

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

In the Matter of )
)
Hannspree North America, Inc. ) File No. EB-08-SE-559
) NAL/Acct. No. 200832100078
) FRN: 0018065409

FORFEITURE ORDER

Adopted: March 24, 2009

Released: March 26, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of twelve thousand four hundred and fifty dollars (\$12,450) against Hannspree North America, Inc. ("Hannspree") for the willful and repeated violation of Section 15.117(i)(1)(iii) of the Commission's Rules ("Rules").

2. On August 28, 2008, the Enforcement Bureau ("Bureau") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Hannspree in the amount of twelve thousand four hundred and fifty dollars (\$12,450).

II. BACKGROUND

3. The Commission adopted the DTV reception capability requirement in 2002. This requirement, which is often termed the "DTV tuner requirement," requires that all new television

1 47 C.F.R. § 15.117(i)(1)(iii).

2 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.")

3 Hannspree North America, Inc., Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12902 (Enf. Bur. 2008) ("NAL").

4 Letter from Eric Hsu, Vice President Operations, Hannspree North America, Inc. to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 3, 2008) ("NAL Response").

5 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 (2002) ("DTV Review Second Report and Order").

6 DTV reception capability involves more circuitry than just a tuner. To provide this capability requires a tuner to receive the digital signal, an MPEG decoder/formatter, and associated processing capability and memory. See

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.<sup>7</sup> 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 over-the-air television reception of digital signals just as they have provided over-the-air television reception of analog signals.<sup>8</sup>

4. Section 15.117(i)(1) of the Rules provides, “[r]esponsible parties, as defined in § 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section” in accordance with the specified phase-in schedule.<sup>9</sup> As modified by the Commission in 2005,<sup>10</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>11</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;

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*Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11196, 11196 n.2 (2005) (“*DTV Tuner Report and Order*”).

<sup>7</sup> *DTV Review Second Report and Order*, 17 FCC Rcd at 15996. The DTV tuner requirement also applies to other devices such as television interface devices that do not include a viewing screen, e.g., devices such as VCRs and DVD players that are intended to provide audio-video signals to a video monitor with an antenna or antenna terminals that can be used for over-the-air television reception. See 47 C.F.R. § 15.117(i)(1)(iv).

<sup>8</sup> *DTV Review Second Report and Order*, 17 FCC Rcd 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 ...”. *Id.* at 15589-91.

<sup>9</sup> 47 C.F.R. § 15.117(i)(1).

<sup>10</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*”).

<sup>11</sup> The DTV tuner requirement applies to “responsible parties,” as defined in Section 2.909 of the Rules, 47 C.F.R. § 2.909. Under Section 2.909(b), the party responsible for equipment such as television receivers that are subject to our “verification” equipment authorization procedure is the manufacturer or, in the case of imported equipment, the importer. If subsequent to manufacture and importation, the equipment is modified by any party not working under the authority of the responsible party, the party performing the modification becomes the new responsible party.

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.

5. The Commission’s 2005 *DTV Tuner Second Report and Order* amended the Rules to apply the DTV tuner requirement to new receivers with screen sizes smaller than 13” on this same schedule (*i.e.*, March 1, 2007). Although the Commission adopted this requirement for receivers with screen sizes smaller than 13” through the appropriate notice and comment procedures, and modified the Rules to show March 1, 2007, as the accelerated deadline, the Commission inadvertently failed to delete the exception in Section 15.117(i)(2) for “units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13’ [sic] diagonally across the picture viewing area.” The Commission subsequently corrected Section 15.117(i)(2) by striking the inappropriate language,<sup>12</sup> and the DTV tuner requirements for receivers with screen sizes less than 13” became effective on January 30, 2008.<sup>13</sup>

6. On July 8, 2008, the Bureau issued a Letter of Inquiry (“LOI”) to Hannspree regarding the company’s importation and interstate shipment of non-DTV-compliant television receivers.<sup>14</sup> Hannspree filed its response to the LOI on August 6, 2008,<sup>15</sup> and stated that since March 1, 2007, it had shipped interstate more than three dozen models of television receivers that were not equipped with DTV tuners,<sup>16</sup> with screen sizes of 10, 12, 15, or 23 inches, measured diagonally.<sup>17</sup> Hannspree stated that it shipped interstate a total of 3,735 such receivers after March 1, 2007.<sup>18</sup>

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<sup>12</sup> See *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 23 FCC Rcd 2994, 3081 (2007).

<sup>13</sup> See *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Final Rule, 73 Fed. Reg. 5634 (Jan. 30, 2008).

<sup>14</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Hannspree North America, Inc. (July 8, 2008) (“LOI”).

<sup>15</sup> See Letter from Eric Hsu, Vice-President of Operations, Hannspree North America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 6, 2008) (“LOI Response”).

<sup>16</sup> *Id.* at 1. Specifically, Hannspree shipped interstate the following models of television receivers that are not equipped with DTV tuners: DT07-10U1-000; DT12-10U1-000; F001-15U1-000; F609-15U1-0011; F617-15U1-000; F629-10U1-000; F633-10U1-000; F637-10U1-000; F651-12U1-000; K206-10U1-005; K206-10U1-010; K209-10U1-000; K212-10U1-000B; K223-10U1-000; K226-10U1-000; LT09-10U1-000; LT09-10U1-0001; LT13-23U1-001; ST02-15U1-019; ST02-15U1-030; ST03-15U1-000; ST06-15U1-000; ST08-10U1-000; ST09-10U1-011; ST23-10U1-000; ST35-15U1-003; ST35-15U1-015; ST35-15U1-022; ST35-15U1-0071; ST35-15U1-0111; ST35-15U1-0211; ST35-15U1-0251; ST35-15U1-0261; ST35-15U1-0281; ST35-15U1-0301; ST43-15U1-000; ST54-10U1-000; ST59-23U1-001.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> See *id.* at Exhibit A. In response to a request to provide a list of non-DTV-compliant receivers shipped in interstate commerce during this period, Hannspree provided data showing its shipment of 5,518 units. Of this number, 1,759 units were actually equipped with DTV tuners and an additional 24 units were in fact exported

7. On August 28, 2008, the Bureau released an *NAL* finding that Hannspree had violated Section 15.117(i)(1)(iii) of the Rules by shipping in interstate commerce television receivers that were not equipped with DTV tuners. Specifically, the *NAL* found that Hannspree had shipped 1,129 television receivers with screen sizes less than 25” after March 1, 2007, that failed to comply with the DTV tuner requirement. The *NAL* noted that in its LOI Response, Hannspree admitted to shipping interstate 3,375 non-DTV-compliant television broadcast receivers, but because the DTV tuner requirement became effective for television receivers with screen sizes measuring less than 13” only on January 30, 2008, we did not consider 2,246 receivers with screen sizes less than 13” that Hannspree shipped prior to the effective date in formulating our proposed forfeiture.<sup>19</sup> The *NAL* additionally noted that of those 1,129 television receivers, 880 had been shipped more than one year prior to the date of the *NAL*, and that Section 503(b)(6)(B) of the Act prohibits the Commission from imposing a forfeiture penalty against a person that does not hold a broadcasting license “if the violation occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”<sup>20</sup> Thus, the *NAL* proposed a forfeiture only for the 249 non-DTV compliant receivers that were shipped interstate by Hannspree within the one year period prior to the issuance of the *NAL*.<sup>21</sup> Using a tiered per unit approach, Hannspree was found liable for a proposed forfeiture in the amount of \$12,450.

8. In its response to the *NAL*, Hannspree requests that if we find that any of the 249 non-DTV compliant receivers were imported prior to March 1, 2007, and sold by Hannspree in their two California-based retail stores from their inventory, then we should reduce the amount of the proposed forfeiture accordingly.<sup>22</sup>

### III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>23</sup> Section 1.80 of the Rules,<sup>24</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>25</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of

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rather than shipped interstate; thus, Hannspree shipped in interstate commerce a total of 3,735 receivers that did not contain DTV tuners. *Id.*

<sup>19</sup> See *NAL*, 23 FCC Rcd at 12905.

<sup>20</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>21</sup> See *NAL*, 23 FCC Rcd at 12907.

<sup>22</sup> In its *NAL* Response, in addition to asking for a reduction in the proposed forfeiture, Hannspree also requested Bureau guidance on the following three topics: 1) if the Rules bar intrastate sales of analog receivers after March 1, 2007; 2) if the Rules allow overseas sales of analog receivers; and 3) if sales of analog receivers after March 1, 2007 are permitted if the unit is sold with a converter box. These inquiries do not relate to the issues before the Bureau pursuant to the *NAL*, and appear to seek a declaratory ruling on the provisions of Section 15.117. To address those issues in this proceeding would therefore be inappropriate. We note, however, that the second issue was implicitly answered in the *NAL*, which excluded the 24 receivers that Hannspree reported exporting, rather than shipping in interstate commerce, from its calculation of the total number of non-DTV-compliant receivers that were the basis for the forfeiture. See *id.* at 12904 n.17.

<sup>23</sup> 47 U.S.C. § 503(b).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> *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) (“*Forfeiture Policy Statement*”).

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>26</sup>

10. We have considered Hannspree's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Hannspree willfully<sup>27</sup> and repeatedly<sup>28</sup> violated Section 15.117(i)(1)(iii) of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount. Specifically, Hannspree admitted in its response to the LOI that of the 1,129 non-DTV-compliant television receivers imported between March 1, 2007 and August 6, 2008, the date of its LOI response, 249 non-DTV-compliant receivers were shipped interstate within the one-year period prior to the issuance of the *NAL*. We note further that in its response to the *NAL*, Hannspree does not dispute that it violated Section 15.117(i)(1)(iii) of the Rules by shipping a total of 249 non-DTV-compliant television receivers in interstate commerce after the effective deadline of March 1, 2007 for receivers with screens 13" or larger, and after January 30, 2008 for receivers with screens that are smaller than 13".

11. Hannspree in its response to the *NAL* seeks a reduction of the proposed forfeiture to the extent that it should be considered a retailer in addition to an importer, and to the extent that we find that any of its non-DTV-compliant television receiver sales were made from inventory that was imported into the United States prior to the March 1, 2007 deadline.<sup>29</sup> While Hannspree is correct in its assertion that the Rules do not bar responsible parties from *retail* sales of non-DTV-compliant receivers after the March 1, 2007 deadline, as long as those sales are conducted in compliance with the labeling requirements of Section 15.117(k),<sup>30</sup> that Section provides no exemption from the separate and distinct prohibition on the *importation* or *interstate* shipment of non-DTV-compliant television receivers set forth in Section 15.117(i), which is the subject rule violation before us in this proceeding.

12. Therefore, Hannspree has not demonstrated that a reduction or cancellation of the proposed forfeiture is warranted. Accordingly, we find that Hannspree has willfully and repeatedly violated Section 15.117(i)(1)(iii) of the Rules, and that a forfeiture in the amount of \$12,450 is appropriate, and that Hannspree is not entitled to a reduction in the amount proposed by the *NAL*.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>31</sup> Hannspree North America, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand four hundred and fifty dollars (\$12,450) for willful and repeated violation of Section 15.117(i)(1)(iii) of the Rules.

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<sup>26</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>27</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 clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>28</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>29</sup> *See* NAL Response at 1.

<sup>30</sup> 47 C.F.R. § 15.117(k).

<sup>31</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

14. 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Hannspree North America, Inc. will also send electronic notification on the date said payment is made to Deborah Broderson at [Deborah.Broderson@fcc.gov](mailto:Deborah.Broderson@fcc.gov) and to Ricardo Durham at [Ricardo.Durham@fcc.gov](mailto:Ricardo.Durham@fcc.gov).

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Eric Hsu, Hannspree North America, Inc., 14450 Myford Road, Suite 100, Irvine, California 92606.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau