

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

In the Matter of
Funai Corporation, Inc.
File No. EB-07-SE-259
NAL/Acct. No. 200832100005
FRN No. 0017000423

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 31, 2007

Released: November 1, 2007

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Funai Corporation, Inc. ("Funai") apparently liable for a forfeiture in the amount of seven million, seven hundred forty-five thousand, six hundred eight-seven dollars (\$7,745,687) for its willful and repeated violations of Section 330(c) of the Communications Act of 1934, as amended, ("Act"), and Section 15.120(d)(2) of the Commission's Rules ("Rules"). The apparent violations involve Funai's interstate shipment, after March 15, 2006, of digital television receivers that do not comply with the Commission's rules requiring that such receivers have the capability to receive program rating descriptors and block programs from viewing when the program rating meets pre-determined user requirements and to respond to changes in the program rating system.

II. BACKGROUND

2. Sections 303(x) and 330(c) of the Act were added by the Telecommunications Act of 1996. Section 303(x) directs the Commission to prescribe rules requiring that television receivers shipped in interstate commerce or manufactured in the United States be equipped with a feature designed to enable viewers to block the display of all programs with a common rating. Section 330(c) provides that no person shall ship in interstate commerce or manufacture in the United States television receivers that do not comply with rules prescribed by the Commission pursuant to Section 303(x). The Commission adopted program blocking capability requirements for both analog and digital television ("DTV") receivers in 1998. In 2004, the Commission adopted specific technical standards to implement

1 47 U.S.C. § 330(c).

2 47 C.F.R. § 15.120(d)(2).

3 See Pub. L. No. 104-104, 110 Stat. 56 (1996).

4 In the Matter of Technical Requirements to Enable Blocking of Video Programming Based on Program Rating, Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996, Report and Order, 13 FCC Rcd 11248 (1998) ("V-Chip Report and Order"). The rule adopted in 1998 provided that digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories, but did not specify technical standards to achieve this objective. Id. at 11258-59 ¶¶ 28-29.

V-Chip functionality for DTV receivers (“V-Chip technology requirements”).⁵ The DTV V-Chip technology requirements provide that, effective March 15, 2006, digital television receivers with picture screens 13 inches or greater (“covered television receivers”) that are shipped in interstate commerce must be equipped with V-Chip technology to allow blocking of the display of programming based on its content.⁶ Specifically, Section 15.120(d)(2) provides that:

Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Effective March 15, 2006, digital television receivers will receive program rating descriptors transmitted pursuant to industry standard EIA/CEA-766-A “U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65-A Program and System Information Protocol (PSIP),” 2001 (incorporated by reference, see § 15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to changes in the content advisory rating system.

To account for manufacturers’ product development cycles, the Commission allowed an 18-month transition period for implementation of the DTV V-Chip technology requirements.⁷

3. The V-Chip technology requirements implement Congress’s determination, in the Telecommunications Act of 1996, that parents should be provided with “timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they consider harmful to their children.”⁸ This determination was based on Congress’s finding that television broadcast and cable programming have established a “uniquely pervasive presence in the lives of American children.”⁹ Further, Congress found that empowering parents to control the presence and influence of television in their children’s lives was a compelling government interest.¹⁰ Finally, Congress concluded that requiring television receiver manufacturers to include V-Chip technology in their products is a nonintrusive and narrowly tailored means of achieving that compelling government interest.¹¹

4. In July 2007, the Enforcement Bureau (“Bureau”) received a complaint alleging that Funai was shipping in interstate commerce covered television receivers that did not include the required V-Chip technology. On August 7, 2007, the Bureau issued a letter of inquiry (“LOI”) to Funai.¹² Funai

⁵ *In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279 (2004) (“*Second DTV Periodic Review Report and Order*”). The V-Chip technology requirements also apply to devices sold without an accompanying display device. *Id.* at 18348 (“Similar to our requirements for closed caption capabilities in digital television receivers, the rules will also be applicable to DTV tuners which are sold without an associated display device.”).

⁶ *Id.* at 18347-49 ¶ 155-59.

⁷ *Id.* at 18348-49 ¶ 159.

⁸ *V-Chip Report and Order*, 13 FCC Rcd at 11248 ¶ 2.

⁹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁰ *Id.*

¹¹ *Id.*

¹² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Funai Corporation (August 7, 2007) (“LOI”).

filed a response to the LOI on September 7, 2007.¹³ Funai requested confidentiality of portions of its LOI response and that request remains pending. Accordingly, portions of Funai's LOI response are discussed in an Appendix hereto, and we are treating the Appendix as confidential at this time.

III. DISCUSSION

A. Funai Apparently Shipped Interstate Digital Television Receivers In Violation of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules

5. Based on our review of Funai's LOI response, we find that the company apparently willfully and repeatedly shipped in interstate commerce covered television receivers that did not comply with the DTV V-Chip technology requirements in apparent violation of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules. Specifically, we find that, after the March 15, 2006 deadline, Funai shipped in interstate commerce digital television receivers that are not capable of receiving any program rating descriptors and blocking programs from viewing when the program rating meets pre-determined user requirements. Additionally, we find that these same digital television receivers were not capable of responding "to changes in the content advisory rating system" as further required by Section 15.120(d)(2).¹⁴ Funai admits to these facts.

B. Proposed Forfeiture

6. Based on the analysis set forth below, we conclude that Funai is apparently liable for a forfeiture in the amount of \$7,745,687 for willfully and repeatedly shipping in interstate commerce television receivers that do not comply with the DTV V-Chip technology requirements in violation of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules.

7. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁶ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹⁷ We conclude under this standard that Funai is apparently liable for forfeiture for its apparent willful and repeated violations of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules.

8. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a NAL.¹⁸ Section 503(b)(6) does not, however, bar the Commission from assessing whether Funai's conduct prior to that time period apparently violated the rules and from considering such conduct in determining the appropriate forfeiture

¹³ See Letter from Yoshikazu Uemura, Executive Vice President, Funai Corporation to Brett Greenwalt, Spectrum Enforcement Division, Enforcement Bureau (September 7, 2007) ("LOI Response").

¹⁴ 47 C.F.R. § 15.120(d)(2).

¹⁵ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

¹⁸ 47 U.S.C. § 503(b)(6).

amount for violations that occurred within the one-year statutory period.¹⁹ Thus, while we may consider that Funai's prior conduct violated the rules, the forfeiture amount we propose herein relates to Funai's apparent violations that have occurred within the past year. Funai shipped in interstate commerce a number of digital television receivers that do not comply with the V-Chip technology requirements more than one year prior to the date of this NAL. The non-compliant receivers represented by these interstate shipments are beyond the applicable one-year statute of limitations and not subject to forfeiture.²⁰ Accordingly, the forfeiture we propose relates only to the non-compliant digital television receivers shipped in interstate commerce within the statute of limitations.

9. Under Section 503(b)(2)(D) of the Act,²¹ we may assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. In exercising such authority, we are required to take into account "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."²²

10. The Commission's *Forfeiture Policy Statement*²³ and Section 1.80 of the Rules do not establish a specific base forfeiture for violation of the DTV V-Chip technology requirements. The Commission has substantial discretion, however, in proposing forfeitures.²⁴ We may apply the base forfeiture amounts described in the *Forfeiture Policy Statement* and our rules, or we may depart from them altogether as the circumstances demand.

¹⁹ See 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28 ¶ 22 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006) ("*Globcom*"); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 ¶ 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 ¶ 6 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 ¶ 3 (1967) *recon. denied*, 11 FCC 2d 193, 195 ¶ 6 (1967).

²⁰ 47 U.S.C. § 503(b)(6)(B).

²¹ 47 U.S.C. § 503(b)(2)(D). The Commission twice 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, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *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 amounts from \$11,000/\$87,500 to \$11,000/\$97,500).

²² 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²³ See *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, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²⁴ See, e.g., *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, 22 FCC Rcd 8689, 8699 ¶ 24 (2007); *Globcom*, 21 FCC Rcd at 4723-24 ¶ 34. We may use the base forfeiture amounts described in the *Forfeiture Policy Statement* and our rules, or we may depart from them altogether if the circumstances demand it. See 47 C.F.R. § 1.80(b)(4) ("The Commission and its staff *may* use these guidelines in particular cases [, and] *retain the discretion* to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.") (emphasis added).

11. The DTV V-Chip technology requirements promote the compelling government interest of providing parents with the capability of blocking the display of violent, sexual, or other programming they believe is harmful to their children.²⁵ We conclude that cases involving the failure to include any sort of V-Chip blocking technology are more egregious, in general, than many other types of equipment marketing cases that come before us.²⁶ In such cases, therefore, we conclude that applying a proposed forfeiture on a per model basis, as we have in other more routine equipment marketing cases, would result in forfeiture amounts that are not commensurate with the seriousness of the violation.²⁷

12. In the *Regent NAL* and the *Syntax-Brilliant NAL*, we determined that, in cases involving the interstate shipping or importation of television receivers that did not comply with the DTV tuner requirements, we will propose a forfeiture based on each unit shipped or imported within the statute of limitations, regardless of the number of models shipped or imported.²⁸ This approach, we noted, “gets to the root of the apparent violation – non-compliant televisions in the hands of American consumers.”²⁹ Furthermore, to reflect the increasing seriousness of the violation as the number of non-compliant units shipped or imported rises, we concluded that we will propose forfeitures on a tier-by-tier basis, applying an escalating per-unit forfeiture amount separately to each successive tier.³⁰

13. In *Syntax Brilliant* and *Regent*, we applied the following tiers and per-unit penalties for violation of our DTV tuner requirements:

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 unit³¹

14. We propose a similar approach for violations of our DTV V-Chip technology requirements involving the interstate shipment of receivers that are incapable of receiving program rating

²⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996). See also *Fox Television Stations, Inc. v. Federal Communications Commission*, 489 F.3d 444, 466 (2d Cir. 2007) (“[B]locking technologies such as the V-chip have empowered viewers to make their own choices about what they do, and do not, want to see on television.”).

²⁶ *Syntax-Brilliant Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10530 (2007), response pending (“*Syntax-Brilliant NAL*”); *Regent U.S.A., Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520 (2007) (forfeiture paid) (“*Regent NAL*”).

²⁷ *Syntax-Brilliant NAL*, 22 FCC Rcd 10530, at 10535-36 ¶¶ 13-15 (concluding that applying a proposed forfeiture on a per-model basis for shipment of television receivers that were not compliant with the DTV tuner mandate would result in forfeiture amounts incommensurate with the seriousness of the violations); *Regent NAL*, 22 FCC Rcd 10520, at 10525-26 ¶¶ 13-15 (same).

²⁸ *Id.*

²⁹ *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535 ¶ 14; *Regent NAL*, 22 FCC Rcd at 10525 ¶ 14.

³⁰ *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535-36 ¶ 15; *Regent NAL*, 22 FCC Rcd at 10525-26 ¶ 15.

³¹ *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535 ¶ 15; *Regent NAL*, 22 FCC Rcd at 10525 ¶ 15.

descriptors and blocking programs from viewing when the program rating meets pre-determined user requirements. We recognize, however, that television receiving devices without digital tuners lack the ability to receive digital television broadcast signals altogether, whereas devices without V-Chip functionality deprive consumers of the important capability to block unwanted programming but may still receive digital television signals. Accordingly, in this and similar cases we will impose a lower per unit forfeiture for each tier than in our DTV tuner cases. Therefore, we establish the following tiers and per-unit penalties for violations of the requirement that digital television receivers be capable of receiving program rating descriptors transmitted pursuant to industry standard EIA/CEA-766-A:

1-1000 units: \$12.50 per unit
1001-2500 units: \$18.75 per unit
2501-5000 units: \$25 per unit
5001-10,000 units: \$31.25 per unit
10,001-20,000 units: \$37.50 per unit
20,001-30,000 units: \$43.75 per unit
30,001-40,000 units: \$50 per unit
40,001-50,000 units: \$56.25 per unit
50,001+ units: \$62.50 per unit.

We find that calculating forfeitures for the failure to include basic DTV V-Chip functionality using this per-unit, tiered approach is reasonable because it results in forfeiture amounts that reflect the egregiousness of the violations and will deter future misconduct.

15. Due to Funai's confidentiality request, we will not specify in the *NAL* the precise number of non-compliant units that Funai shipped interstate in apparent violation of our rules. Based on the record in this case, however, Funai's violations merit a large proposed forfeiture. The regulatory requirements at issue have been in place in some form since 1998. The Commission announced specific technical standards to implement V-Chip functionality in digital television receivers in 2004 and gave manufacturers 18 months, consistent with the industry's design cycle for a television receiver model, to comply.³² For more than 16 months after the March 1, 2006 deadline, however, Funai continued to ship in interstate commerce large numbers of digital television receivers that did not comply with the V-Chip technology requirements. These unlawful shipments were substantial both in terms of the number of non-compliant models and the total number of non-compliant units. For these reasons, and based on the tiered, per unit approach described above, we propose a forfeiture of \$7,745,687³³ for Funai's willful and repeated interstate shipment of television receivers that do not comply with the DTV V-Chip technology requirements in violation of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Funai Corporation Inc. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven million, seven hundred forty-five thousand, six hundred eighty-seven dollars (\$7,745,687) for willful and repeated violations of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules.

³² *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18348-49 ¶159.

³³ For simplicity's sake, we have rounded the proposed forfeiture amount to the nearest dollar.

17. **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, Funai Corporation Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

19. 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.

20. 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.

21. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴

22. **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. Yoshikazu Uemura, Executive Vice President, Funai Corporation Inc., 201 Route 17 North, Suite 903, Rutherford, NJ 07070.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ See 47 C.F.R. § 1.1914.