



Federal Communications Commission
Washington, D.C. 20554

DA-05-2872
Adopted: 10/26/2005
Released: 10/31/2005

Certified Mail, Return Receipt Requested

Entravision Holdings, LLC
2425 Olympic Boulevard
Suite 6000 West
Santa Monica, CA 90404

Re: KCEC-DT, Denver, CO
Facility ID No. 24514
NAL/Acct. No. 0541420001
FRN: 0001529627

Dear Licensee:

This letter addresses the response to the *Notice Of Apparent Liability For A Forfeiture (NAL)* in the amount of \$3,000 issued on July 26, 2005, against Entravision Holdings, LLC ("Entravision"), licensee of the above-captioned station, 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 ATSC A/65B Program System and Information Protocol (PSIP) standard by February 1, 2005.¹ As described herein, we affirm the forfeiture imposed.

In the NAL, we found that KCEC-DT did not comply with the PSIP implementation deadline and did not seek relief from that obligation by, for example, filing a timely request for a waiver or for an extension of that deadline. We also stated that the fact that we granted other licensees' timely requests for relief from the implementation requirement did not excuse or mitigate the failure to comply with the PSIP implementation deadline or seek appropriate relief for this station.

In response to the NAL, you state that the facts do not support the Bureau's conclusions. You maintain that the failure to fully comply with the required PSIP implementation was beyond your control and resulted from the unavailability of upgraded software from your supplier. You state that you completed full implementation upon receiving the upgraded software shortly after submitting your April 15, 2005 waiver request.

You further state that the delay in filing a timely request for a waiver of the implementation deadline was the result of "uncertainties surrounding the PSIP implementation process rather than any desire on Entravision's part to withhold any information from the

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).

Commission.”² You maintain that the ultimate voluntary submission of a request for waiver of the implementation requirement demonstrates a lack of willful disregard for the rules and the absence of concealment on your part. You therefore argue that in light of the of the “liberal waivers” of the implementation deadline afforded other licensees, and because “there was no notice that a party using its best efforts to comply with the PSIP rules in the short period after the rules came into effect was in potential violation of the Commission’s Rules,” the forfeiture should now be reconsidered.

We will not reconsider the forfeiture imposed. Your arguments concerning the efforts and intent to timely implement the required PSIP standard do not excuse the failure to do so or to seek appropriate relief from that obligation. As we stated in the *NAL*, the fact that other licensees sought and received waivers does not exempt or excuse Entravision from its obligations as a digital television licensee. Moreover, the fact that the Bureau granted timely requests for waiver of the PSIP implementation deadline for licensees facing the same circumstances as Entravision does not evidence the “uncertainty” you claim prevented you from advising the Commission or otherwise seeking appropriate relief for more than two months after the implementation deadline had passed. Finally, we do not agree with your claim that the lack of prior notice in this case -- specifically, that the failure to comply with the PSIP implementation requirement is a potential violation of the Commission’s Rules -- requires reconsideration of the forfeiture imposed here.³

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY 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’s request to cancel or reduce the forfeiture imposed in the *NAL* IS DENIED.

IT IS FURTHER ORDERED That, pursuant to 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §503(b), and Section 1.80(f)(4) of the Commission’s Rules, 47 C.F.R. §1.80(f)(4) Entravision Holdings, LLC IS LIABLE FOR A MONETARY FORFEITURE of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 73.682(d) of the Commission’s Rules.

Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this letter. If the forfeiture is not made within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482,

² You assert that these uncertainties included the capability of older versions of the PSIP software to comply with the required implementation standard and, if necessary, the availability and installation of upgraded software.

³ With regard to Entravision’s claims that it did not willfully intend to violate the PSIP implementation deadline or conceal its failure to do so, we stated in the *NAL* and reiterate here that the Commission has held that an act 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).

Chicago, Illinois, 60673-7482. The payment MUST INCLUDE the NAL/Account Number and the FCC Registration Number (FRN) referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁴

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Acting Chief, Media Bureau

cc: Barry A Friedman, Esquire

⁴ See 47 C.F.R. § 1.1914.