

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

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

ORDER

Adopted: October 14, 2011

Released: October 14, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”), on behalf of the Federal Communications Commission (“Commission”), and Hauppauge Computer Works, Inc. (“Hauppauge”). The Consent Decree terminates an investigation and cancels a Notice of Apparent Liability for Forfeiture (“NAL”)¹ against Hauppauge for possible violations of section 15.117(i)(1)(iv) of the Commission’s rules (“Rules”)² regarding the shipment in interstate commerce or importation into the United States, for sale or resale to the public, after March 1, 2007, of certain television receivers³ that do not have digital television (“DTV”) reception capability.

2. The Bureau, on behalf of the Commission, and Hauppauge have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, which terminates the investigation and cancels the NAL.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Hauppauge possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,⁴ and sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

¹ *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 5272 (2009).

² 47 C.F.R. § 15.117(i)(1)(iv).

³ 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”).

⁴ 47 U.S.C. §§ 154(i), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture issued by the Commission against Hauppauge on April 15, 2009 **IS CANCELLED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Norman Leventhal, Esq., Holland & Knight, 2099 Pennsylvania Avenue, N.W., Suite 100, Washington, D.C. 20006, and to Mr. Kenneth Plotkin, President and Chief Executive Officer, Hauppauge Computer Works, Inc., 91 Cabot Court, Hauppauge, NY 11788.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Hauppauge Computer Works, Inc.)	
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CONSENT DECREE

The Enforcement Bureau, on behalf of the Commission, and Hauppauge Computer Works, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating an investigation into whether Hauppauge violated section 15.117(i)(1)(iv) of the Commission's rules¹ regarding the shipment in interstate commerce or importation into the United States, for sale or resale to the public, after March 1, 2007, of certain television receivers² that do not have digital television ("DTV") reception capability.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau, on behalf of the Commission, adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the plan described in this Consent Decree at paragraph 9.
 - (f) "Digital Television" and "DTV" mean the television signals that are generated, transmitted and received under the Advanced Television Systems Committee ("ATSC") standard.
 - (g) "Effective Date" means the date on which the Bureau, on behalf of the Commission, releases the Adopting Order.

¹ 47 C.F.R. § 15.117(i)(1)(iv).

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").

- (h) “Hauppauge” means Hauppauge Computer Works, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) “Investigation” means the investigation commenced by the Bureau’s July 18, 2007 Letter of Inquiry (“LOI”)³ regarding whether Hauppauge violated section 15.117(i)(1)(iv) of the Rules⁴ by shipping in interstate commerce or importing into the United States, for sale or resale to the public, after March 1, 2007, television receivers not equipped with DTV tuners.
- (j) “NAL” means the Notice of Apparent Liability for Forfeiture issued by the Commission against Hauppauge on April 15, 2009.
- (k) “Parties” mean Hauppauge and the Bureau, and each a “Party.”
- (l) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to section 15.117(i)(iv) of the Rules, all “video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.), that receive television signals,” including devices without an associated television screen, shipped in interstate commerce or imported into the United States, for sale or resale to the public, were required to be equipped with a DTV tuner as of March 1, 2007.

3. On July 18, 2007, the Bureau issued a Letter of Inquiry (“LOI”) to Hauppauge.⁵ The July 18, 2007 LOI directed Hauppauge, among other things, to submit a sworn written response to a series of questions relating to its importation, interstate shipment, and sale of certain television tuner boards designed to be installed in personal computers. Hauppauge responded to the July 18, 2007 LOI on August 15, 2007.⁶ On August 28, 2007, the Bureau issued a follow-up LOI to Hauppauge.⁷ Hauppauge responded to the Follow-up LOI on April 15, 2008,⁸ and supplemented its Second Response on May 6, 2008.⁹

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Hauppauge Computer Works, Inc. (July 18, 2007).

⁴ 47 C.F.R. § 15.117(i)(1)(iv).

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Hauppauge Computer Works, Inc. (July 18, 2007).

⁶ See Letter from Ken Plotkin, President and Chief Executive Officer, Hauppauge Computer Works, Inc., to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 15, 2007) at 1 (“Response”).

⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ken Plotkin, Chief Executive Officer, Hauppauge Computer Works, Inc. (August 28, 2007).

⁸ See Letter from Kenneth Plotkin, President and Chief Operation Officer, Hauppauge Computer Works, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (April 15, 2008) (“Second Response”).

⁹ See Letter from Norman P. Leventhal, Esq., Counsel for Hauppauge Computer Works, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 6, 2008) (“Supplemental Response”).

4. On April 15, 2009, the Commission issued an NAL¹⁰ proposing that Hauppauge be held liable for a forfeiture of \$175,000 under section 503(b)(1)(B) of the Act, and ordered Hauppauge either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau, on behalf of the Commission, by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Hauppauge agrees that the Bureau, on behalf of the Commission, has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau adopted on behalf of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau, on behalf of the Commission, agrees to terminate the Investigation and to cancel the Commission's NAL. In consideration for the termination of said Investigation and cancellation of the NAL, Hauppauge agrees to the terms, conditions, and procedures contained herein. The Bureau, on behalf of the Commission, further agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Hauppauge concerning the matters that were the subject of the Investigation. The Bureau, on behalf of the Commission, also agrees that it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Hauppauge with respect to Hauppauge's basic qualifications, including its character qualifications, to hold Commission authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Hauppauge agrees to maintain a limited Compliance Plan related to its future compliance with the Act, the Rules, and the Commission's Orders. The Plan will include the following components.

- (a) **Compliance Officer.** Hauppauge will designate an employee to be familiar with all applicable Commission Rules, regulations and associated policies relating to television receivers, including all applicable administrative, technical, labeling and identification requirements ("Compliance Officer"). The designated Compliance Officer will administer the Compliance Plan. The designated Compliance Officer will also review, with counsel, any new or modified Rules, regulations and associated policies, described above, on an annual basis to stay abreast of any new requirements, and ensure that any television receivers imported, shipped interstate, or marketed by Hauppauge comply with these Rules, regulations and policies.

¹⁰ *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 5272 (2009).

- (b) **Compliance Reports.** Hauppauge shall file compliance reports with the Commission twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date. Each report shall include a compliance certificate from the Compliance Officer, as an agent of Hauppauge, stating that the Hauppauge has established operating procedures intended to ensure compliance with this Consent Decree (namely, continued, compliance with section 15.117(i)(iv) of the Rules regarding television reception devices with analog only tuners) together with an accompanying statement explaining the basis for the compliance certification. All compliance reports shall be submitted to Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Nissa.Laughner@fcc.gov and to Neal.McNeil@fcc.gov.
- (c) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire twenty-four (24) months from the Effective Date.

10. **Voluntary Contribution.** Hauppauge agrees that it shall make a voluntary contribution to the United States Treasury in the amount of fifty-five thousand dollars (\$55,000) to be made in eleven (11) consecutive monthly payments of five thousand dollars (\$5,000), due on or before the fifteenth (15th) day of each month, with the first payment due on or before October 15, 2011 and the eleventh payment due on or before August 15, 2012. Each payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the 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). Hauppauge will also send electronic notification on the date said payment is made to Nissa.Laughner@fcc.gov and Neal.McNeil@fcc.

11. **Waivers.** Hauppauge waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau, on behalf of the Commission, issues the Adopting Order without change, addition, modification, or deletion. Hauppauge shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Hauppauge nor the Bureau on behalf of the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Hauppauge shall waive any statutory right to a trial *de novo*. Hauppauge hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Hauppauge does not expressly consent) that provision will be superseded by such Rule or Order.

14. **Successors and Assigns.** Hauppauge agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Kenneth Plotkin
President and Chief Executive Officer
Hauppauge Computer Works, Inc.

Date