

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

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

ORDER

Adopted: July 3, 2008

Released: July 10, 2008

By the Commission:

1. In this Order, we adopt the attached Consent Decree entered into between the Federal Communications Commission ("Commission") and Funai Corporation, Inc. ("Funai"). The Consent Decree terminates an investigation and Notice of Apparent Liability for Forfeiture ("NAL")¹ by the Commission against Funai for possible violations of Section 330(c) of the Communications Act of 1934, as amended, ("Act"),² Section 15.120(d)(2) of the Commission's Rules ("Rules"),³ regarding Funai's apparent interstate shipment, after March 15, 2006, of digital television receivers that do not comply with the Commission's rules regarding program blocking technology requirements for televisions receivers, and Section 1.17 of the Rules⁴ regarding Funai's apparent inaccurate statements to the Commission.

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

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

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

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

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

¹ Funai Corporation, Inc., Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19663 (2007), response received ("NAL").

² 47 U.S.C. § 330(c).

³ 47 C.F.R. § 15.120(d)(2).

⁴ 47 C.F.R. § 1.17.

⁵ 47 U.S.C. § 154(i), 503(b).

7. **IT IS FURTHER ORDERED** that Funai shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, 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 Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Funai will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

8. **IT IS FURTHER ORDERED** that Funai will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and two years after the Effective Date, as set forth in the attached Consent Decree. Each report shall include a compliance certificate from an officer, as an agent of Funai, stating that the officer has personal knowledge that Funai has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer’s compliance certification. All reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. Yoshikazu Uemura, Executive Vice President, Funai Corporation Inc., 201 Route 17 North, Suite 903, Rutherford, NJ 07070 and to its counsel, Cheryl A. Tritt, Esq., Morrison & Foerster LLP, 2000 Pennsylvania Ave., NW, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**Before the
Federal Communications Commission
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)	
)	Acct. No. 200832100005
Funai Corporation, Inc.)	
)	FRN No. 0017000423

CONSENT DECREE

The Federal Communications Commission ("Commission" or "FCC") and Funai Corporation, Inc. ("Funai" or the "Company"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Commission's investigation into whether Funai violated 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 regarding the interstate shipment, after March 15, 2006, of digital television receivers that do not comply with the program blocking technology requirements (known as "V-Chip technology requirements"), and whether Funai violated Section 1.17 of the Rules³ regarding its apparent incorrect responses to Commission inquiries.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (c) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) "Compliance Plan" means the program described in this Consent Decree at paragraph 11.
 - (e) "Digital Television Receivers" or "DTV Receivers" means (i) digital television broadcast receivers with display screens in the 4:3 aspect ratio measuring 13 inches or larger diagonally, (ii) digital television broadcast receivers with display screens in the 16:9 aspect ratio measuring 7.8 inches or larger vertically, and (iii) digital television broadcast receivers sold without an accompanying display device, such as Digital Video Recorders ("DVR").
 - (f) "Effective Date" means the date on which the Commission releases the Adopting Order.

¹ 47 U.S.C. § 330(c).

² 47 C.F.R. § 15.120(d)(2).

³ 47 C.F.R. § 1.17.

- (g) "Funai Models" means the television models supplied or manufactured by Funai that formed the basis for the Investigation.
- (h) "Investigation" means the investigation commenced by the Bureau's August 7, 2007 Letter of Inquiry ("First LOI")⁴ regarding whether Funai violated Section 330(c) of the Act,⁵ and Section 15.120(d)(2) of the Rules,⁶ by shipping interstate, after March 15, 2006, digital television receivers that do not comply with the DTV V-Chip technology requirement,⁷ and the investigation commenced by the Bureau's December 27, 2007 Letter of Inquiry ("Second LOI")⁸ regarding whether Funai violated Section 1.17 of the Rules by responding incorrectly to the First LOI.⁹
- (i) "Funai" means Funai Corporation, Inc. and its predecessors-in-interest and successors-in-interest.
- (j) "NAL" or "Notice of Apparent Liability for Forfeiture" means *Funai Corporation, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19663 (2007).
- (k) "Order" or "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (l) "Parties" means Funai and the Commission.
- (m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Section 303(x) of the Act directs the Commission to prescribe rules that require 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.¹⁰ Section 330(c) of the Act 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).¹¹ The Commission adopted program blocking capability requirements for both analog and digital television ("DTV") receivers in 1998.¹² In 2004, the Commission adopted specific technical standards to implement V-Chip functionality for DTV receivers

⁴ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Funai Corporation, Inc. (August 7, 2007) ("First LOI").

⁵ 47 U.S.C. § 330(c).

⁶ 47 C.F.R. § 15.120(d)(2).

⁷ 47 C.F.R. 15.120(d)(2).

⁸ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Funai Corporation, Inc. (December 27, 2007) ("Second LOI").

⁹ 47 C.F.R. § 1.17.

¹⁰ 47 U.S.C. § 303(x).

¹¹ 47 U.S.C. § 330(c).

¹² *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 technology requirements").¹³ 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 commerce must be equipped with V-Chip technology to allow blocking of the display of programming based on its content and be able to respond to changes in the content advisory rating system.¹⁴

3. The Bureau released a Letter of Inquiry on August 7, 2007 ("First LOI"), regarding Funai's apparent interstate shipment, after March 15, 2006, of certain digital television receivers that did not comply with the Commission's DTV V-Chip technology requirements.¹⁵ Question 2 of the First LOI asked: "State whether the receivers listed above are capable of receiving program rating descriptors transmitted pursuant to industry standard EIA/CEA-766-A and are capable of blocking programs from viewing when the program rating meets pre-determined user requirements."¹⁶ In its response to the First LOI ("First LOI Response"),¹⁷ Funai's one-word answer to Question 2 was "No." Question 3 of the First LOI asked the separate question of whether the Funai Models are "able to process newer RRT versions contained in PSIP or use new RRT codes to permit program blocking based on a new rating system." Funai also answered "No" to Question 3 in its First LOI Response.

4. On November 1, 2007, the Commission issued a Notice of Apparent Liability for Forfeiture ("NAL")¹⁸ proposing that Funai be held liable for a forfeiture of \$7,745,687 under Section 503(b)(1)(B) of the Act, and ordered the Company either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled. This forfeiture amount was consistent with the Commission's understanding, based on the answers described in paragraph 3 above, that the Funai Models did not comply with any part of Section 15.120(d)(2).¹⁹

5. In its December 3, 2007 Response to the NAL ("NAL Response"),²⁰ Funai stated that its First LOI Response was incorrect in certain respects and that the Funai Models are capable of receiving program rating descriptors transmitted pursuant to industry standard EIA/CEA-766-A and blocking programs from viewing when the program rating meets pre-determined user requirements, as required by Section 15.120(d)(2) of the Rules.²¹ Funai indicated, however, that the Funai Models are not capable of responding to changes in the content advisory rating system.²²

¹³ *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). The V-Chip technology requirements also apply to devices sold without an accompanying display device. *Id.* at 18348.

¹⁴ 47 C.F.R. § 15.120(d)(2).

¹⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Funai Corporation, Inc. (August 7, 2007) ("First LOI"); see also 47 C.F.R. § 15.120(d)(2).

¹⁶ First LOI at 2.

¹⁷ See Letter from Yoshikazu Uemura, Executive Vice President, Funai Corporation to Brett Greenwalt, Spectrum Enforcement Division, Enforcement Bureau (September 7, 2007) ("First LOI Response").

¹⁸ *Funai Corporation, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19663 (2007), *response pending* ("NAL").

¹⁹ See NAL, 22 FCC Rcd at 19665.

²⁰ See Response of Funai Corporation, Inc. to Notice of Apparent Liability (December 3, 2007) ("NAL Response").

²¹ NAL Response at 8.

²² *Id.* at 9-10.

6. On December 27, 2007, the Bureau issued a Second LOI²³ seeking, among other things, a detailed explanation for Funai's apparently providing material factual information that was incorrect in its First LOI Response. In response, Funai explained that its statement in the First LOI Response that the Funai Models were incapable of receiving and responding to any program rating descriptors was based on an overly literal interpretation of the question and its confusion on how to respond accurately.²⁴

III. TERMS OF AGREEMENT

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

8. **Jurisdiction.** Funai agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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

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

11. **Compliance Plan.** For purposes of settling the matters set forth herein, Funai agrees to create within 30 days a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **FCC Compliance Procedures.** Funai shall develop, implement, and update as necessary, with the assistance of outside regulatory counsel, appropriate FCC Compliance Procedures. Relevant Funai personnel shall be made aware of the FCC Compliance Procedures and are to follow them. The FCC Compliance Procedures will, among other things, address Section 15.120 of the Commission's Rules. The FCC Compliance Procedures also will set forth a protocol to ensure that knowledgeable persons at Funai review and verify all information provided in all

²³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Funai Corporation, Inc. (December 27, 2007) ("Second LOI").

²⁴ See Letter from Cheryl A. Tritt, Esq. Counsel for Funai Corporation, Inc. to Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau at 3 (January 23, 2008) ("Second LOI Response").

communications with the Commission to ensure that those responses are correct, complete, and not misleading.

- (b) **Compliance Committee.** Funai will assemble and staff an FCC Compliance Committee (the "Committee") chaired by the Officer of Product Reliability at Funai Electric Company, Ltd. ("Funai Electric"). The Committee, which may be organized into subcommittees, will include representatives from Funai and Funai Electric, including staff from the Product Reliability, TV Engineering, TV Project, DVD Engineering, DVD Project, Development, TV Business Assistance, Business Strategy, Marketing, Product Planning and the Legal & Intellectual Property Departments. The Committee will meet on a monthly basis to discuss compliance with FCC regulations and will communicate in a timely fashion among the members any new technical requirements that might be imposed by the FCC. The Committee will retain an outside technical consultant that will be responsible for monitoring the FCC's and other relevant U.S. web sites and routinely updating the Committee.
- (c) **FCC Compliance Chairman.** Funai shall designate an FCC Compliance Chairman ("FCC Compliance Chairman") who will administer the Compliance Plan, oversee Funai's regulatory compliance and serve as the Funai point of contact for all Commission-related compliance matters. The FCC Compliance Chairman, working with the Legal & Intellectual Property Department and outside regulatory counsel, also will be responsible for assuring that information provided to the FCC by Funai is correct and accurate.
- (d) **Employee Training.** Funai will train and provide materials concerning the V-Chip technology requirements set forth at Section 15.120(d)(2) of the Commission's Rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the design, development, testing, marketing, and distribution of Funai products equipped with digital television receivers. Specifically, Funai will, within 120 days of the Effective Date of the Consent Decree, conduct a training program regarding compliance with the V-Chip technology requirements and the Consent Decree. New employees who are involved directly or indirectly in the design, development, testing, marketing, and distribution of Funai products equipped with digital television receivers will be trained within 120 days of being hired. Existing employees who are reassigned to jobs with such responsibilities will be trained within 120 days of reassignment. All employees who are involved directly or indirectly in the design, development, testing, marketing, and distribution of Funai products equipped with digital television receivers will receive "refresher" training annually.
- (e) **Remedial Equipment Measures.** Funai agrees to prepare a software upgrade (the "Upgrade") for any Funai Model in inventory as of the Effective Date of the Consent Decree that is shipped interstate in the United States. The Upgrade will update Funai digital television receivers to allow them to respond to changes in the content advisory rating system.

Funai agrees that for individual units of any of the Funai Models sold to customers in the United States, Funai will provide remedial measures for a period of two years after the Effective Date of the Consent Decree. Funai will post a link to a notice in a prominent position on its main website, www.funai.us (the "Customer Notice"). The Customer Notice will identify the Funai Models for which a remedial measure is available, will explain the preinstalled V-Chip capabilities already available in them,

and will announce the availability of modifications to enhance current V-Chips. The Customer Notice will provide a toll-free telephone number or numbers for consumers to call to learn about the options with respect to modifications to enable the full V-Chip technology functionality. Software for some televisions will be upgraded at Funai facilities. Consumers may either bring the set to an authorized Funai service center in person or may ship the set. The locations of authorized service centers are provided via Funai's website, www.funai.us. Depending on the television set and other equipment that a consumer uses, for a period of 90 days from the Effective Date, on request from a consumer, Funai will provide additional hardware without charge to the customer to enable the enhanced V-Chip functions. After 90 days from the Effective Date, on request from a consumer, Funai will provide such hardware at cost, plus actual shipping and handling charges, for a period of two years from the Effective Date.

- (f) **Review and Monitoring.** Funai will review the Compliance Plan annually, with assistance from outside regulatory legal counsel, to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.
- (g) **Compliance Reports.** Funai will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and two years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Funai, stating that the officer has personal knowledge that Funai has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (h) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire two years from the Effective Date of the Adopting Order.

12. **Voluntary Contribution.** Funai agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$335,000. The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. 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 Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Funai will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

13. **Waivers.** Funai waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Funai shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the

Adopting Order, neither Funai nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Funai shall waive any statutory right to a trial *de novo*. Funai hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

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

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

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Funai does not admit or deny noncompliance, violation or liability for violating the Act or Rules in connection with the matters that are the subject of this Consent Decree.

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

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

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

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

Marlene H. Dortch
Secretary
Federal Communications Commission

Date

Yoshikazu Uemura
President
Funai Corporation, Inc.

Date