

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

In the Matter of)	
)	File No.: EB-10-SE-127
)	NAL/Acct. No.: 201232100024
T-Mobile USA, Inc.)	FRN: 0006945950
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 13, 2012

Released: April 13, 2012

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we propose a forfeiture in the amount of eight hundred nineteen thousand dollars (\$819,000) against T-Mobile USA, Inc. (T-Mobile).¹ As detailed herein, we find that T-Mobile apparently willfully and repeatedly violated Sections 20.19(c)(2) and 20.19(d)(2) of the Commission's rules (Rules).² We further find that this apparent misconduct persisted for the two-year period, 2009-2010. Specifically, T-Mobile, a nationwide wireless carrier with more than 33 million customers and more than \$21 billion dollars in annual revenue,³ apparently failed to offer the required number of hearing aid-compatible digital wireless handset models as set forth in the Rules. These hearing aid compatibility requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services.⁴

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.⁵ The Commission established technical standards that digital wireless

¹ T-Mobile is a Tier I carrier. Tier I carriers are nationwide wireless radio service providers. *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, paras. 22-23 (2002). T-Mobile offers service over the Global System for Mobile Communications (GSM) and Wideband Code Division Multiple Access (WCDMA) a.k.a. Universal Mobile Telecommunications System (UMTS) air interfaces.

² 47 C.F.R. § 20.19(c)(2), (d)(2).

³ *See infra* note 65 and accompanying text.

⁴ *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, 11174, para. 18 (2010) (*2010 Policy Statement*).

⁵ *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

(continued....)

handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁶ Specifically, the Commission adopted a 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.⁷

3. 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.⁸ These handset deployment requirements apply to each air interface over which the

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Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005). 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)(B) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 610(b)(2)(B).

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777, para. 56. See also 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and inductive coupling (telecoil) modes as follows:

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.

⁷ 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 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) 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, DA 12-550 (WTB/OET rel. Apr. 9, 2012).

⁸ See *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).

service provider offers service.⁹ 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.

4. Specifically, Tier I carriers were required to offer the following minimum numbers of hearing aid-compatible handsets:

Table 1: Hearing Aid-Compatible Handset Deployment Requirements

Dates	M3 – Acoustic Coupling	T3 – Inductive Coupling
	Number of wireless handset models per digital air interface ¹⁰ 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 8 handset models, or at least 50% of the models offered (whichever is less) ¹¹	At least 3 handset models, or at least 1/3 of the models offered (whichever is less) ¹²
February 15, 2009 to February 14, 2010	At least 9 handset models or 50% of the models offered ¹³	At least 5 handset models, or 1/3 of the models offered ¹⁴
February 15, 2010 to December 31, 2010	At least 10 handset models, or 50% of the models offered ¹⁵	At least 7 handset models, or 1/3 of the models offered ¹⁶

5. On January 14, 2010, T-Mobile submitted a hearing aid compatibility status report covering January 1, 2009 to December 31, 2009.¹⁷ 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.

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd 3406, 3419, paras. 35-36 (stating that the hearing aid compatibility handset deployment requirements apply on a per air interface basis).

¹⁰ 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 GSM, WCDMA a.k.a. UMTS, Code Division Multiple Access (CDMA), and Integrated Digital Enhanced Network (iDEN).

¹¹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419, para. 35; 47 C.F.R. § 20.19(c)(2).

¹² See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419, para. 36; 47 C.F.R. § 20.19(d)(2).

¹³ See *supra* note 11.

¹⁴ See *supra* note 12.

¹⁵ See *supra* note 11.

¹⁶ See *supra* note 12.

¹⁷ See *T-Mobile USA, Inc. Hearing Aid Compatibility Report*, Docket No. 07-250 (Jan. 14, 2010), available at http://wireless.fcc.gov/hac_documents/100317/T-Mobile%20USA_164.PDF (2009 Report).

6. As part of its investigation, Commission staff consulted the FCC Office of Engineering and Technology Equipment Authorization System to independently confirm the hearing aid compatibility rating of each handset model as established in the grant of equipment authorization issued by the Commission for that handset. The FCC Office of Engineering and Technology Equipment Authorization System is an electronic database of all equipment certified under FCC authority. The database identifies the hearing aid compatibility rating of each device by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization or of any modifications to such authorization.¹⁸ 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.¹⁹

7. 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 a series of questions related to its compliance with Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.²⁰ T-Mobile responded to the LOI on September 30, 2010 (LOI Response),²¹ stating that it had relied on the manufacturers' reports for several handset models' hearing aid compatibility ratings.²² In October 2010, T-Mobile disclosed to the Commission possible hearing aid-compatible handset deployment violations during the 2010 calendar year.²³ As a consequence, the Commission expanded its investigation to include these additional potential violations.²⁴

¹⁸ See <http://transition.fcc.gov/oet/ea/fccid/>.

¹⁹ See *supra* note 10 (explaining that WCDMA and GSM are two technical protocols that permit a handset to communicate with a service provider's base station). Specifically, with respect to 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; that the Research in Motion Blackberry 8220 (FCC ID L6ARBY40GW) is rated M3/T3 when Commission records show that the model has an M3/T4 rating; and that the Sony Ericsson TM747 (FCC ID PY7A3880030) is rated M3/T3 when Commission records show the model has an M3/T4 rating. Because the Blackberry 8220 and Sony Ericsson TM747 handset models meet the minimum requirements for hearing aid compatibility, the noted discrepancies had no impact on our analysis herein. The Bureau's investigation revealed similar inaccuracies with respect to certain handset models that operate only over the GSM air interface. Specifically, T-Mobile's 2009 Report indicated that the Research in Motion Blackberry 8900 (FCC ID L6ARBZ40GW) is not rated for hearing aid compatibility while Commission records show that the model has an M3 rating; and that the Nokia 3711 (FCC ID PPIRM-511) is rated M3/T3 while Commission records show that the model has an M3/T4 rating. We have carefully considered all of this information, including the hearing aid compatibility ratings from the OET database that would be more favorable to T-Mobile than the ratings in its own submission.

²⁰ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc. (Sept. 10, 2010) (LOI).

²¹ See Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc., to Linda M. Nagel, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Sept. 30, 2010). 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, Enforcement Bureau, Federal Communications Commission (Feb. 22, 2011).

²² *Id.* at 1-3.

²³ T-Mobile filed its Hearing Aid Compatibility Status Report for the January 1, 2010 to December 31, 2010 reporting period on January 18, 2011; its disclosure of possible deployment violations was made prior to this filing.

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III. DISCUSSION

A. Failure to Comply With Hearing Aid-Compatible Handset Deployment Requirements on the WCDMA Air Interface

8. Our analysis of T-Mobile's compliance with the hearing aid compatibility rules focuses on the company's apparent handset deployment deficiencies for the WCDMA air interface, where over an extended period of time, T-Mobile apparently failed to meet the minimum regulatory benchmarks for hearing aid-compatible handsets rated M3 or higher (M3-rated handset models) and for hearing aid-compatible handsets rated T3 or higher (T3-rated handset models).²⁵

9. *Acoustic Coupling (M3-rated handset models).* We find that T-Mobile apparently failed to offer to consumers during the 2009 and 2010 calendar years the required number of M3-rated handset models that operate on the WCDMA air interface. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets.²⁶ During 2009, T-Mobile was required to offer between *four* and *nine* M3-rated handset models that operate on the WCDMA air interface.²⁷ As detailed in Appendix A, T-Mobile apparently failed to meet this standard, repeatedly falling short each month by one to three handset models.²⁸ T-Mobile's record failed to improve during 2010: T-Mobile was required to offer either *nine* or *ten* M3-rated handset models that operate on the WCDMA air interface,²⁹ but failed to meet this benchmark even once, repeatedly falling short each month by as many as four handset models.³⁰ Accordingly, we find that T-Mobile apparently willfully³¹ and

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See *T-Mobile USA, Inc.* Hearing Aid Compatibility Report, Docket No. 07-250 (Jan. 18, 2011), available at http://wireless.fcc.gov/hac_documents/110210/5940157_186.PDF (2010 Report).

²⁴ To permit a full and fair investigation of this matter, the Bureau and T-Mobile entered into tolling 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, File No. EB-10-SE-127, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel to T-Mobile USA, Inc. (Dec. 16, 2011).

²⁵ All of T-Mobile's handsets for 2009 and 2010 either operated only over the GSM air interface or were capable of operating over both the GSM and WCDMA air interfaces. Based on information provided in the 2009 Report and 2010 Report, T-Mobile has demonstrated its compliance with the deployment benchmarks applicable to handset models that operate over the GSM air interface.

²⁶ See *supra* Table 1.

²⁷ *Id.*

²⁸ See Appendix A, 2009 T-Mobile Hearing Aid-Compatible Handset Offerings (M3 Rating) (indicating that in January 2009, T-Mobile offered seven WCDMA handset models, only three of which were hearing aid-compatible for acoustic coupling, and that between July 1, 2009 and December 31, 2009, T-Mobile offered between 11 and 20 WCDMA handset models, only four to seven of which were hearing aid-compatible for acoustic coupling).

²⁹ See *supra* Table 1.

³⁰ See Appendix B, 2010 T-Mobile Hearing Aid-Compatible Handset Offerings (M3 Rating) (indicating that between January 1, 2010 and December 31, 2010, T-Mobile offered between 18 and 25 WCDMA handset models, only five to nine of which were hearing aid-compatible for acoustic coupling).

³¹ 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) (continued....)

repeatedly³² violated Section 20.19(c)(2) of the Rules by failing to offer to consumers the required number of digital wireless M3-rated handset models that operate on the WCDMA air interface. We also find that this apparent misconduct continued for seven months in 2009 and for all of 2010.

10. *Inductive Coupling (T3-rated handset models).* We further find that T-Mobile apparently failed to offer to consumers during the 2009 and 2010 calendar years the required number of T3-rated handset models that operate on the WCDMA air interface. During 2009, T-Mobile was required to offer between *three* and *five* T3-rated handset models that operate on the WCDMA air interface.³³ As set forth in greater detail in Appendix C, T-Mobile apparently failed to meet this standard, repeatedly falling short each month during the year by as many as four handset models.³⁴ Similarly, during 2010, T-Mobile was required to offer between *five* and *seven* T3-rated handset models that operate on the WCDMA air interface.³⁵ As shown in Appendix D, T-Mobile failed to meet the deployment benchmarks during seven months in 2010, repeatedly falling short by at least one and by as many as three handset models.³⁶ Accordingly, we conclude that T-Mobile apparently willfully and repeatedly violated Section 20.19(d)(2) of the Rules by failing to offer to consumers the required number of T3-rated handset models that operate on the WCDMA air interface. We also find that this apparent misconduct continued for all of 2009 and for seven months in 2010.

11. We note that with respect to one handset model—the Huawei Tap (FCC ID QISU7519)—offered from November 2009 until December 2010, T-Mobile asserts that it obtained ratings information for the handset model “directly from Huawei,” and that it “lawfully

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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, para. 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, para. 12 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523, para. 9 (2007); *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).

³² 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.

³³ *See supra* Table 1.

³⁴ *See* Appendix C, 2009 T-Mobile Hearing Aid-Compatible Handset Offerings (T3 Rating) (indicating that between January 1 and February 14, 2009, T-Mobile offered either seven or eight WCDMA handset models, only two of which were hearing-aid compatible for inductive coupling, and that between February 15 and December 31, 2009, T-Mobile offered between eight and 20 WCDMA handset models, only one to four of which were hearing aid-compatible for inductive coupling).

³⁵ *See supra* Table 1.

³⁶ *See* Appendix D, 2010 T-Mobile Hearing Aid-Compatible Handset Offerings (T3 Rating) (indicating that between January 1 and June 30, 2010, T-Mobile offered between 17 and 24 WCDMA handset models, only four to six of which were hearing aid-compatible for inductive coupling, and that in August 2010, T-Mobile offered 22 WCDMA handset models, only six of which were hearing aid-compatible for inductive coupling).

relied” on manufacturers’ representations of the hearing aid compatibility rating for handsets in accordance with Commission guidance.³⁷ In support of its assertion, T-Mobile provides a copy of a document titled “2008 Roadmap v9 T-Mobile – Product Development,” which references the Huawei Tap by its FCC ID and purports to indicate that the model has an M3 rating.³⁸

12. T-Mobile’s reliance on a preliminary technical specifications sheet for the Huawei Tap handset was not reasonable under the circumstances here. For example, in the specifications sheet submitted by T-Mobile, many of the handset model’s technical specifications are incomplete (*e.g.*, including the notations “need to clarify,” “screen shots not ready,” “Partial support Pending on TMO clarification,” and “TBD”). The record shows that there was ample information available to T-Mobile from the manufacturer establishing that the Huawei handset was not hearing aid-compatible. Specifically, Huawei’s early submissions to the Commission in connection with the equipment authorization of the handset,³⁹ the equipment authorization itself,⁴⁰ the device user manual prepared by Huawei,⁴¹ and Huawei’s hearing aid compatibility report for the July 1, 2009 through June 30, 2010 reporting period⁴² all confirm the absence of a hearing aid-compatible rating. Therefore, T-Mobile’s decision to rely on a preliminary spec sheet to the exclusion of numerous sources of more accurate information that were readily available from the manufacturer was unreasonable and taken at its own peril.

B. Proposed Forfeiture

13. 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.⁴³ 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.⁴⁴ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the

³⁷ LOI Response at 1-2 (*citing* Hearing Aid Compatibility First Report and Order, 23 FCC Rcd at 3445-46, para. 98 and claiming that its reliance on Huawei’s representations was consistent with Commission guidance).

³⁸ *Id.* at Exhibit 1.

³⁹ See https://apps.fcc.gov/oetcf/eas/reports/ViewExhibitReport.cfm?mode=Exhibits&RequestTimeout=500&calledFromFrame=N&application_id=352140&fcc_id='QISU7519' (test reports submitted with the Huawei Tap handset model’s application for equipment authorization showing that the model apparently was not tested for hearing aid compatibility).

⁴⁰ See https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb_code=&application_id=352140&fcc_id=QISU7519 (grant of authorization for Huawei Tap handset model showing that the model is not rated for hearing aid compatibility).

⁴¹ See <https://apps.fcc.gov/eas/GetApplicationAttachment.html?id=1167422> (user manual for Huawei Tap handset model providing no indication that the model is rated for hearing aid compatibility).

⁴² See *Futurewei Technologies, Inc. dba Huawei Technologies*, Hearing Aid Compatibility Status Report (July 15, 2010), available at http://wireless.fcc.gov/hac_documents/100720/Futurewei%20Technologies21.PDF (reporting that the Huawei Tap handset model is not rated for hearing aid compatibility).

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

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

person has violated the Act or a Commission rule.⁴⁵ We conclude under this standard that T-Mobile is apparently liable for a forfeiture for its apparent willful and repeated violations of Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.

14. 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.⁴⁶ In exercising such authority, we are required to 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.”⁴⁷

15. 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.⁴⁸ The fact that the *Forfeiture Policy Statement* does not specify a base amount in no way suggests, however, that a forfeiture should not 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.”⁴⁹ 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.⁵⁰

16. 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.⁵¹ Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase

⁴⁵ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

⁴⁶ 47 U.S.C. § 503(b)(2)(B). The Commission has amended section 1.80(b)(2) of the Rules, 47 C.F.R. § 1.80(b)(2), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note. The most recent inflation adjustment 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.

⁴⁷ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(5), Note to paragraph (b)(5): Section II. Adjustment Criteria for Section 503 Forfeitures.

⁴⁸ See *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), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. §§ 1.80, 20.19.

⁴⁹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22.

⁵⁰ *Id.*

⁵¹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755, para. 4.

with the growing reliance on wireless technology and with the increasing median age of our population.⁵²

17. In prior cases decided on delegated authority since at least 2008, the Bureau generally has applied a base forfeiture amount of \$15,000 on a per handset model basis, identifying the calendar month within the statute of limitations where the service provider or manufacturer fell the furthest short of the required benchmark.⁵³ The Bureau then applied the \$15,000 per handset base forfeiture only with respect to the handset shortages in that calendar month—the so-called “highest handset shortfall approach.”⁵⁴

18. Both the Commission and the Bureau, however, are concerned that the “highest handset shortfall” approach does not adequately reflect the nature and scope of the violations of hearing aid compatibility rules. As the Bureau has previously indicated, the failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications.⁵⁵ After careful consideration, we conclude that the highest handset shortfall approach could yield anomalous results contrary to the critical policy goals at stake.

19. It is counterintuitive, for example, that a company with more violations (taking into account the number of months in which the violations occur) would be assessed the same base forfeiture as a competitor with fewer violations overall. To illustrate, take two carriers that were out of compliance with the deployment requirements for an entire calendar year, both of

⁵² *Id.* at 16756, para. 5 (noting that approximately one in ten Americans, 28 million, 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 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]”).

⁵³ *See, e.g., NEP Cellcorp*, 24 FCC Rcd at 13, para. 11; *Pinpoint Wireless*, 23 FCC Rcd at 9295, para. 11; *Smith Bagley, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14113, 14117-18, para. 11 (Enf. Bur., Spectrum Enf. Div. 2009), *response pending*; *South Canaan*, 23 FCC Rcd at 24-25, para. 11.

⁵⁴ *See, e.g., Keystone Wireless LLC d/b/a Immix Wireless*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15210, 15216-17, para. 13 (Enf. Bur. 2011), *response received*; (*Keystone*) (finding that Keystone missed the T3 deployment benchmark by four handset models in October 2010, and assessing a base forfeiture of \$60,000 for such shortage); *see also Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services*, 26 FCC Rcd 15237, 15244, para 13 (Enf. Bur. 2011) (response received) (*Chariton Valley*) (finding that Chariton Valley missed the T3 deployment benchmark by three handsets in October 2010, and assessing a base forfeiture of \$45,000 for such shortage). In recent years, the Bureau also has upwardly adjusted these base forfeitures based on the duration of the violation. *See, e.g., Keystone*, 26 FCC Rcd at 15217, para. 14 (upwardly adjusting the base forfeiture because Keystone was out of compliance with the M3 deployment benchmark for nine and one-half months and with the T3 deployment benchmark for eleven and one-half months); *see also Chariton Valley*, 26 FCC Rcd at 15244, para. 14 (upwardly adjusting the base forfeiture because Chariton Valley was out of compliance with the M3 deployment benchmark for seven months and with the T3 deployment benchmark for ten consecutive months).

⁵⁵ *See South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24 para. 11 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid) (*South Canaan*) (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”).

which had the greatest handset shortfall (of five handsets) in December. Assume that Carrier A is down five handsets for the entire year and Carrier B was short only one handset for the first 11 months of that year. Using the Bureau's current approach, both Carriers A and B would receive the same base forfeiture of \$75,000 (5 handsets x \$15,000). The current approach, by focusing only on the single month with the greatest handset shortfall, does not take into account the fact that consumers may have been denied an adequate choice of compatible handsets for a period of time well beyond that particular month.

20. Moreover, we are troubled that failing to capture all the handset shortages during a calendar year could lead to inappropriately low base forfeiture amounts and provide little incentive to comply. 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.⁵⁶ Indeed, if a carrier was short five handsets in one month, the current approach would provide little incentive to quickly reduce the shortfall given that the likely forfeiture would remain the same whether the carrier was short five or one handsets the next month. Here, T-Mobile was out of compliance with the hearing aid-compatible handset deployment requirements on the WCDMA air interface through the entire 24-month period, January 2009 to December 2010. During this extended period of noncompliance, T-Mobile was short by a total of 52 handset models—a deficiency which gave potentially large number of consumers with hearing disabilities far fewer choices of compatible handsets than the minimum numbers required by our rules.⁵⁷

21. Furthermore, while T-Mobile made available to consumers without hearing loss a wide variety of handset offerings (as many as 20 handset models in 2009 and 25 handset models in 2010), T-Mobile apparently failed to offer to consumers experiencing hearing loss even the *minimum* number of hearing aid-compatible handset models required by the rules during those two years.⁵⁸ 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 Commission's 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.

⁵⁶ Applying the highest handset shortfall approach in this case would have resulted in the assessment of a base forfeiture of only \$165,000 (11 handset models x \$15,000). Specifically, the calculation would only have reflected the handset shortages in December 2009 (three M3 handsets short; one T3 handset short) and in March 2010 (four M3 handsets short and three T3 handsets short).

⁵⁷ See Appendices A through D (indicating that T-Mobile was short a total of five M3-rated handset models in November and December 2009, 33 M3-rated handset models from January through December 2010, two T3-rated handset models in November and December 2009, and 12 T3-rated handset models from January through December 2010).

⁵⁸ See Appendices A through D (showing that during the 2009 and 2010 calendar years, T-Mobile failed to offer the requisite number of M3-rated and T3-rated handset models during each calendar month). While non-hearing aid-compatible handsets are technically available to all consumers, these handsets may not function effectively with hearing aids and can create excessive feedback and "noise." See also *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16756 para. 6 ("[D]igital wireless phones can cause interference to hearing aids and cochlear implants because of electromagnetic energy emitted by the phone's antenna, backlight, or other components. This interference can be significant enough to prevent individuals with hearing aids or cochlear implants from using digital wireless phones and services. In addition, most wireless phones do not internally provide the capability to inductively couple with hearing aids containing telecoils, as wireline phones do.").

22. Recognizing that “our hearing aid compatibility rules provide people who use hearing aids and cochlear implants with continuing access to the most advanced and innovative technologies as science and markets develop,” we find that a more nuanced base forfeiture methodology is warranted in order to more fully reflect the significance of the violations at issue and to better deter future noncompliance with these critical rules.⁵⁹ In this regard, we are mindful that the wireless hearing aid compatibility rules have been in place for almost a decade and that carriers have had more than sufficient opportunity to structure compliance programs and ensure that they meet our requirements.⁶⁰

23. Given the potentially substantial and tangible impact on consumers with hearing loss, we will continue to apply the \$15,000 per handset base amount. However, for the reasons explained above, we will apply this per handset base amount to *each* failure to offer a hearing aid-compatible handset during each month of the calendar year, rather than to a limited subset of such handset shortages as the Bureau did previously.⁶¹ We will implement this approach 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. We recognize that there may be instances where the violator's size or inability to pay may be particularly salient factors. Section 503 gives us ample discretion to consider such circumstances and adjust the forfeiture amount accordingly.

24. Consequently, and consistent with Section 503(b)(6) of the Act, we start with a base forfeiture of \$570,000 (38 handset models x \$15,000) for T-Mobile's apparent failure to offer to consumers the required number of M3-rated handset models that operate on the WCDMA air interface in willful and repeated violation of Section 20.19(c)(2) of the Rules.⁶² We also conclude that a base forfeiture of \$210,000 (14 handset models x \$15,000) is warranted for T-Mobile's apparent failure to offer to consumers the required number of T3-rated handset

⁵⁹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17092 - 93, para. 8 (recognizing that “guidelines will provide the needed measure of predictability to the process and uniformity to our administrative sanctions while retaining flexibility for the Commission to act appropriately in particular cases”).

⁶⁰ *2010 Policy Statement*, 25 FCC Rcd at 11168 (noting that the Commission's wireless hearing aid compatibility rules are “intended to ensure that consumers with hearing loss are able to access wireless communications service through a wide selection of handsets without experiencing disabling interference or other technical obstacles”).

⁶¹ *See, e.g., South Canaan*, 23 FCC Rcd at 25, para. 12 & n.33 (cautioning carriers that “that future enforcement actions may consider all failures to comply with our hearing aid compatibility rules . . . as continuing violations”).

⁶² *See* Appendices A and B (indicating that T-Mobile was short a total of five M3-rated handset models in November and December 2009, and 33 M3-rated handset models from January through December 2010). In calculating the number of handset shortages in 2009, we focus on the company's failure to offer to consumers the requisite number of M3-rated and T3-rated handset models in November and December 2009, when T-Mobile missed the benchmarks by a total of seven handset models. *See supra* paras. 9 and 10. While we find that T-Mobile also was apparently out of compliance with the hearing aid-compatible handset deployment requirements for the entire 2009 calendar year (*see supra* paras. 9–10) and that these violations are continuing violations, we exercise our prosecutorial discretion to focus on the apparent violations that occurred after October 31, 2009. This is consistent with the tolling agreements negotiated with T-Mobile under the Bureau's prior forfeiture calculation framework, which tolled the statute of limitations for apparent violations that occurred after this date.

models that operate on the WCDMA air interface in willful and repeated violation of Section 20.19(d)(2) of the Rules.⁶³

25. These base forfeiture amounts, however, are subject to adjustment. Consistent with the *Forfeiture Policy Statement* and Section 503(b)(2)(E) of the Act, we find that an upward adjustment of the \$780,000 base forfeiture amount is warranted. T-Mobile is a sophisticated Tier I carrier with 33 million subscribers and the buying power to procure any number of wireless hearing aid-compatible handsets from equipment manufacturers. In addition, as the Commission made clear in the *Forfeiture Policy Statement*, it is appropriate to impose higher forfeitures than the base amounts on large or highly profitable entities, such as T-Mobile, to ensure that the forfeiture serves as an effective deterrent against their future noncompliance.⁶⁴ T-Mobile reported more than \$21 billion in total annual revenues and equipment sales of more than \$2.4 billion in 2009 and 2010.⁶⁵ We also note, however, that the severity of the apparent 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.⁶⁶ We note that but for T-Mobile's cooperation the upward adjustment would have been significantly higher.

26. In view of all the factual circumstances presented and after weighing the upward and downward adjustment factors (including the T-Mobile's ability to pay as well as the

⁶³ See Appendices C and D (indicating that T-Mobile was short a total of two T3-rated handset models in November and December 2009, and 12 T3-rated handset models from January through December 2010).

⁶⁴ Specifically, the Commission stated:

[W]e recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level. For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100, para. 24.

⁶⁵ See T-Mobile USA Reports Fourth Quarter 2010 Results, February 25, 2011, available at <http://s.tmocache.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B5A79D454F2C8/file/TMUSQ42010PressReleaseFinalv2.pdf> (last visited April 13, 2012); see also T-Mobile USA Reports Fourth Quarter 2011 Operating Results, Press Release, February 23, 2012, available at <http://www.tmobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF30135AD3E32E64A86/file/TMUS%20Q4%202011%20Press%20Release%20FINAL.pdf> (last visited Mar. 16, 2012). In 2011, T-Mobile served nearly 33.2 million customers, and reported total annual revenues of \$20.6 billion and equipment sales of \$1.9 billion. *Id.*

⁶⁶ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098, para. 6 (Enf. Bur. 2004). See also *SES Americom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2694, 2697, para. 11 (Enf. Bur., Spectrum Enforcement Div. 2009) (forfeiture paid); *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901, para. 11 (Enf. Bur., Spectrum Enf. Div. 2008); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712, para. 10 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

company's timely disclosure of certain of the violations),⁶⁷ we propose a total forfeiture of \$819,000 against T-Mobile for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.⁶⁸

IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁶⁹ and Section 1.80 of the Rules,⁷⁰ T-Mobile USA, Inc. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight hundred and nineteen thousand dollars (\$819,000) for willful and repeated violations of Sections 20.19(c)(2) and 20.19(d)(2) of the Rules.⁷¹

28. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days after the release date of this Notice of Apparent Liability for Forfeiture, T-Mobile USA, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

29. 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. T-Mobile USA, Inc. must also send electronic notification to Pamera Hairston at Pamera.Hairston@fcc.gov,

⁶⁷ See, e.g., *Locus Telecommunications, 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 Communications Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9406, 9412-13 ¶ 13 (Enf. Bur. 2008) (forfeiture paid) (*2008 Centennial NAL*) (emphasizing that large, highly profitable entities can expect forfeitures that are higher than the base amount); *SunCom Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8681, 8688 ¶ 17 (Enf. Bur. 2008) (forfeiture paid) (*SunCom Wireless*) (violations of the hearing aid compatibility handset requirements by Tier II carriers are more egregious, warranting a higher forfeiture amount than that assessed against smaller Tier III carriers and serves as an effective deterrent against their future noncompliance with the hearing aid compatibility handset requirements).

⁶⁸ 47 C.F.R. § 20.19(c)(2), (d)(2).

⁶⁹ 47 U.S.C. § 503(b).

⁷⁰ 47 C.F.R. § 1.80.

⁷¹ *Id.* § 20.19(c)(2), (d)(2).

Linda Nagel at Linda.Nagel@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

30. 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.⁷² 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/Acct. No. referenced in the caption. The statement also should be emailed to Pamela Hairston at Pamela.Hairston@fcc.gov and to Linda Nagel at Linda.Nagel@fcc.gov.

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

32. **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 Kathleen O'Brien Ham, Vice President, Regulatory Affairs, T-Mobile USA, Inc., 401 9th St, NW Suite 550, Washington, DC 20004 and to counsel to T-Mobile USA, Inc., David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷² *Id.* §§ 1.80(f)(3), 1.16.

APPENDIX A
2009 T-Mobile Hearing Aid-Compatible Handset Offerings (M3 Rating)
WCDMA Air Interface

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (M3 rating)	Hearing Aid-Compatible Handsets Required (M3 rating)	Compliance?
January 2009	7	3	At least 50% of the total number of handset models offered or at least 8 handset models (1/1/09 – 2/14/09)	No
February 1-14, 2009	8	4		Yes
February 15-28, 2009	8	4	At least 50% of the total number of handset models offered or at least 9 handset models (2/15/09 – 12/31/09)	
March 2009	8	4		Yes
April 2009	8	4		Yes
May 2009	8	4		Yes
June 2009	8	4		Yes
July 2009	11	4		No
August 2009	14	4		No
September 2009	15	5		No
October 2009	15	5		No
November 2009	20	7		No
December 2009	19	6	No	

APPENDIX B
2010 T-Mobile Hearing Aid-Compatible Handset Offerings (M3 Rating)
WCDMA Air Interface

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (M3 rating)	Hearing Aid-Compatible Handsets Required (M3 rating)	Compliance?
January 2010	18	6	At least 50% of the total number of handset models offered or at least 9 handset models (1/1/10 – 2/14/10)	No
February 1-14, 2010	18	6		No
February 15-28, 2010	18	6	At least 50% of the total number of handset models offered or at least 10 handset models (2/15/10 – 12/31/10)	No
March 2010	20	6		No
April 2010	17	5		No
May 2010	17	5		No
June 2010	24	7		No
July 2010	24	9		No
August 2010	22	6		No
September 2010	23	7		No
October 2010	23	8		No
November 2010	25	9		No
December 2010	24	9	No	

APPENDIX C
2009 T-Mobile Hearing Aid-Compatible Handset Offerings (T3 Rating)
WCDMA Air Interface

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (T3 rating)	Hearing Aid-Compatible Handsets Required (T3 rating)	Compliance?
January 2009	7	2	At least 1/3 of the total number of handset models offered or at least 3 handset models (2/1/09 – 2/14/09)	No
February 1-14, 2009	8	2		No
February 15-28, 2009	8	2	At least 1/3 of the total number of handset models offered or at least 5 handset models (2/15/09 – 12/31/09)	No
March 2009	8	2		No
April 2009	8	2		No
May 2009	8	1		No
June 2009	8	1		No
July 2009	11	1		No
August 2009	14	1		No
September 2009	15	2		No
October 2009	15	2		No
November 2009	20	4		No
December 2009	19	4	No	

APPENDIX D
2010 T-Mobile Hearing Aid-Compatible Handset Offerings (T3 Rating)
WCDMA Air Interface

Period	Total Handsets Offered	Hearing Aid-Compatible Handsets Offered (T3 rating)	Hearing Aid-Compatible Handsets Required (T3 rating)	Compliance?
January 2010	18	4	At least 1/3 of the total number of handset models offered or at least 5 handset models (1/1/10 – 2/14/10)	No
February 1-14, 2010	18	4		No
February 15-28, 2010	18	4		At least 1/3 of the total number of handset models offered or at least 7 handset models (2/15/10 – 12/31/10)
March 2010	20	4	No	
April 2010	17	4	No	
May 2010	17	4	No	
June 2010	24	6	No	
July 2010	24	8	Yes	
August 2010	22	6	No	
September 2010	23	7	Yes	
October 2010	23	7	Yes	
November 2010	25	7	Yes	
December 2010	24	7	Yes	