Federal Communications Commission
Washington, D.C. 20554

DA 05-2075
Released: July 26, 2005

Certified Mail, Return Receipt Requested
Entravision Holdings, LLC
2425 Olympic Boulevard
Suite 6000 West
Santa Monica, CA 90404

Re: KORO-DT, Corpus Christi, TX
Facility ID No. 64877
NAL/Acct. No. 0541420007
FRN: 0001529627

Dear Licensee:

This letter responds to your request for an extension of time for the above-captioned DTV station implement the ATSC A/65B Program System and Information Protocol (PSIP) standard by February 1, 2005.[1] This letter also constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against Entravision Holdings, LLC (Entravision) for violation of Section 73.682(d) of the Commission's Rules, 47 C.F.R. § 73.682(d), by failing to timely implement the PSIP standard.

Waiver Request. You state that the equipment necessary for this station to implement PSIP has been ordered, but that you have been unable to secure the delivery of that equipment from the manufacturer. You assert that the equipment is on "backorder," and the manufacturer remains uncertain when it can provide that equipment. You also state that you understand "that the Commission has entertained and granted, on an unpublished basis, a number of similar waivers." You therefore submit that you are entitled to a temporary waiver of Section 73.682(d) of the Commission's Rules until you can secure and install the necessary equipment in order to comply with the implementation requirements for this station.

The delay in compliance with PSIP implementation does not appear to be for reasons wholly beyond your control, and/or suggests that you have not committed to a reasonable implementation schedule for meeting this requirement. A reasonable period of time was provided by the Commission for PSIP implementation, and, upon request of a licensee, we have been willing to grant a temporary waiver of the compliance deadline on a case-by-case basis in order to accommodate unforeseen circumstances, such as manufacturers' backlogs. You did not seek such a waiver prior to the compliance deadline, and you have not now provided sufficient information to allow us to conclude that you have not had sufficient time to overcome those

[1] *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order,* FCC 04-192, 19 FCC Rcd 18279, 18345 (2004).

problems. Nevertheless, you will be afforded an additional 90 days to fully comply with the PSIP implementation requirement.

Rule Violation. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's Rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's Rules shall be liable for a forfeiture penalty. As noted above, digital broadcast licensees were required to implement the PSIP standard, pursuant to Section 73.682(d) of the Commission's Rules, 47 C.F.R. §73.682(d), by February 1, 2005. It is apparent that KORO-DT did not comply with the PSIP implementation deadline on that date.[2] Nor did you seek relief from that obligation by, for example, filing a timely request for a waiver or for an extension of that deadline. The fact that we granted other timely requests for relief from the implementation requirement does not excuse or mitigate your failure to comply with the PSIP implementation deadline or seek appropriate relief for your station.

The Commission's Forfeiture Policy Statement does not set a specific base forfeiture amount for the failure to timely implement the PSIP standard required by Section 73.682(d) of the Commission's Rules.[3] Nevertheless, the Commission has expressly retained "discretion in situations that arise" to assess forfeitures in individual cases.[4] In this regard, we view the nature of Entravision's noncompliance with the PSIP implementation standard as closely analogous to the failure to install or operate EAS equipment, for which the base forfeiture amount is set at $8,000 per violation. However, we do not believe that your failure in this case is of the magnitude or is as egregious as those related to EAS. Accordingly, we will adjust that forfeiture amount downward in this case to $3,000.

Ordering Clauses

Based on our review of the facts and circumstances as set forth above, IT IS ORDERED That Entravision Holdings, LLC's request for waiver of the PSIP standard implementation requirement IS DENIED. Nevertheless, we will afford Entravision 90 days from the date of this letter to fully comply with the PSIP implementation requirement.

IT IS FURTHER ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, Entravision Holdings, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR

[2] Your conduct in this regard was both "willful" and "repeated" within the meaning of Section 503(b)(1)(B) of the Communications Act and Section 1.80(a)(2) of the Commission's Rules. As the commission has held, an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *See Southern California Broadcasting Company,* 6 FCC Rcd 4387 (1991), *recon. denied,* 7 FCC Rcd 3453 (1992). Further, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

[3] *See, e.g., The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997) and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80.

[4] *See Policy Statement, Standards for Assessing Forfeitures,* 6 FCC Rcd 4695 (1991)(the Forfeiture Policy Statement is not a binding rule, but simply offers guidance on the general approach the Commission may take in forfeiture cases).

FORFEITURE in the amount of three thousand dollars ($3,000) for willfully and repeatedly violating Section 73.682(d) of the Commission's Rules,[5] as described herein.

IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice/Order, Entravision Holdings, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington D.C. 20554.[6]

Finally, IT IS ORDERED That a copy this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested to Entravision Holdings, LLC, at the address listed above, and to its counsel, Barry A Friedman, Esquire, Thompson Hine, LLP, 1920 N Street, NW, Washington, DC 20036-1600.

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Sincerely,

Donna C. Gregg
Chief, Media Bureau

[5] 47 C.F.R. §§ 73.682(d).
[6] *See* 47 C.F.R. § 1.1914.