

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

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

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2012

Released: July 13, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ and Section 1.106 of the Federal Communications Commission’s rules (Rules),² we grant in part and deny in part the Petition for Reconsideration (Petition)³ filed by Hannspree North America, Inc. (Hannspree). Hannspree seeks reconsideration of the *Forfeiture Order*⁴ that imposed a twelve thousand four hundred fifty dollar (\$12,450) forfeiture for Hannspree’s willful and repeated violation of Section 15.117(i)(1)(iii) of the Rules in connection with its interstate shipment of television broadcast receivers that failed to include the capability to receive over-the-air DTV broadcast signals.⁵ For the reasons set forth below, the Petition is granted in part and denied in part, and we reduce the amount of the forfeiture penalty to eleven thousand eight hundred dollars (\$11,800).

II. BACKGROUND

2. In 2002, the Federal Communications Commission (Commission) adopted the “DTV tuner requirement,”⁶ which requires that all new television broadcast receivers imported into the United

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ On April 1, 2009, Hannspree filed a letter seeking reduction of the forfeiture. See Letter from Eric Hsu, Vice President of Operations, Hannspree North America, Inc., to Secretary, Federal Communications Commission (Apr. 1, 2009) (on file in EB-08-SE-559). Consistent with Section 405 of the Act and Section 1.106 of the Rules, we are treating this letter as a petition for reconsideration.

⁴ *Hannspree North America, Inc.*, Forfeiture Order, 24 FCC Rcd 3616 (Enf. Bur. 2009) (*Forfeiture Order*).

⁵ See 47 C.F.R. 15.117(i)(1)(iii); see also 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”).

⁶ See *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*). The Commission later modified the Rules to advance the dates by which new television receivers were required to include DTV tuners. See *Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11196 (2005) (*DTV Tuner Report and Order*);

States or shipped in interstate commerce include the capability to receive over-the-air DTV broadcast signals.⁷ 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 provide over-the-air television reception of digital signals.⁸

3. Hannspree, a subsidiary of Hannstar Display Corporation, is a California-based importer and retailer of television broadcast receivers. On July 8, 2008, the Enforcement Bureau (Bureau) issued a letter of inquiry (LOI) to Hannspree regarding the company's compliance with the DTV tuner requirement.⁹ In its August 6, 2008, response (LOI Response), Hannspree conceded, via affidavit, that certain of its receiver offerings were noncompliant; it also provided, under penalty of perjury, comprehensive business sales records of all receivers imported and shipped during the period covered by the investigation.¹⁰ After analyzing the data provided by Hannspree, the Bureau issued a *Notice of Apparent Liability for Forfeiture (NAL)* to the company, proposing a \$12,450 forfeiture for its apparent willful and repeated violation of Section 15.117(i)(1)(iii) of the Rules by shipping in interstate commerce 249 television receivers that were not equipped with the required DTV tuners.¹¹

4. Hannspree filed a response to the *NAL* on September 3, 2008 (NAL Response).¹² In its NAL Response, Hannspree requested the exclusion of noncompliant receivers that were imported *prior to* the March 1, 2007, deadline, but sold and shipped from its two California-based retail stores *after* the deadline.¹³ The *Forfeiture Order* considered Hannspree's NAL Response but found that Hannspree presented no circumstances that warranted reduction of the proposed forfeiture.¹⁴ In particular, the *Forfeiture Order* reiterated that Section 15.117(i) prohibits the importation *or* interstate shipment of noncompliant units after the applicable deadlines.¹⁵

5. In its Petition, Hannspree argues for the first time that the Bureau incorrectly calculated the number of noncompliant receivers that were subject to the forfeiture computation.¹⁶ Hannspree avers

Requirements for Digital Television Receiving Capability, Second Report and Order, 20 FCC Rcd 18607 (2005) (*DTV Tuner Second Report and Order*).

⁷ See *DTV Review Second Report and Order*, 17 FCC Rcd at 15996, para. 40. The DTV tuner requirement also applies to other television receiving equipment, such as VCRs and DVD players. See *id.*

⁸ See *id.* at 15979, para. 1. In this regard, the DTV tuner requirement ensures that the intent of the All Channel Receiver Act of 1962 (ACRA), Pub. L. No. 87-529, 76 Stat. 150, is fulfilled. The ACRA, which is codified at 47 U.S.C. § 303(s), provides the Commission with "authority to require" that all television receivers "be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting."

⁹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Hannspree North America, Inc. (July 8, 2008) (on file in EB-08-SE-559).

¹⁰ See Letter from Eric Hsu, Vice President of Operations, Hannspree North America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 6, 2008) (on file in EB-08-SE-559).

¹¹ See *Hannspree North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12902 (Enf. Bur. 2008).

¹² See Letter from Eric Hsu, Vice President of Operations, Hannspree North America, Inc., to Secretary, Federal Communications Commission (Sept. 3, 2008) (on file in EB-08-SE-559).

¹³ See *id.* at 1.

¹⁴ See *Forfeiture Order*, 24 FCC Rcd at 3620, para. 10.

¹⁵ See *id.*

¹⁶ See Petition at 1.

that it shipped interstate a total of 74 non-DTV-compliant receivers that were subject to a forfeiture penalty, rather than the 249 units stated in the *NAL*.¹⁷ Accordingly, Hannspree seeks a corresponding reduction in the forfeiture.

III. DISCUSSION

6. Under Section 1.106(c)(1) of the Rules, a petition for reconsideration that relies on facts or arguments not previously presented to the designated authority may be granted only if (1) the facts or arguments relate to events that occurred or circumstances that have changed since the last opportunity to present such matters; or (2) the petition relies on facts or arguments unknown to the petitioner until after petitioner's last opportunity to present such matters.¹⁸ Section 1.106(c)(2) of the Rules also permits grant of a petition for reconsideration that raises new facts or arguments if the designated authority determines that consideration of the new information is required to serve the public interest.¹⁹

7. In support of its Petition, Hannspree provides a new analysis of its sales records purporting to show that only 74 units are subject to a forfeiture penalty and resubmits certain business sales records. Without explanation, however, Hannspree omits a sizeable group of noncompliant receivers that it had previously disclosed.²⁰ In addition, Hannspree neither explains the figures in its analysis (or describes their origin), nor demonstrates, as required by Section 1.106(c)(1), that the new analysis relates to changed circumstances or previously unknown facts.²¹ Therefore, while Hannspree argues that the Bureau miscalculated the number of noncompliant television receivers that were subject to a forfeiture penalty, it provides little factual support to undergird its claims, and what it does offer fails to meet the procedural threshold in Section 1.106(c)(1).

8. We note, however, that the Bureau has conducted another careful review of the record and identified a small miscalculation, which, consistent with the public interest, warrants partial reconsideration and modification of the *Forfeiture Order*.²² The *NAL* determined that Hannspree shipped a total of 5,518 receivers during the relevant period, of which 249 were non-compliant.²³ We now

¹⁷ See *id.* at 2.

¹⁸ See 47 C.F.R. § 1.106(c)(1).

¹⁹ See *id.* § 1.106(c)(2).

²⁰ See LOI Response at Exhibit A. Specifically, the business sales records that Hannspree submitted with its Petition exclude one attachment that details shipment of over 400 television receivers during the period covered by the investigation. Hannspree does not argue in its Petition that the 400 receivers that it had previously disclosed were improperly considered in connection with the *NAL*. Therefore, the Bureau again considers those receivers in its evaluation here.

²¹ See 47 C.F.R. § 1.106(c)(1).

²² See *id.* § 1.106(c)(2); see also *EZ Sacramento, Inc.*, 15 FCC Rcd 18257 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965)).

²³ *NAL*, 23 FCC Rcd at 12907, para. 15 & n.17. To determine the number of receiver units subject to forfeiture penalty, the *NAL* analysis excluded the following categories of receivers: compliant receivers; receivers that were exported; noncompliant receivers that were shipped interstate more than one year prior to the date on which the *NAL* was issued; and receivers with diagonal screen sizes measuring less than 13 inches that were shipped interstate prior to the effective date for such receivers. See *id.* The DTV tuner requirement became applicable to television receivers with screen sizes less than 13 inches (measured diagonally) on January 30, 2008. 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, para. 190 (2007) (correcting language in Section 15.117(i)(2) regarding receivers with screen sizes less than 13 inches); *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) (publishing the rule correction).

conclude that Hannspree shipped a total of 5,519 units, only 236 of which were non-DTV-compliant.²⁴ We thus affirm our finding that Hannspree willfully²⁵ and repeatedly²⁶ violated Section 15.117(i)(1)(iii) of the Rules by shipping in interstate commerce television receivers that were not equipped with DTV tuners, but modify the decision to reflect the interstate shipment of 236 non-DTV-compliant television receivers—or 13 fewer units—within the one year preceding the issuance of the *NAL*. Consistent with Commission precedent, we reduce the forfeiture to \$11,800 (236 units x \$50 per unit) for Hannspree’s willful and repeated violation of Section 15.117(i)(1)(iii) of the Rules²⁷ in connection with its interstate shipment of television receivers that did not comply with the DTV tuner requirement.²⁸

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,²⁹ and Section 1.106 of the Commission’s rules,³⁰ the Petition for Reconsideration filed by Hannspree North America, Inc. hereby **IS GRANTED IN PART AND DENIED IN PART**.

²⁴ To arrive at this number, the Bureau excluded the following units that were compliant with the Rules or were otherwise not subject to forfeiture penalty: 1,404 units that, in fact, contained DTV tuners; 6 units that were exported; 3,521 units that were shipped more than one year before the August 28, 2008, issuance of the *NAL*; and 352 units with screen sizes less than thirteen inches that were shipped before the January 30, 2008, DTV tuner effective date for such receivers. Because of the order in which these exclusions are applied, certain overlap among the units within these categories, and the inclusion of additional DTV-compliant units, the numbers of receivers in each category differ somewhat from those represented in the *NAL*.

²⁵ 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 clarifies that this definition of willful applies to both Sections 312 and 503 of the Act, H.R. Conf. Rep. No. 97-765 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237, para. 12 (2008), *consent decree ordered*, Order and Consent Decree, 27 FCC Rcd 4110 (2012); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

²⁶ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated’ . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (forfeiture paid); *Southern California*, 6 FCC Rcd at 4388, para. 5.

²⁷ 47 C.F.R. § 15.117(i)(1)(iii).

²⁸ See, e.g., *Precor, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6361, 6367, para. 16. (2008) (applying the following tiered approach to the forfeiture calculation: 0–1000 units: \$50 per unit; 1001–2500 units: \$75 per unit; 2501–5000 units: \$100 per unit; 5001–10,000 units: \$125 per unit; 10,001–20,000 units: \$150 per unit; 20,001–30,000 units: \$175 per unit; 30,001–40,000 units: \$200 per unit; 40,001–50,000 units: \$225 per unit; 50,001+ units: \$250 per unit).

²⁹ 47 U.S.C. § 405.

³⁰ 47 C.F.R. § 1.106.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,³¹ Hannspree North America, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand eight hundred dollars (\$11,800) for violation of Section 15.117(i)(1)(iii) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within fifteen (15) calendar days after the release date of this Memorandum Opinion and Order.³² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³³ Hannspree North America, Inc. shall send electronic notification of payment to Daudeline Meme at Daudeline.Meme@fcc.gov, Kevin Pittman at Kevin.Pittman@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

12. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁵ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

³¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

³² See 47 C.F.R. § 1.80.

³³ See 47 U.S.C. § 504(a).

³⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁵ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by First Class Mail and by Certified Mail, return receipt requested, to Hannspree North America, Inc. at 14450 Myford Road, Suite 100, Irvine, CA 92606.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau