

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. 200832100019
FRN No. 0014106520

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 3, 2008

Released: March 5, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Hauppauge Computer Works, Inc. ("Hauppauge") apparently willfully and repeatedly violated a Commission order by failing to respond to a directive of the Enforcement Bureau ("Bureau") to provide certain information. Upon our review of the facts and circumstances surrounding this apparent violation, we find that Hauppauge is apparently liable for at forfeiture in the amount of \$11,000.

II. BACKGROUND

2. The Commission adopted the digital television ("DTV") reception capability requirement in 2002. The DTV reception capability requirement, which also is often termed the "DTV tuner requirement," requires that all new television broadcast receivers that are imported into the United States or shipped in interstate commerce be capable of receiving the signals of DTV broadcast stations over-the-air. The DTV tuner requirement also applies to other video devices that include television receivers but do not include a viewing screen. The DTV tuner requirement was intended to facilitate the transition to digital television by promoting the availability of DTV reception equipment and to protect consumers by 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

1 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").

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

3 See 47 C.F.R. § 15.117(i)(1)(iv).

4 Id. at 15979. In this latter regard, the DTV tuner requirement ensures that the intent of the All Channel Receiver Act of 1962 ("ACRA"), P.L. No. 87-529, 76 Stat. 150, is fulfilled. The 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." See DTV Review Second Report and Order, 17 FCC Rcd at 15589-91.

devices that do not include a viewing screen, *i.e.*, VCRs and DVD players.<sup>5</sup> 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.<sup>6</sup> As modified by the Commission in 2005,<sup>7</sup> this phase-in schedule is as follows:

Receivers with screen sizes 36” and above -- 50% of units imported or shipped interstate by responsible parties<sup>8</sup> 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 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 17 of its devices that apparently receive analog television signals but are not capable of receiving digital television signals.<sup>9</sup>

5. In its response to the LOI, Hauppauge admitted that it sells TV boards for personal computers, some of which include both an analog and DTV tuner and some of which include only an analog TV tuner.<sup>10</sup> Hauppauge indicated its belief that its analog-only TV boards should not be covered under the Commission’s requirements for DTV tuners.<sup>11</sup> 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

---

<sup>5</sup> *Id.* at 15998-99.

<sup>6</sup> *Id.*

<sup>7</sup> 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.*

<sup>8</sup> The DTV tuner requirement applies to “responsible parties,” as defined in Section 2.909 of the Rules, 47 C.F.R. § 2.909.

<sup>9</sup> *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Hauppauge Computer Works, Inc. (July 18, 2007) (“LOI”).

<sup>10</sup> *See* Letter from Ken Plotkin, President and CEO, Hauppauge Computer Works, Inc., to Neal McNeil, Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (August 15, 2007) at 1.

<sup>11</sup> *Id.*

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.<sup>12</sup> 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.<sup>13</sup> Hauppauge did not respond to most of the questions in the LOI, including questions concerning whether the 17 devices identified in the LOI included DTV tuners, the total number of such devices imported and shipped interstate, the dates on which the devices were imported and shipped interstate, and the entities to whom the devices were shipped interstate.

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 it to respond fully and completely to each question asked in the LOI within 15 business days.<sup>14</sup> The follow-up LOI explicitly warned Hauppauge that failure to provide complete responses may result in enforcement action. On October 10, 2007, approximately 29 business days after the follow-up LOI was issued, the Bureau received a response from Hauppauge stating that “Due to our annual audit, we have been unable to finish processing your request. We expect that we will be able to do so within the next 30 days.”<sup>15</sup> To date, however, Hauppauge has not complied with the Bureau’s directive to provide the requested information.

### III. DISCUSSION

#### A. Failure to Respond to the LOI

7. We find that Hauppauge apparently violated Commission orders by failing to respond to a Bureau inquiry. Sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, (“Act”) afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,”<sup>16</sup> and Section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”<sup>17</sup> Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of this Act.”<sup>18</sup>

8. As indicated above, the Bureau twice directed Hauppauge to provide certain information related to its TV boards for personal computers. Such information was necessary to enable the Commission to perform its enforcement function and evaluate whether Hauppauge violated Commission rules. There is no question that Hauppauge received the LOIs. To date, however, Hauppauge has failed

---

<sup>12</sup> *Id.* at 1-2.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> 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”).

<sup>15</sup> See Letter from Ken Plotkin, President and CEO, Hauppauge Computer Works, Inc., to Neal McNeil, Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (October 9, 2007) at 1.

<sup>16</sup> 47 U.S.C. § 154(i).

<sup>17</sup> 47 U.S.C. § 154(j).

<sup>18</sup> 47 U.S.C. § 403.

to provide full and complete responses. Hauppauge's failure to fully respond to the Bureau's inquiry constitutes an apparent willful<sup>19</sup> and repeated<sup>20</sup> violation of a Commission order.<sup>21</sup>

## B. Proposed Forfeiture

9. Section 503(b)(1) of the Act and Section 1.80(a)(1) of the Rules authorize the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>22</sup> In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as "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."<sup>23</sup>

10. Under Section 503(b)(2)(C) of the Act and Section 1.80(b)(3) of the Rules,<sup>24</sup> the Commission is authorized to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, by an entity not specifically designated in Sections 503(b)(2)(A) or 503(b)(2)(B), up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.<sup>25</sup>

<sup>19</sup> 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 indicates 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, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 ¶ 5 (1991) ("*Southern California Broadcasting*").

<sup>20</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362 ¶ 9.

<sup>21</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600 ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions) (subsequent history omitted); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), *forfeiture ordered*, 20 FCC Rcd 3954 (Enf. Bur. 2005) ("*BigZoo*") (ordering \$20,000 forfeiture for failure to respond to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003), *forfeiture ordered*, 19 FCC Rcd 2718 (ordering a \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), *forfeiture ordered*, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual's failure to respond to an LOI).

<sup>22</sup> 47 U.S.C. § 503(b)(1); 47 C.F.R. § 1.80(a)(1).

<sup>23</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>24</sup> 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. § 1.80(b)(3).

<sup>25</sup> In 2004, the Commission amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), 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, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *see also* 47 C.F.R. § 1.80(c).

11. Section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$4,000 for failure to respond to Commission communications.<sup>26</sup> We find that Hauppauge's failure to respond to the LOIs in the circumstances presented here warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in an area of critical importance to the Commission -- the DTV transition. Prompt and full responses to Bureau inquiry letters are essential to the Commission's enforcement function. We therefore propose an \$11,000 forfeiture against Hauppauge for failing to respond to Commission communications. This forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to multiple Bureau inquiries concerning compliance with the Commission's rules despite evidence that the LOIs had been received.<sup>27</sup>

12. We also direct Hauppauge to respond fully to the July 18, 2007 LOI within 20 days of the release of this NAL. Failure to do so may constitute an additional violation subjecting Hauppauge to further penalties, including potentially higher monetary forfeitures.

#### IV. ORDERING CLAUSES

13. 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 eleven thousand dollars (\$11,000) for willful and repeated violations of a Commission order.

14. **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.

15. 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

---

<sup>26</sup> See 47 C.F.R. § 1.80(b)(4); *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*, 15 FCC Rcd. 303 (1999).

<sup>27</sup> See, e.g., *BigZoo*, 20 FCC Rcd at 3955 (ordering a \$20,000 forfeiture for failure to respond to an LOI); *Universal Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 Rcd 6579 (Enf. Bur. 2006) (proposing a \$20,000 forfeiture for failure to respond to an LOI); *Liberty Phones, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 17264 (Enf. Bur., Inv. & Hearings Div., 2007) (proposing a \$20,000 forfeiture for failure to respond to an LOI). Each of these cases ordered or proposed forfeitures of \$20,000 for failure to respond to Commission communications. We note, however, that these cases involved common carriers, which are subject to a higher maximum statutory forfeiture amount than non-common carriers like Hauppauge. See 47 U.S.C. 503(b)(2)(B)-(C). We do not decide here whether failure to respond to an LOI constitutes a continuing violation.

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.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j) and 403 of the Act, Hauppauge Computer Works, Inc. shall fully respond to the July 18, 2007 Letter of Inquiry sent by the Enforcement Bureau within twenty (20) days of the release of this NAL.

17. 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.

18. 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.

19. **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.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau