless assessing a \$39,000 forfeiture for its apparent willful and repeated violation of Section 20.19(c)(3)(ii) of the Commission’s rules (Rules)1 by failing to offer the required number or percentage of hearing aid-compatible handset models that met or exceeded the M3 rating for nine months during the 2009 reporting period.2 The Bureau concluded that Indigo Wireless failed to meet the applicable handset model deployment benchmark by two handset models and that the proposed upward forfeiture adjustment based on the duration of the violation was appropriate.3

3. On July 21, 2014, Indigo Wireless filed an Application for Review challenging the Bureau’s assessment of the \$39,000 forfeiture.4 Indigo Wireless argues that the Bureau erred by “discount[ing] the diligent, good-faith efforts of a small service provider to faithfully comply with the Commission’s HAC rules in the absence of adequate official resources....”5 Indigo Wireless also argues that the Bureau “erroneously discounted” Indigo Wireless’s assertion that several contemporaneous Notices of Apparent Liability for Forfeiture with “very similar HAC-related fact situations” had proposed

1 47 C.F.R. § 20.19(c)(3)(ii).

2 Indigo Wireless, Inc., Forfeiture Order, 29 FCC Rcd 7404 (Enf. Bur. 2014) (Forfeiture Order). The Forfeiture Order affirmed in full the conclusions of the Notice of Apparent Liability for Forfeiture (NAL) against Indigo Wireless. See Indigo Wireless, Inc., Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17821 (Enf. Bur. 2010).

3 Forfeiture Order, 29 FCC Rcd at 7408, para. 10.

4 Indigo Wireless, Inc., Application for Review (filed July 21, 2014) (on file in EB-SED-13-00009306).

5 Id. at 6.

lesser forfeitures.⁶ Finally, Indigo Wireless generally references the company's "annual residential subscriber revenue" that it reported in its 2011 FCC Form 499-A Telecommunications Reporting Worksheet in an apparent effort to demonstrate an inability to pay the assessed forfeiture.⁷

4. Upon review of the Application for Review and the entire record, and finding no basis in the Application for Review to modify the Bureau's decisions, we conclude that Indigo Wireless has failed to demonstrate that the Bureau erred. We uphold the forfeiture amount for the reasons set forth in the *Forfeiture Order*.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115 of the Rules, the Application for Review filed by the Indigo Wireless, Inc. on July 21, 2014, **IS DENIED**, and the *Forfeiture Order* **IS AFFIRMED**.⁸

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ *Id.*

⁷ *Id.* at 1. Indigo Wireless had an opportunity to provide financial information in response to the *NAL* but did not do so. See *Forfeiture Order*, 29 FCC Rcd at 7408, para. 9; see also *NAL*, 25 FCC Rcd at 17829, para. 19 (outlining the types of financial information that should be provided to support an inability to pay argument).

⁸ 47 U.S.C. §§ 154(i), 155(c)(5); 47 C.F.R. § 1.115.