

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

In the Matter of
Hauppauge Computer Works, Inc.
File No. EB-07-SE-126
NAL/Acct. No. 200932100054
FRN No. 0014106520

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 14, 2009

Released: April 15, 2009

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Hauppauge Computer Works, Inc. ("Hauppauge") apparently liable for a forfeiture in the amount of \$175,000 for its willful and repeated violation of Section 15.117(i)(1)(iv) of the Commission's Rules ("Rules").

II. BACKGROUND

2. The All Channel Receiver Act of 1962 ("ACRA"), which is codified at 47 U.S.C. § 303(s), states that the Commission shall "[h]ave authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting."

1 47 C.F.R. § 15.117(i)(1)(iv).

2 P.L. No. 87-529, 76 Stat. 150.

3 Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15996 (2002) ("DTV Review Second Report and Order").

4 See 47 C.F.R. § 15.3(w) (defining a television broadcast receiver as "a device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of this chapter").

5 DTV Review Second Report and Order, 17 FCC Rcd at 15996.

6 See 47 C.F.R. § 15.117(i)(1)(iv).

ensuring that their television receivers will provide off-the-air television reception of digital signals just as they have provided off-the-air television reception of analog signals.

3. To minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applied the requirement first to receivers with the largest screens and then to progressively smaller screen receivers and other television receiving devices that do not include a viewing screen, *i.e.*, VCRs and DVD players.⁷ This phase-in plan was intended to allow increasing economies of scale with production volume to be realized so that DTV tuner costs would be lower when they are required to be included in smaller sets and other television receiving devices.⁸ As modified by the Commission in 2005,⁹ this phase-in schedule is as follows:

Receivers with screen sizes 36” and above -- 50% of units imported or shipped interstate by responsible parties¹⁰ were required to include DTV tuners effective July 1, 2004; 100% of such units were required to include DTV tuners effective July 1, 2005;

Receivers with screen sizes 25” to 35” -- 50% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective July 1, 2005; 100% of such units were required to include DTV tuners effective March 1, 2006;

Receivers with screen sizes less than 25” - 100% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective March 1, 2007; and

Other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals - 100% of units imported or shipped interstate by responsible parties were required to include DTV tuners effective March 1, 2007.

4. In March 2007, the Bureau received a complaint alleging that Hauppauge was marketing in the United States, and apparently shipping interstate, analog-only TV broadcast receiver products for personal computers. On July 18, 2007, the Bureau issued a Letter of Inquiry (“LOI”) directing Hauppauge to provide certain information regarding certain of its devices that apparently receive analog television signals but are not capable of receiving digital television signals.¹¹

5. In its response to the LOI, Hauppauge admitted that it imports¹² and sells TV boards for personal computers, some of which include both an analog and DTV tuner and some of which include

⁷ *Id.* at 15998-99.

⁸ *Id.*

⁹ In June 2005, the Commission modified the rules to advance the date on which 100% of new television receivers with screen sizes 25-36” that are imported or shipped interstate must include DTV tuners from July 1, 2006 to March 1, 2006. *DTV Tuner Report and Order*, 20 FCC Rcd at 11203. Subsequently, in November 2005, the Commission modified the rules to advance the date on which 100% of new television receivers with screen sizes 13-24” and certain other television receiving devices such as VCRs and digital video recorders that are imported or shipped interstate must include DTV tuners from July 1, 2007 to March 1, 2007. *See Requirements for Digital Television Receiving Capability*, Second Report and Order, 20 FCC Rcd 18607, 18614-16 (2005) (“*DTV Tuner Second Report and Order*”). The Commission also amended the rules to apply the DTV tuner requirement to new receivers with screen sizes smaller than 13” on this same schedule. *Id.*

¹⁰ The DTV tuner requirement applies to “responsible parties,” as defined in Section 2.909 of the Rules, 47 C.F.R. § 2.909.

¹¹ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Hauppauge Computer Works, Inc. (July 18, 2007) (“LOI”).

¹² As the importer of the television tuner boards, Hauppauge is the party responsible for compliance of those cards with all applicable technical and administrative requirements. *See* 47 C.F.R. § 2.909(b).

only an analog TV tuner.¹³ Hauppauge indicated its belief that its analog-only TV boards should not be covered under the Commission's requirements for DTV tuners.¹⁴ In support of this belief, Hauppauge asserted that its products are not stand-alone TV receivers but are components that are added to a personal computer to provide TV capabilities; that personal computers are "open" so an end user can add a DTV tuner at any time; that its software is designed to support multiple TV boards in a media personal computer; that there are some software applications which do not yet support DTV; and that its products are designed to be added to existing personal computer systems, some of which do not have the technical capabilities needed to support DTV reception without the addition of expensive hardware.¹⁵ Hauppauge added that it believes an "open approach," one that allows consumers to choose how many and which type of tuner to select for their personal computers, is the most "consumer friendly" approach.¹⁶

6. On August 28, 2007, the Bureau issued a follow-up LOI to Hauppauge, notifying it that its response to the LOI was insufficient and directing Hauppauge to respond fully and completely to each question asked in the LOI within 15 business days.¹⁷ As of March 3, 2008, Hauppauge had not responded to the follow-up LOI. Accordingly, the Bureau's Spectrum Enforcement Division issued a Notice of Apparent Liability for Forfeiture and Order ("First NAL") which proposed an \$11,000 forfeiture against Hauppauge for apparently willfully and repeatedly violating a Commission order by failing to respond to a directive of the Bureau to provide certain information and directed Hauppauge to respond fully to the LOI.¹⁸

7. On April 15, 2008, Hauppauge provided the information originally requested by the first LOI.¹⁹ Hauppauge supplemented its response on May 6, 2008.²⁰ Hauppauge acknowledges that, after March 1, 2007, it shipped interstate 7 models of analog-only television tuner boards designed to be installed in personal computers.²¹ Hauppauge has requested confidentiality regarding the specific number of units shipped interstate, its vendors, and the dates on which the units were shipped.²² Although we do not rule on this confidentiality request at this time, we will treat this information confidentially for purposes of this *NAL*.

¹³ See Letter from Ken Plotkin, President and CEO, Hauppauge Computer Works, Inc., to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (August 15, 2007) at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1 - 2.

¹⁶ *Id.* at 2.

¹⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Ken Plotkin, Chief Executive Officer, Hauppauge Computer Works, Inc. (August 28, 2007) ("Follow-up LOI").

¹⁸ See *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd. 3684 (Enf. Bur., Spectrum Enf. Div., 2008) (forfeiture paid).

¹⁹ See Letter from Ken Plotkin, President and Chief Operation Officer, Hauppauge Computer Works, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (April 15, 2008) ("Second LOI Response").

²⁰ See Letter from Norman P. Leventhal to Marlene H. Dortch, Secretary, Federal Communications Commission (May 6, 2008) ("Supplemental Response").

²¹ Specifically, Hauppauge acknowledges that, after March 1, 2007, it shipped interstate the following 7 models: Win TV Go Plus, Win TV USB2, Win TV PVR 150, Win TV PVR 250, Win TV PVR 350, Win TV PVR 500 MCE, Win TV PVR USB2. Second LOI Response at 3- 67. Hauppauge also acknowledges shipping several other models which are identical to models listed above.

²² Second LOI Response at 1.

III. DISCUSSION

A. Failure to Comply with DTV Tuner Requirement

8. We conclude that Hauppauge apparently shipped in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iv) of the Rules. Section 15.117(i) applies to all “new television broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States,” and Section 15.117(i)(1)(iv) mandates that other video devices that receive television signals (receivers without associated viewing screens) “include DTV tuners effective March 1, 2007.”²³ Hauppauge acknowledges that, after March 1, 2007, it shipped interstate 7 models of analog-only television tuner boards designed to be installed in personal computers.²⁴ Accordingly, we find that Hauppauge apparently willfully²⁵ and repeatedly²⁶ shipped in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iv) of the Rules.

9. In its Supplement Response, Hauppauge reiterates its contention that its devices are not subject to the requirements of Section 15.117.²⁷ Hauppauge states that its products are not TV sets, nor are they similar to set-top boxes, VCRs, or DVD players which have an output to a video monitor.²⁸ Instead, Hauppauge contends that the TV tuner boards are computer peripheral devices, or simply components of a multi-media PC, that could not operate without being installed in a PC and provided with additional software.²⁹ Finally, Hauppauge asserts that, even if the Commission concludes that its devices are indeed covered under the requirements of 15.117, the Commission should not impose a

²³ 47 C.F.R. § 15.117(i)(1)(iv).

²⁴ On April 29, 2008, Hauppauge and the Enforcement Bureau executed a Tolling Agreement tolling the one-year statute of limitations set forth in Section 503(b)(6) of the Act in order to permit settlement discussions. Tolling Agreement, File No. EB-07-SE-126, executed by and between Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Ken Plotkin, CEO, Hauppauge Computer Works, Inc. (April 29, 2008). Hauppauge and the Bureau extended the Tolling Agreement on July 9, 2008, October 8, 2008, and January 13, 2009. Tolling Agreement Extensions, File No. EB-07-SE-126, executed by and between Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Ken Plotkin, CEO, Hauppauge Computer Works, Inc. (July 9, 2008, October 8, 2008, and January 13, 2009). Hauppauge and the Bureau were subsequently unable to reach a settlement agreement. Thus, this *NAL* includes a number of violations that occurred more than a year ago, but which remain subject to forfeiture pursuant to the Tolling Agreement and Tolling Agreement Extensions, the last of which expires on April 15, 2009.

²⁵ 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*”).

²⁶ 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.

²⁷ Supplemental Response at 7, 11.

²⁸ *Id.*

²⁹ *Id.* at 8.

forfeiture because the company was not given reasonable notice that the rules are applicable to such devices.³⁰

10. Hauppauge's assertion that the rules are not applicable to its devices is erroneous. Section 15.3(w) of the Rules defines a television broadcast receiver as "a device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of this chapter."³¹ Hauppauge's TV tuner boards are designed to receive television signals which have been broadcast over-the-air in accordance with Part 73 of the Rules.³² Therefore, Hauppauge's TV tuner boards for personal computers clearly meet the definition of a television broadcast receiver. Indeed, the advertised purpose of these tuner boards is to enable a personal computer to receive television signals.³³ Moreover, while Hauppauge correctly notes that Section 15.117(i)(1)(iv) references devices such as VCRs that typically display broadcast signals on home entertainment sets and monitors, these examples were meant to merely illustrate the types of devices that are intended to receive television signals, and were not meant to be an exhaustive list of all such devices. Indeed, Section 15.117(i)(1)(iv) specifically includes the term "etc." at the end of the list of examples provided under the rule.³⁴ Moreover, in the *DTV Tuner Second Report and Order*, the Commission made clear that any device capable of receiving broadcast television signals off-the-air must comply with the DTV tuner requirement.³⁵ The Commission stated that "in cases where a cell phone, PDA or similar device does include the capability to receive TV programming on the channels allocated for the broadcast television service, that device is a TV broadcast receiver under Section 15.3(w) of the rules and must comply with the DTV tuner requirements."³⁶ Hauppauge's TV tuner boards likewise include the capability to receive TV programming on the channels allocated for the broadcast television service. Accordingly, they are TV broadcast receivers under the definition set forth in Section 15.3(w) of the Rules and must comply with the DTV tuner requirements.

11. In addition, we reject Hauppauge's argument that the Commission failed to provide reasonable notice that the rules are applicable to TV tuner boards for personal computers and similar devices. While the methods of television transmission and reception have evolved since the ACRA was enacted in 1962, the requirement that television receivers must receive all available channels has not. As set forth above, the relevant rules and rulemaking orders have made clear that all devices capable of receiving a television broadcast signal, including TV receiving devices without associated viewing screens, are required to provide DTV reception.

B. Proposed Forfeiture

12. Based on the analysis set forth below, we conclude that Hauppauge is apparently liable for a forfeiture in the amount of \$175,000 for its interstate shipment, after March 1, 2007, of television receivers that do not comply with the DTV tuner requirement in apparent willful and repeated violation of Section 15.117(i)(1)(iv) of the Rules.

³⁰ *Id.* at 17-18.

³¹ 47 C.F.R. § 15.3(w).

³² 47 C.F.R. Part 73 – Radio Broadcast Services.

³³ In its Second LOI Response, Hauppauge states that, "A user of our TV tuner boards can install a mix of our analog and digital TV tuners in a personal computer to make a television receiver with multiple analog and digital tuners." Second LOI Response at 2.

³⁴ 47 C.F.R. § 15.117(i)(1)(iv).

³⁵ 20 FCC Rcd at 18616.

³⁶ *Id.*

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.³⁷ 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.³⁸ 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.³⁹

14. At the time of Hauppauge's apparent violations, Section 503(b)(2)(D) of the Act authorized the Commission to assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.⁴⁰ 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."⁴¹

15. The Commission's *Forfeiture Policy Statement*⁴² and Section 1.80 of the Rules do not establish a specific base forfeiture for violation of the DTV tuner requirement. The Commission has substantial discretion, however, in proposing forfeitures.⁴³ We may apply the base forfeiture amounts described in the *Forfeiture Policy Statement* and our rules, or we may depart from them altogether as the circumstances demand.⁴⁴

16. The DTV tuner requirement promotes the important public policy goal of helping to speed the transition to digital television, and we therefore have found violations of this requirement to be

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

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

³⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁴⁰ 47 U.S.C. § 503(b)(2)(D). 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*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts from \$11,000/\$97,500 to \$16,000/\$112,500); *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 from \$11,000/\$87,500 to \$11,000/\$97,500); *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 from \$10,000/\$75,000 to \$11,000/\$87,500). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occurred after that date. See 73 Fed. Reg. 44663-5.

⁴¹ 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.

⁴² 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, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁴³ See, e.g., *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, 22 FCC Rcd 8689, 8699 (2007); *Globcom, Inc. d/b/a Globcom Global Commun.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723-24 (2006).

⁴⁴ See 47 C.F.R. § 1.80(b)(4) ("The Commission and its staff *may* use these guidelines in particular cases [, and] *retain the discretion* to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.") (emphasis added).

more egregious, in general, than many other types of equipment marketing cases that come before us.⁴⁵ DTV receivers are a necessary element of digital broadcast television service. Consumers must have the capability to receive DTV signals for the DTV transition to move forward to successful completion.⁴⁶ The DTV tuner requirement is intended to protect consumers by ensuring that their TV receivers will provide over-the-air TV reception of digital signals when analog TV operation ceases.⁴⁷ In recent cases involving violations of the DTV tuner requirement, we found that applying a proposed forfeiture on a per model basis, as we have in other more routine equipment marketing cases, would result in forfeiture amounts that are not commensurate with the seriousness of the violation, and thus, we proposed a forfeiture based on each noncompliant unit shipped interstate or imported.⁴⁸

17. Nevertheless, we conclude that violations of the DTV tuner requirement involving television receivers without an associated viewing screen, while serious, are not as egregious as violations of the DTV tuner requirement involving television receivers with an associated viewing screen.⁴⁹ Significantly, television receivers with an associated viewing screen are likely to be used by consumers as the primary television viewing device, while television receivers without an associated viewing screen, such as the relatively inexpensive Hauppauge TV tuner boards, are more likely to be used as a secondary or tertiary television viewing alternative. Thus, while we conclude that Hauppauge has apparently shipped interstate television receivers without DTV tuners in violation of Section 15.117(i)(1)(iv), we believe that the tiered forfeiture approach outlined above would be excessively punitive, given the nature of the violations. Therefore, we will assess the present forfeiture on a per model basis as we have in other equipment marketing cases.

18. As noted above, in this case we may propose a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. In view of the important public policy considerations underlying the DTV tuner requirement for television receivers without an associated viewing screen, we conclude that, generally, the appropriate per model forfeiture amount in such cases will be \$25,000.⁵⁰ We find that

⁴⁵ *Syntax-Brilliant Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10530, 10535 (2007), forfeiture ordered, 23 FCC Rcd 6323 (2008) (“*Syntax-Brilliant NAL*”); *Regent U.S.A., Inc.*, 22 FCC Rcd 10520 (2007) (forfeiture paid) (“*Regent NAL*”).

⁴⁶ *See DTV Tuner Report and Order*, 20 FCC Rcd at 11199; *DTV Tuner Second Report and Order*, 20 FCC Rcd at 18608.

⁴⁷ *See id.*

⁴⁸ *See Syntax-Brilliant NAL*, 22 FCC Rcd at 10535-36 (concluding that applying a proposed forfeiture on a per-model basis for shipment of television receivers that were not compliant with the DTV tuner mandate would result in forfeiture amounts incommensurate with the seriousness of the violations); *Regent NAL*, 22 FCC Rcd at 10525-26 (same). To reflect the increasing seriousness of the violation as the number of non-compliant units shipped or imported rises, we assessed forfeiture amounts on a tier-by-tier basis, increasing the forfeiture amount as the number of units shipped or imported increased. *See e.g., Syntax-Brilliant NAL*, 22 FCC Rcd 10535-36 (Tiers and per-unit forfeiture amounts were: 0-1000 units: \$50 per unit, 1001-2500 units: \$75 per unit, 2501-5000 units: \$100 per unit, 5001-10000 units: \$125 per unit, 10001-20000 units: \$150 per unit, 20001-30000 units: \$175 per unit, 30001-40000 units: \$200 per unit, 40001-50000: \$225 per unit, and 50001+ units: \$250 per unit.).

⁴⁹ *Cf. Polaroid Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6346, 6350 (2008) (“*Polaroid NAL*”) (forfeiture paid); *Proview Technology, Inc. and Proview Technology (Shenzhen), Ltd.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6353, 6357 (2008) (“*Proview NAL*”) (forfeiture paid) (both concluding that that violations of the requirement to ensure that digital television receivers have the capability to respond to changes in the content advisory rating system, while very serious, are not as egregious as violations of the DTV tuner requirement or violations involving the failure to provide any V-Chip blocking capability).

⁵⁰ Because each non-compliant unit shipped interstate is a separate violation, we could impose a far higher forfeiture than \$25,000 for each model. As noted above, however, because of the circumstances of this rule and these (continued ...)

calculating forfeitures for violations of the DTV tuner requirement involving television receivers without an associated viewing screen on a per model basis will result in forfeiture amounts that reflect the seriousness of the violations and will deter future misconduct.

19. Applying the forfeiture calculation methodology outlined above, we propose a forfeiture of \$175,000 (7 models * \$25,000/model) for Hauppauge's willful and repeated interstate shipment of television receivers without an associated viewing screen that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iv) of the Rules.

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Hauppauge Computer Works, Inc. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred seventy-five thousand dollars (\$175,000) for willful and repeated violation of Section 15.117(i)(1)(iv) of the Rules.

21. **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, Hauppauge Computer Works, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. 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 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. Hauppauge will also send an electronic notification on the date said payment is made to Neal.McNeil@fcc.gov and Kathy.Berthot@fcc.gov.

23. 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.

24. 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-

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violations, we consider \$25,000 per model to be sufficient. We have used a \$25,000 per model approach in other contexts. Specifically, in *Polaroid* and *Proview*, we established a \$25,000 per model forfeiture approach for the interstate shipment of DTV receivers that do not comply with the Commission's rules requiring that such receivers have the capability to respond to changes in the content advisory rating system. *Polaroid NAL*, 23 FCC Rcd at 6350; *Proview NAL*, 23 FCC Rcd at 6358. See also *AboCom Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 7875, 7878-79 (Enf. Bur. Spectrum Enf. Div. 2006), *forfeiture ordered*, 21 FCC Rcd 13140 (Enf. Bur. Spectrum Enf. Div. 2006), *recon. denied*, 22 FCC Rcd 7448 (Enf. Bur. 2007) (proposing a \$25,000 forfeiture against an equipment manufacturer for marketing one model of radio frequency equipment that did not comply with the terms of its equipment authorization and technical requirements specified in the rules).

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.

25. **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 Mr. Ken Plotkin, President and CEO, Hauppauge Computer Works, Inc., 91 Cabot Court, Hauppauge, NY, 11788, and to Norman Leventhal, Esq., Holland & Knight, 2099 Pennsylvania Avenue, N.W., Suite 100, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary