

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

In the Matter of	)	
	)	File No. EB-07-SE-235
Precor Incorporated	)	NAL/Acct. No. 200832100033
	)	FRN # 0012740635
	)	
	)	

**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 Precor Incorporated (“Precor”) apparently liable for a forfeiture in the amount of \$357,900 for its willful and repeated violations of Section 15.117(i)(1)(iii) of the Commission’s Rules (“Rules”).<sup>1</sup> The apparent violations involve Precor’s importation and interstate shipment after March 1, 2007 of television receivers that do not comply with the Commission’s rules regarding digital television (“DTV”) reception capability.

**II. BACKGROUND**

2. The Commission adopted the DTV reception capability requirement in 2002.<sup>2</sup> The DTV reception requirement, which also is often termed the “DTV tuner requirement,”<sup>3</sup> 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.<sup>4</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 off-the-air television reception of digital signals just as they have provided off-the-air television reception of analog signals.<sup>5</sup>

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

<sup>2</sup> *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, 15996 (2002) (“*DTV Review Second Report and Order*”).

<sup>3</sup> 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 *Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11196 n. 2 (2005) (“*DTV Tuner Report and Order*”).

<sup>4</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 off-the-air television reception. See 47 C.F.R. § 15.117(i)(1)(i).

<sup>5</sup> *Id.* 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. § (continued ...)

3. In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applied the requirement first to receivers with the largest screens and then to progressively smaller screen receivers and other television receiving devices that do not include a viewing screen, *i.e.*, VCRs and DVD players.<sup>6</sup> This phase-in plan was intended to allow increasing economies of scale with production volume to be realized so that DTV tuner costs would be lower when they are required to be included in smaller sets and other television receiving devices.<sup>7</sup> As modified by the Commission in 2005,<sup>8</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>9</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;

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.

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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 ...." See *DTV Review Second Report and Order*, 17 FCC Rcd at 15589-91.

<sup>6</sup> *Id.* at 15998-99.

<sup>7</sup> *Id.*

<sup>8</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*"). The Commission also amended the rules to apply the DTV tuner requirement to new receivers with screen sizes smaller than 13" on this same schedule. *Id.* 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, we inadvertently omitted to delete the exception created by 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 recently corrected Section 15.117(i)(2) by striking the inappropriate language. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07-228 ¶ 190 (rel. Dec. 31, 2007).

<sup>9</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, 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.

4. In July 2007, the Enforcement Bureau received a complaint alleging that Precor, through its Cardio Theater division, was importing and shipping in interstate commerce television receivers that do not comply with the DTV tuner requirements. The Enforcement Bureau issued a letter of inquiry (“LOI”) to Precor on September 12, 2007.<sup>10</sup> On November 9, 2007, Precor filed a response to the LOI.<sup>11</sup> Precor filed supplemental responses on December 10, 2007, December 21, 2007, January 15, 2008, and March 31, 2008.<sup>12</sup>

5. Precor is a manufacturer of commercial and consumer exercise equipment and accessories for the domestic and international market.<sup>13</sup> According to Precor’s LOI Response, the company’s commercial fitness equipment is sold to fitness facilities directly by Precor or by its dealers, with Precor selling roughly 90% of the commercial products directly.<sup>14</sup> In addition to health clubs, Precor’s commercial customers include institutions such as resorts, gyms established by major corporations for their employees, colleges and universities, hospitals and health spas (collectively, “health clubs”).<sup>15</sup> Precor states that it imports and ships interstate television receivers, which it refers to as “personal viewing screen” (“PVS”) units, in connection with, and as an accessory product to, certain of its commercial fitness equipment, including ellipticals, treadmills and adaptive movement products.<sup>16</sup> The PVS units are sold either on an integrated basis, attachable directly to the fitness equipment, or on a standalone basis, with their own Precor-provided stands that are positioned in front of the fitness equipment.<sup>17</sup> Precor asserts that the PVS units are not sold in connection with fitness equipment sold to consumers, nor are the PVS units sold separately to consumers.<sup>18</sup> Precor further asserts that the retail prices for the PVS units exceed \$1,000, well above the prices that consumers would pay at retail outlets for televisions providing similar quality and resolution and the same size viewing screens.<sup>19</sup>

6. Precor explains that Precor-certified technicians install the PVS units in health clubs as part of the company’s integrated closed circuit video entertainment systems provided to health clubs.<sup>20</sup> Health clubs utilize a central cable box or satellite receiver that terminates that cable system feed or satellite feed at the health clubs.<sup>21</sup> Either device is then connected to a Precor-supplied server located on

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<sup>10</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Paul J. Byrne, President, Precor, Inc. (September 12, 2007).

<sup>11</sup> See Letter from C. Douglas Jarrett, Esq. Counsel for Precor, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau (November 9, 2007) (“LOI Response”).

<sup>12</sup> See Letter from C. Douglas Jarrett, Esq. Counsel for Precor, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau (December 10, 2007); Letter from C. Douglas Jarrett, Esq. Counsel for Precor, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau (December 21, 2007); Letter from C. Douglas Jarrett, Esq. Counsel for Precor, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau (January 15, 2008); Letter from C. Douglas Jarrett, Esq. Counsel for Precor, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau (March 31, 2008).

<sup>13</sup> LOI Response at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

the health club's premises, which is attached to a coaxial cable network extending to the PVS units installed or placed directly in front of the commercial fitness equipment throughout the facility.<sup>22</sup> The server, Precor states, allows users to select the channels of their choice on their PVS units during their workouts.<sup>23</sup> Precor also states that it operates its own content distribution network that delivers video content via satellite to health clubs.<sup>24</sup> The server enables users to select at least eight music video streams provided by Precor's satellite network, programming and text messages determined by the health club, and generally available satellite or cable programming.<sup>25</sup>

7. Precor acknowledges that, after March 1, 2007, it imported and shipped interstate units of one model of a 15" PVS unit that contain an analog tuner, but do not contain a digital tuner.<sup>26</sup> Precor further admits that the importation of analog-only reception devices is not permitted under the Commission's rules.<sup>27</sup> Precor maintains, however, that it may legally ship PVS units interstate within the U.S.<sup>28</sup> Precor asserts, in this regard, that in adopting the importation and interstate shipping restrictions, the Commission stated

[c]onsistent with the DTV transition plan that Congress established in Section 309(j) of the Communications Act of 1934, and pursuant to our authority under the ACRA, our objective in establishing a DTV tuner requirement is [to ensure that television receiving equipment] *manufactured or imported* after a specified date be able to receive over the air signals.<sup>29</sup>

Thus, according to Precor, the Commission clearly intends to exercise its jurisdiction by regulating interstate shipping only by U.S. manufacturers of DTV receivers.<sup>30</sup> Precor claims that because it imports the PVS units from overseas and does not manufacture the units in the U.S., it is subject only to the Commission's import restrictions and not to any restrictions on interstate shipments of those imports.<sup>31</sup>

8. Moreover, Precor submits that strict enforcement of the DTV tuner requirement would not support either the purpose or intent of the DTV tuner requirement.<sup>32</sup> In support of this argument, it asserts that the PVS units are not intended for and are not sold to consumers for personal use; that, although technically capable, the units do not, as installed, receive over-the-air broadcast signals; that the PVS units are sold as elements of integrated closed circuit video entertainment systems designed to meet the needs of the health club industry; and the PVS units are priced well above the price of similar television sets that are ubiquitously available in the marketplace.<sup>33</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2, 4.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (quoting *DTV Review Second Report and Order*, 17 FCC Rcd at 15994 (emphasis added)).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

9. Precor requested confidentiality of certain information in its LOI response and supplemental responses, including the specific number of units imported and shipped interstate, and that request remains pending. Accordingly, portions of Precor's LOI response and supplemental responses are discussed in an Appendix hereto, and we are treating the Appendix as confidential at this time.

### III. DISCUSSION

#### A. Failure to Comply with DTV Tuner Requirement

10. We conclude that Precor apparently willfully<sup>34</sup> and repeatedly<sup>35</sup> imported and shipped in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iii) of the Rules. As set forth in detail in the confidential Appendix, Precor admits that, after the March 1, 2007 deadline for small-size screen receivers, it repeatedly imported and shipped interstate non-DTV-compliant small-size screen receivers.

#### B. Proposed Forfeiture

11. 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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> Based on the analysis set forth below, we conclude that Precor is apparently liable for a forfeiture in the amount of \$357,900 for willfully and repeatedly importing and shipping in interstate commerce television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iii) of the Rules.

12. Under Section 503(b)(2)(D) of the Act,<sup>39</sup> 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

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<sup>34</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 both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (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 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>35</sup> 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 Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>36</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>37</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>38</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>39</sup> 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).

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.”<sup>40</sup>

13. The Commission’s *Forfeiture Policy Statement*<sup>41</sup> and Section 1.80 of the Rules do not establish a specific base forfeiture for violation of the DTV tuner requirement. The Commission has substantial discretion, however, in proposing forfeitures.<sup>42</sup> 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.<sup>43</sup>

14. The DTV tuner requirement promotes the important public policy goal of helping to speed the transition to digital television, and we therefore have found violations of this requirement to be more egregious, in general, than many other types of equipment marketing cases that come before us.<sup>44</sup> DTV receivers are a necessary element of digital broadcast television service. Consumers must have the capability to receive DTV signals for the DTV transition to move forward to successful completion.<sup>45</sup> The DTV tuner requirement is intended to protect consumers by ensuring that their TV receivers will provide off-the-air TV reception of digital signals when analog TV operation ceases.<sup>46</sup> Thus, we have concluded 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.<sup>47</sup>

15. 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.<sup>48</sup> This approach, we noted, “gets to

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<sup>40</sup> 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.

<sup>41</sup> 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*”).

<sup>42</sup> See, e.g., *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, 22 FCC Rcd 8689, 8699 (2007); *Globcom, Inc. d/b/a Globom Global Commun.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723-24 (2006).

<sup>43</sup> 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).

<sup>44</sup> *Syntax-Brilliant Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10530, 10535 (2007), *response pending* (“*Syntax-Brilliant NAL*”); *Regent U.S.A., Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10525 (2007) (forfeiture paid) (“*Regent NAL*”).

<sup>45</sup> See *DTV Tuner Report and Order*, 20 FCC Rcd at 11199; *DTV Tuner Second Report and Order*, 20 FCC Rcd at 18608.

<sup>46</sup> See *id.*

<sup>47</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535-36 (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 (same).

<sup>48</sup> *Id.*

the root of the apparent violation – non-compliant televisions in the hands of American consumers.”<sup>49</sup> 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.<sup>50</sup>

16. 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 unit<sup>51</sup>

Consistent with *Syntax-Brilliant* and *Regent*, we will use the tier-by-tier, per-unit methodology articulated in those *NALs* to assess the forfeiture here.

17. We reject Precor’s claim that since it imports the PVS units from overseas and does not manufacture the units in the U.S., it is subject only to the Commission’s import restrictions and not to the interstate shipment restrictions. Section 15.117 makes clear that responsible parties may not ship in interstate commerce *or* import television receivers that do not comply with the DTV tuner requirement.<sup>52</sup> Under Section 2.909 of our rules, the responsible party for purposes of the DTV tuner requirement may be a manufacturer or an importer.<sup>53</sup> However, neither Section 2.909 nor Section 15.117 contains language limiting our authority to enforce the DTV tuner rules such that we may penalize only interstate shipments of non-compliant DTV receivers manufactured in the United States. The language of the *DTV Review Second Report and Order* cited by Precor that describes our overarching objective in enacting the DTV tuner rule cannot be read to impose such a restriction. Therefore, Precor’s interpretation of the DTV tuner rule is excessively narrow and we reject it.<sup>54</sup>

18. Thus, the rule imposes two distinct prohibitions on responsible parties: it prohibits both the importing and interstate shipping of television receivers that do not contain digital tuners. We find, however, that treating the importation and subsequent interstate shipment of the *same* television receiver as two separate violations is not warranted. Given that the DTV tuner rule is meant to ensure that all television receiving devices are equipped with a digital tuner, we conclude that the purpose of the rule will best be served by treating the importation and subsequent interstate shipment of the same receiver as a single violation. In future forfeiture actions taken for violations of the DTV tuner requirement, we will assess the facts of each case in determining how best to enforce the requirements of Section 15.117, under the interpretation articulated here. In this case, there is insufficient information to determine which

<sup>49</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535; *Regent NAL*, 22 FCC Rcd at 10525.

<sup>50</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535-36; *Regent NAL*, 22 FCC Rcd at 10525-26.

<sup>51</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535; *Regent NAL*, 22 FCC Rcd at 10525.

<sup>52</sup> See 47 C.F.R. § 15.117(a).

<sup>53</sup> See 47 C.F.R. § 2.909(b).

<sup>54</sup> See *supra* ¶ 7.

receivers may have been imported by Precor, but not subsequently shipped interstate. Therefore, we will propose a forfeiture only for those non-DTV-compliant units that Precor shipped in interstate commerce after the March 1, 2007 deadline.

19. Finally, we disagree with Precor's argument that strict enforcement of the DTV tuner requirement to the PVS units would not support either the purpose or intent of the DTV tuner requirement. In a closely analogous situation, the Commission rejected a request by the manufacturer of a specialized video system distributed for use in the health care system that we clarify that the DTV tuner requirement does not apply to viewing units included in specialized video systems.<sup>55</sup> In the *PDI Order*, the manufacturer (PDI) argued that the Commission should not consider its viewing units to be television receivers subject to the DTV tuner requirement because the units: (1) received power through the same coaxial cable that provided the video signal to the units; (2) had no place to attach an over-the-air antenna, instead receiving video signals only from a central unit through the specialized coaxial cable; and (3) could be used only as part of a larger video system that was designed and sold exclusively for the health care market.<sup>56</sup> The Commission concluded that the PDI viewing units could be used to receive off-the-air broadcast signals and therefore were television broadcast receivers as defined in Section 15.3(w) of the Rules.<sup>57</sup> The Commission also found no merit in PDI's argument that requiring its viewing units to include digital tuners would not advance the goals of the DTV tuner requirement.<sup>58</sup> Rather, the Commission noted that its objective in adopting the DTV tuner requirement was to maximize the number of television receivers containing a digital tuner in the market, with a final goal that all new television receiver products include a digital tuner as quickly as possible.<sup>59</sup> While the Commission acknowledged that the PDI viewing units differed from most television receivers in that they were designed to receive service from a separate antenna connected through a cable, rather than an attached antenna, this did not alter the fact that the viewing units would not be able to receive off-the-air television signals when analog television service ends unless they include a DTV tuner.<sup>60</sup> The Commission concluded, moreover, that "it would be inconsistent with [the goals underlying the DTV tuner requirement] to establish a process that would provide favorable treatment of requests for waiver of the DTV tuner requirement for TV receivers used in specialized video systems."<sup>61</sup>

20. Notwithstanding Precor's claims that its customers are commercial health clubs that will not use the PVS units to view over-the-air broadcasts, we find that those devices, like the viewing units at issue in the *PDI Order*, are capable of receiving over-the-air broadcast television signals and therefore are

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<sup>55</sup> See *Requirements for Digital Television Receiving Capability*, Order, 21 FCC Rcd 9478, 9479-80 (2006) ("*PDI Order*").

<sup>56</sup> *Id.* at 9479.

<sup>57</sup> *Id.* at 9479-80. 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").

<sup>58</sup> *Id.* at 9480.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* We note that the Commission granted PDI a limited waiver of the DTV tuner requirement to allow it additional time to bring its existing models into compliance, recognizing that the process for meeting the safety requirements for equipment used in medical facilities, coupled with PDI's position as a smaller manufacturer, may pose difficulties for PDI in meeting the March 1, 2007 deadline. *Id.* By contrast, Precor never sought such a waiver, nor does not argue that it encountered particular difficulties in bringing its PVS units into compliance with the DTV tuner requirement by the March 1, 2007 deadline. To the contrary, after the Bureau initiated its investigation, Precor promptly began distributing PVS units with digital tuners.



television broadcast receivers subject to the DTV tuner requirement. In the *Regent NAL*, Regent claimed that it should not be subject to forfeiture because, although its devices were subject to the DTV tuner requirement, most of its customers were commercial or educational organizations that used the devices as monitors, rather than television receivers, and the company did not emphasize the devices' analog tuner capabilities in its marketing efforts. In rejecting these arguments, we noted that the DTV tuner requirement does not exclude television receivers used as monitors and, notwithstanding Regent's claims about its customer base and its marketing efforts, it was likely that Regent's devices would be used as television receivers at some point.<sup>62</sup> Similarly, no exception to the DTV tuner requirement exists for units like those at issue here. As we noted in the *Regent NAL*, we will not assume that owners of these devices will never attempt to use them to receive over-the-air broadcasts, nor will we accept Precor's marketing strategy as a mitigating factor. In any event, our research found a thriving consumer market for used commercial-quality exercise equipment, including Precor's PVS units.<sup>63</sup> Thus, it is probable that some of these products will find their way to consumers, who may be unaware that Precor's PVS units will not receive over the air digital broadcasts. Therefore, for all the reasons stated above, we reject Precor's arguments and find that a significant forfeiture is appropriate here.

21. Due to Precor's confidentiality request, we will not specify in this *NAL* the precise number of non-compliant units that Precor shipped interstate in apparent violation of our rules. Based on the record in this case, however, Precor's violations merit a large proposed forfeiture. The regulatory deadlines at issue have been in place for some time – manufacturers and importers have known about the DTV tuner requirement since 2002. Precor nevertheless continued to ship interstate small-size screen receivers that do not comply with the DTV tuner requirement until September 18, 2007, more than six months after the March 1, 2007 deadline. These unlawful interstate shipments were substantial in terms of the number non-DTV compliant units. For these reasons, and based on the tiered, per unit approach described above, we propose a forfeiture of \$357,900 for Precor's willful and repeated interstate shipment of television receivers that do not comply with the DTV tuner requirement in violation of Section 15.117(i)(1)(iii) of the Rules.

### III. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Precor Incorporated is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three hundred fifty-seven thousand, nine hundred dollars (\$357,900) for willful and repeated violations of Section 15.117(i)(1)(iii).

23. **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, Precor Incorporated **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>62</sup> *Regent NAL*, 22 FCC Rcd at 10526. Indeed, we noted that Regent's devices were sold to consumers by retailers like Costco and Best Buy. *Regent NAL*, 22 FCC Rcd at 10526.

<sup>63</sup> Although Precor claims that its new PVS units are sold exclusively to commercial users rather than consumers, we found several used units and related equipment available for sale online to individuals. *See, e.g.*, [http://www.globalfitness.com/detail\\_elliptical\\_training\\_machine.asp?id=357](http://www.globalfitness.com/detail_elliptical_training_machine.asp?id=357) (offering a "remanufactured" Precor treadmill and 17" "flat screen tv"); [http://www.usedgynequipment.com/precor/precor\\_966i.htm](http://www.usedgynequipment.com/precor/precor_966i.htm) (offering a used treadmill with PVS unit); <http://sporting-goods.pricegrabber.com/treadmills/m/44277469/> (showing four merchants selling used treadmills with PVS units); [http://www.treadmillsrus.com/component/page/shop/product\\_details/flypage.shop.flypage/product\\_id,21/category\\_id,14/manufacture\\_id,0/option.com\\_virtuemart/Itemid,1/vmcchk,1/](http://www.treadmillsrus.com/component/page/shop/product_details/flypage.shop.flypage/product_id,21/category_id,14/manufacture_id,0/option.com_virtuemart/Itemid,1/vmcchk,1/) (offering a used 12" PVS unit).

24. 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.

25. 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.

26. 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.

27. **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 counsel for Precor Incorporated, C. Douglas Jarrett, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary