

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

In the Matter of)	
)	File No. EB-08-SE-1204
)	NAL/Acct. No. 200932100020
NEP Cellcorp, Inc.)	FRN # 0014802284
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 31, 2008

Released: January 5, 2009

By the Chief, Spectrum Enforcement Division:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we propose a forfeiture of twelve thousand dollars (\$12,000) against NEP Cellcorp, Inc. (“NEP”), a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier,¹ serving rural parts of Pennsylvania. As detailed herein, we find that NEP apparently willfully and repeatedly violated former Section 20.19(d)(2) of the Commission’s Rules (“Rules”),² by failing to timely include in its digital wireless handset offerings at least two models that meet the inductive coupling standards for hearing aid compatibility.

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling

¹ Tier III carriers are non-Nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of September 2001. *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847 ¶¶ 22-24 (2002) (“*Non-Nationwide Carrier Order*”).

² 47 C.F.R. § 20.19(d)(2) (2007). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission made several changes to these rules, including, *inter alia*, the continuation and expansion of hearing aid compatibility reporting requirements, and the phasing in of new technical standards for hearing aid compatibility. *See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-11, 3418 at ¶¶ 6-13, 34 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). *See also infra* note 9. These revised rules, however, do not govern NEP’s conduct prior to the effective date of the revisions, June 6, 2008. *See* 73 Fed. Reg. 25,566 (May 7, 2008). Accordingly, we assess NEP’s conduct in this NAL under the former version of the rules.

³ *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

(telecoil) modes.⁴ Specifically, the Commission adopted a standard for radio frequency interference (the “U3” or “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “U3T” or “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁵ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard if they did not come under the *de minimis* exception.⁷

3. The Commission required that manufacturers and service providers begin making commercially available at least two handset models per air interface that meet the U3 or M3 rating for

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling 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 electrical signals. 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.

Id. at 16763 ¶ 22.

⁵ Former Section 20.19(b)(1) provided that a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1). Former Section 20.19(b)(2) provided that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2). On April 25, 2005, the Commission’s Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. See *OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau and Office of Engineering and Technology announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006). In addition, since the 2005 version, the ANSI C63.19 technical standard has used an “M” nomenclature for the radio frequency interference rating rather than a “U,” and a “T” nomenclature for the handset’s inductive coupling rating, rather than a “UT.” The Commission has approved the use of the “M” and “T” nomenclature and considers the M/T and U/UT nomenclatures as synonymous. See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238 ¶ 33.

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

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility 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).

radio frequency interference by September 16, 2005.⁸ The Commission also required that manufacturers and service providers make commercially available at least two handset models per air interface that meet the U3T or T3 rating for inductive coupling by September 18, 2006.⁹ In connection with the offer of hearing aid-compatible handset models, the Commission further required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.¹⁰ In order to monitor the availability of these handsets, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.¹¹

4. On March 21, 2008, NEP sought a waiver of former Section 20.19(d)(2) of the Rules for the period February 1, 2007 through January 11, 2008.¹² In its waiver petition, NEP acknowledged that it erred in its November 2007 Hearing Aid Compatibility Report ("November Report") by mistakenly, but in good faith, reporting that it was offering two inductive coupling-compliant models.¹³ NEP explained that at the time it filed its Report, it failed to distinguish between acoustic and inductive coupling compliance. NEP discovered its error upon learning, on January 3, 2008, that another carrier was issued an NAL for its apparent violation of former Section 20.19(d)(2).¹⁴ Thereafter, NEP promptly reviewed its handset offerings; determined that as of February 1, 2007, it had only offered the inductive coupling-compliant Motorola V3i model; and obtained and offered its second compliant model, the Motorola V8, on January 11, 2008.¹⁵ In support of its waiver request, NEP stated that it is a new carrier, having just

⁸ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; see also 47 C.F.R. § 20.19(c).

⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; see also 47 C.F.R. § 20.19(d). In addition, on February 28, 2008, the Commission released an order that, as modified on reconsideration, among other things: (a) modified the requirement that manufacturers and service providers ensure that 50 percent of their digital wireless handset models per air interface meet the U3/M3 (radio frequency) standard and stayed enforcement of that requirement until the new rules took effective, (b) increased the obligation on manufacturers and service providers to offer handset models that meet the U3T/T3 (inductive coupling) standard, (c) allowed service providers other than Tier I carriers an additional three months to meet the new handset deployment benchmarks, (d) adopted a technology "refresh" requirement for manufacturers, (e) required service providers to offer hearing aid-compatible handsets with different levels of functionality, (f) adopted an updated version of the technical standard for measuring hearing aid compatibility, and (g) required manufacturers and service providers to submit annual reports on an open ended basis, beginning January 15, 2009. See *Hearing Aid-Compatibility First Report and Order*, 23 FCC Rcd at 3408-3411, 3418. The effective date of the new rules was June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008).

¹⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785; see also 47 C.F.R. § 20.19(f).

¹¹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004). The Commission will now require service providers to submit annual status reports beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410 ¶ 13. Manufacturers will report on January 15, 2009, and then annually beginning July 15, 2009. *Id.* at ¶¶ 13, 101.

¹² See Letter from Sylvia Lesse, Esq., Communications Advisory Counsel, LLC to Marlene Dortch, Secretary, and John Branscome, Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (March 21, 2008) ("Waiver Petition").

¹³ See Waiver Petition at 1.

¹⁴ See *id.* at 2; see also *South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20 (Enf. Bur. 2008).

¹⁵ See Waiver Petition at 2.

launched its service on February 1, 2007; that its non-compliance was attributed to its misinterpretation of Commission requirements; that it took prompt corrective action by voluntarily notifying the Commission and amending its November Report; and that it obtained and offered a second inductive-coupling handset -- prior to any investigation or enforcement action.¹⁶ NEP also noted that it has adopted new regulatory oversight policies and procedures, which include the periodic review by its President regarding, and the designation of a Vice President of Operations tasked with overseeing, FCC compliance matters.¹⁷

5. On December 31, 2008, the Wireless Telecommunications Bureau (“WTB”) denied NEP’s waiver request.¹⁸ Consistent with the Commission’s *February 2008 Inductive Coupling Compatibility Waiver Order*,¹⁹ which addressed petitions filed on behalf of other Tier II and III carriers seeking relief from the hearing aid compatibility requirements, the WTB found that NEP presented “no unique facts or circumstances that would justify its failure to comply with the inductive coupling capability requirement.”²⁰ Specifically, the WTB found that NEP failed to provide evidence that it exercised sufficient diligence to understand its hearing aid compatibility obligations as set forth in the Commission’s rules.²¹ The WTB thus referred NEP’s apparent violation of the hearing aid compatibility requirements to the Enforcement Bureau for action.

III. DISCUSSION

A. Failure to Offer For Sale Two Hearing Aid-Compatible Handset Models

6. Former Section 20.19(d)(2) of the Rules required digital wireless service providers to begin offering for sale at least two handset models for each air interface that meet at least a T3 rating for inductive coupling by September 18, 2006. NEP launched its service on February 1, 2007, and admits that on that date, it offered for sale only one inductive coupling-compliant handset model and that it did not offer a second model until January 11, 2008. Accordingly, we conclude that NEP apparently willfully²² and repeatedly²³ failed to comply with former Section 20.19(d)(2) of the Rules, by failing to offer two inductive coupling-compliant handset models as of February 1, 2007.

¹⁶ *See id.*

¹⁷ *See id.* NEP also indicated that as a Tier III carrier its access to compatible handsets is limited. *See id.* at n. 3. Based on the record, it appears that NEP’s failure to timely offer a second compatible handset is attributable to its misinterpretation of former Section 20.19(d)(2), rather than its status as a small carrier.

¹⁸ *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Petition of NEP Cellcorp, Inc. for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, DA 08-2822 (WTB rel. December 31, 2008).

¹⁹ *See id.* at ¶ 7.

²⁰ *Id.* at ¶ 8.

²¹ *See id.*

²² Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²³ 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*, (continued ...)

B. Proposed Forfeiture

7. 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.²⁴ 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.²⁵ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁶ We conclude under this standard that NEP is apparently liable for forfeiture for its apparent willful and repeated violation of former Section 20.19(d)(2) of the Rules.

8. At the time of NEP's apparent violation, Section 503(b)(2)(B) of the Act²⁷ authorized a forfeiture assessment against a common carrier up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. 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."²⁸

9. The Commission's *Forfeiture Policy Statement*²⁹ 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 former Section 20.19 of the Rules. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant."³⁰ The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue

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Inc., Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

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

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

²⁶ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²⁷ 47 U.S.C. § 503(b)(2)(B). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for common carriers from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts for common carriers from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,325,000 to \$150,000/\$1,500,000). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. See 73 Fed. Reg. 44663-5.

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

²⁹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

³⁰ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.³¹

10. In determining the appropriate forfeiture amount for violation of the hearing aid compatibility handset requirements, we take into account that these requirements serve to ensure that individuals with hearing disabilities have access to digital wireless 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 impairments should not be denied the public safety and convenience benefits of digital wireless telephony.³² Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population.³³

11. Our recent decisions established a base forfeiture amount of \$15,000 per handset for violations of the hearing aid compatibility handset requirements.³⁴ In establishing this base forfeiture amount, we determined that violations of the hearing aid compatibility handset requirements warranted a significantly higher forfeiture than for violations of the labeling requirements for wireless hearing aid-compatible handsets.³⁵ We found 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.³⁶ We also found that the handset requirements require providers to offer at least two handset models that meet at least a T3 rating for inductive coupling, and thus determined that a proposed forfeiture for violation of these requirements should be applied on a per handset basis.

12. The record establishes that NEP only offered one handset model that met the T3 rating for inductive coupling on February 1, 2007, when it launched service. The record further establishes that NEP did not offer the second inductive coupling-compliant model, and thus did not come into compliance with former Section 20.19(d)(2), until January 11, 2008. Although NEP sought a waiver of former

³¹ *Id.*

³² *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755.

³³ *Id.* at 16756 (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 Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was "at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade").

³⁴ *See, e.g., Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9403 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Iowa Wireless Services, LLC d/b/a i Wireless*, 23 FCC Rcd 4735 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Epic Touch Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2831, 2835 ¶¶ 10-11 (Enf. Bur. 2008), *response pending*.

³⁵ The Enforcement Bureau has established a base forfeiture amount of \$8,000 for violation of the labeling requirements for wireless hearing aid-compatible handsets. *See, e.g., South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *Pine Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9205, 9210 (Enf. Bur., Spectrum Enf. Div. 2007), *consent decree ordered*, Order, 24 FCC Rcd 4495 (Enf. Bur. 2008).

³⁶ *See supra* note 34.

Section 20.19(d)(2),³⁷ the WTB determined that the carrier's efforts to come into compliance did not demonstrate due diligence or unique or unusual circumstances and thus denied the petition.³⁸ Accordingly, NEP is apparently liable for a base forfeiture of \$15,000 for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of former Section 20.19(d)(2).

13. We find, however, that downward adjustment to the \$15,000 base forfeiture amount to \$12,000 is warranted based on NEP's demonstrated good faith efforts. NEP volunteered information to the Commission,³⁹ corrected its violation,⁴⁰ as well as instituted procedures and policies to ensure future compliance with its carrier responsibilities, *prior* to our initiating any investigative or other enforcement action. We do not find, however, that a further downward adjustment is warranted based on NEP's misunderstanding or misinterpretation of the hearing aid compatibility requirements for digital wireless handsets.⁴¹ We also note that NEP is a small Tier III carrier that only began offering service in February 2007.

14. Based on all of the foregoing, we therefore propose a \$12,000 forfeiture against NEP for failing to comply with the inductive coupling compatibility requirements in apparent willful and repeated violation of former Section 20.19(d)(2).

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, NEP Cellcorp, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of former Section 20.19(d)(2) of the Rules.

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

17. 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 Number referenced above. Payment by check or money order may be mailed to

³⁷ See *supra* notes 12-17 and accompanying text.

³⁸ See *supra* notes 18-21 and accompanying text.

³⁹ See, e.g., *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23858 ¶ 10 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Victoria Cellular Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 7853, 7854 ¶¶ 10-11 (1992); *American Family Association*, Forfeiture Order, 17 FCC Rcd 18135, 18137 ¶ 10 (Enf. Bur. 2002), *recon. denied*, Memorandum Opinion and Order, 18 FCC Rcd 2413 (Enf. Bur. 2003); *RSDC of Michigan, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6858, 6861 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2007), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 19865 (Enf. Bur., Spectrum Enf. Div. 2007) ("*RSDC*"); *T-Mobile Northeast, LLC*, 21 FCC Rcd 11799, 11806-07 ¶ 19 (Enf. Bur., Spectrum Enf. Div. 2006) ("*T-Mobile*").

⁴⁰ See, e.g., *SpectraSite Communications, Inc.*, Forfeiture Order, 19 FCC Rcd 17673 ¶¶ 10-11 (2004); *Radio One Licenses*, Memorandum Opinion and Order, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *T-Mobile*, 21 FCC Rcd at 11806-07 ¶ 19; *RSDC*, 22 FCC Rcd at 6861 ¶ 12; *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893, 17899 ¶ 18 (Enf. Bur., Spectrum Enf. Div. 2005).

⁴¹ See, e.g., *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846 ¶ 5 (1993); *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437, 438 ¶ 6 (1972); *South Canaan Cellular Communications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 25 ¶ 13 (Enf. Bur., Spectrum Enf. Div. 2008); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13817 ¶ 16 (Enf. Bur., Spectrum Enf. Div. 2006).

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. NEP will also send electronic notification on the date said payment is made to Kathy.Berthot at kathy.berthot@fcc.gov and Ava Holly Berland at holly.berland@fcc.gov.

18. The response, if any, 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 response should also be emailed to Kathy.Berthot at kathy.berthot@fcc.gov and Ava Holly Berland at holly.berland@fcc.gov.

19. 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.

20. **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 Edward Tourje, CEO, NEP Cellcorp, Inc., 720 Main Street, Forest City, PA 18421 and to counsel, Sylvia Lesse, Esq., Communications Advisory Counsel, LLC, 2154 Wisconsin Avenue, N.W., Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau