

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

)	
)	
In the Matter of)	File No. EB-07-SE-257
)	NAL/Acct. No. 200832100038
Polaroid Corporation)	FRN No. 0004902185

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 9, 2008

Released: April 10, 2008

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Polaroid Corporation (“Polaroid”) apparently liable for a forfeiture in the amount of seven hundred seventy five thousand dollars (\$775,000) for its willful and repeated violations of Section 330(c) of the Communications Act of 1934, as amended, (“Act”),¹ and Section 15.120(d)(2) of the Commission’s Rules (“Rules”).² The apparent violations involve Polaroid’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 respond to changes in the content advisory rating system.

II. BACKGROUND

2. Sections 303(x) and 330(c) of the Act were added by the Telecommunications Act of 1996.³ Section 303(x) directs the Commission to prescribe rules that require that television receivers with picture screens 13 inches or greater shipped in interstate commerce or manufactured in the United States to 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 (“DTV”) television receivers in 1998.⁴ In 2004, the Commission adopted specific technical standards to implement V-Chip functionality for DTV receivers (“V-Chip technology requirement”).⁵ The DTV V-Chip technology requirements provide that, effective March 15, 2006, digital television receivers with picture screens 13 inches or greater that are shipped in interstate

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*, Report and Order, 13 FCC Rcd 11248 (1998) (“*V-Chip Report and Order*”).

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.”).

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 Polaroid was shipping in interstate commerce digital television receivers that did not include the required V-Chip technology. On August 6, 2007, the Bureau issued a letter of inquiry (“LOI”) to Polaroid.¹² Polaroid filed a response to the LOI on October 9, 2007.¹³ Polaroid requested confidentiality of its LOI Response and that request remains pending.¹⁴ Accordingly, Polaroid’s LOI Response is discussed in an Appendix hereto, and we are treating the Appendix as confidential at this time.

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 Polaroid Corporation, Telecom Department (August 6, 2007) (“LOI”).

¹³ See Letter from William M. Boyd, Senior Vice President and General Counsel, Polaroid Corporation, to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (September 19, 2007) (“LOI Response”); Letter from Scott W. Hardy, Executive Vice President, Technology and Management, Polaroid Corporation, to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (December 19, 2007) (“Supplemental Response”).

¹⁴ *Id.*

III. DISCUSSION

A. Polaroid 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. As noted above, under Section 330(c) of the Act and Section 15.120(d)(2) of our rules, digital television receivers that are shipped in interstate commerce and/or manufactured in the United States¹⁵ shall be “able to respond to changes in the content advisory rating system.”¹⁶ Based on our review of Polaroid’s LOI Response and Supplemental Response, we find that the company apparently willfully and repeatedly shipped in interstate commerce digital television receivers that did not comply with this requirement. Polaroid does not dispute this finding.

B. Proposed Forfeiture

6. Based on the analysis set forth below, we conclude that Polaroid is apparently liable for a forfeiture in the amount of \$775,000 for willfully and repeatedly shipping in interstate commerce television receivers that do not comply with the DTV V-Chip technology requirements because they lack the ability to adapt to new rating systems 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.¹⁷ 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.¹⁸ 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.¹⁹ We conclude under this standard that, as explained more fully in the Appendix, Polaroid 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. Under Section 503(b)(2)(D) of the Act,²⁰ 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,

¹⁵ See 47 U.S.C. § 303(c)(1); 47 C.F.R. § 15.120(b).

¹⁶ 47 C.F.R. § 15.120(d)(2).

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

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

¹⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

²⁰ 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).

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.”²¹

9. The Commission’s *Forfeiture Policy Statement*²² 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.²³ 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.²⁴

10. We recently issued Notices of Apparent Liability for Forfeiture proposing forfeitures against two manufacturers for importing and shipping interstate television receivers that did not comply with the Commission’s DTV tuner requirement, reasoning that such a failure is more egregious, in general, than many other types of equipment marketing cases that come before us.²⁵ In those cases, we found 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, and thus, we proposed a forfeiture based on each noncompliant unit shipped or imported.²⁶ We proposed 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 descriptors and blocking programs from viewing when the program rating meets pre-determined user requirements.²⁷ We imposed a lower per unit forfeiture in the *Funai NAL*, however, because we recognized that television receiving devices without digital tuners, which were at issue in the *Syntax-Brillain* and *Regent NALs*, lack the ability to receive digital television broadcast signals altogether,

²¹ 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.

²² 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*”).

²³ 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.

²⁴ 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).

²⁵ *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*”). 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. See 47 C.F.R. § 15.117(i)(1)(i).

²⁶ *Syntax-Brilliant NAL*, 22 FCC Rcd 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 at 10525-26 ¶¶ 13-15 (same). To reflect the increasing seriousness of the violation as the number of non-compliant units shipped or imported rises, we assessed forfeiture amounts on a tier-by-tier basis, increasing the forfeiture amount as the number of units shipped or imported increased. See e.g., *Syntax-Brilliant NAL*, 22 FCC Rcd 10535-36 ¶ 15 (Tiers and per-unit forfeiture amounts were: 0-1000 units: \$50 per unit, 1001-2500 units: \$75 per unit, 2501-5000 units: \$100 per unit, 5001-10000 units: \$125 per unit, 10001-20000 units: \$150 per unit, 20001-30000 units: \$175 per unit, 30001-40000 units: \$200 per unit, 40001-50000: \$225 per unit, and 50001+ units: \$250 per unit.).

²⁷ *Funai Corporation, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19663, 19667-8 ¶ 14 (2007), *response pending* (“*Funai NAL*”).

whereas devices without V-Chip functionality deprive consumers of the important capability to block unwanted programming but may still receive digital television signals.²⁸

11. Considering these precedents, we conclude that violations of the requirement to ensure that digital television receivers have the capability to respond to changes in the content advisory rating system, while serious, are not as egregious as violations of the DTV tuner requirement or violations involving the failure to provide any V-Chip blocking capability. Significantly, television receivers that do not include digital tuners or do not include any V-Chip technology both deprive consumers of a key functionality altogether. By contrast, digital television receivers that lack the ability to adapt to a new rating system are still able to receive the existing program rating descriptors and block unwanted programming. Therefore, although each time a digital television receiver that lacks the ability to adapt to a new rating system is shipped interstate constitutes a separate violation subject to forfeiture, we find that such an approach would be excessively punitive, given the nature of these violations. Therefore, we will follow a per-model approach to the forfeiture calculation for cases involving the interstate shipment of receivers that do not have the capability to respond to changes in the rating system.

12. 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.²⁹ Section 503(b)(6) does not, however, bar the Commission from assessing whether Polaroid's conduct prior to that time period apparently violated the rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.³⁰ Thus, while we may consider that Polaroid's prior conduct violated the rules, the forfeiture amount we propose herein relates to Polaroid's apparent violations that have occurred within the past year.

13. As noted above, in this case we may propose 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 view of the important public policy considerations underlying this requirement, we conclude that, generally, the appropriate per model forfeiture amount in such cases will be \$25,000.³¹ We find that calculating forfeitures for the failure to include the capability to respond to changes in the rating system using this per model approach will result in forfeiture amounts that reflect

²⁸ *Id.* (Tiers and per-unit forfeiture amounts were: 0-1000 units: \$12.50 per unit, 1001-2500 units: \$18.75 per unit, 2501-5000 units: \$25 per unit, 5001-10000 units: \$31.25 per unit, 10001-20000 units: \$37.50 per unit, 20001-30000 units: \$43.75 per unit, 30001-40000 units: \$50 per unit, 40001-50000: \$56.25 per unit, and 50001+ units: \$62.50 per unit.).

²⁹ 47 U.S.C. § 503(b)(6).

³⁰ 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, 21 FCC Rcd 1820, 1827-28 ¶ 22 (2006), *forfeiture ordered*, Forfeiture Order, 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*, Forfeiture Order, 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 (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).

³¹ Because each non-compliant unit shipped interstate is a separate violation, we could impose a far higher forfeiture than \$25,000 for each model. As noted above, however, because of the circumstances of this rule and these violations, we consider \$25,000 per model to be sufficient. We have used this amount in other contexts. Cf. *AboCom Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 7875, 7878-79 ¶ 11 (Enf. Bur. Spectrum Enf. Div. 2006), *forfeiture ordered*, 21 FCC Rcd 13140 (Enf. Bur. Spectrum Enf. Div. 2006), *recon. denied*, 22 FCC Rcd 7448 (Enf. Bur. 2007) (proposing a \$25,000 forfeiture against an equipment manufacturer for marketing one model of radio frequency equipment that did not comply with the terms of its equipment authorization and technical requirements specified in the rules).

the seriousness of the violations and will deter future misconduct. In cases presenting exacerbating factors, or if this enforcement approach proves to be an inadequate deterrent to Polaroid or other entities that ship television receivers in interstate commerce, however, we will not hesitate to revisit this forfeiture calculation approach.

14. Pursuant to Polaroid's confidentiality request, we will not specify in the *NAL* the precise number of non-compliant models that Polaroid shipped interstate in apparent violation of our rules. We will say, however, that based on the record in this case, Polaroid's violations merit a large proposed forfeiture. The regulatory deadlines at issue have been in place in some form since 1998. The Commission announced the application of V-Chip technology requirements for 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 18 months after the March 15, 2006 deadline, however, Polaroid continued to ship in interstate commerce digital television receivers that do not have the ability to respond to changes in the content advisory rating system. 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 per model approach described above, we propose a forfeiture of \$775,000 for Polaroid'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. The interstate shipments on which we are basing this proposed forfeiture all occurred within the past year, i.e., within the applicable one-year statute of limitations period.³³

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Polaroid Corporation is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven hundred seventy five thousand dollars (\$775,000) for willful and repeated violations of Section 330(c) of the Act and Section 15.120(d)(2) of the Rules.

16. **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, Polaroid Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture. 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 with any questions regarding payment procedures. 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.

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

³³ *See supra* paragraph 12.

17. 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.

18. **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 William M. Boyd, Senior Vice President and General Counsel, Polaroid Corporation, 1265 Main Street, Waltham, MA 02451, and to its counsel, David Hilliard, Esq. and John M. Burgett, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary