

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

In the Matter of	)	
	)	File No. EB-08-SE-100
Invision Industries, Inc.	)	NAL/Acct. No. 200832100068
	)	FRN # 0018034611
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: August 14, 2008**

**Released: August 18, 2008**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Invision Industries, Inc. (“Invision”) apparently liable for a forfeiture in the amount of \$324,000 for its willful and repeated violation of Section 15.117(i)(1)(iii) of the Commission’s Rules (“Rules”).<sup>1</sup> These apparent violations involve Invision’s importation and interstate shipment, after January 30, 2008, of television receivers<sup>2</sup> that do not comply with the Commission’s rules regarding digital television (“DTV”) reception capability. Additionally, we find Invision apparently liable for a forfeiture in the amount of \$4,000 for providing to the Commission, during the course of its investigation, material factual information that is incorrect without a reasonable basis for believing the material factual information was correct, in willful violation of Section 1.17(a)(2) of the Rules.<sup>3</sup> In light of evidence that the company has continued to import and ship interstate television receivers in violation of our rules, we further order Invision to submit a report within 10 days of release of this *NAL* certifying that it has ceased all such unlawful conduct.

**II. BACKGROUND**

2. The Commission adopted the DTV reception capability requirement in 2002.<sup>4</sup> The DTV reception requirement, which also is often termed the “DTV tuner requirement,”<sup>5</sup> requires that all new television broadcast receivers that are imported into the United States or shipped in interstate commerce

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

<sup>2</sup> 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>3</sup> 47 C.F.R. § 1.17(a)(2).

<sup>4</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 (2002) (“*DTV Review Second Report and Order*”).

<sup>5</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*”).

be capable of receiving over-the-air the signals of DTV broadcast stations.<sup>6</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 over-the-air television reception of digital signals just as they have provided over-the-air television reception of analog signals.<sup>7</sup>

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, such as VCRs and DVD players.<sup>8</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>9</sup> As modified by the Commission in 2005,<sup>10</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>11</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

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<sup>6</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 over-the-air television reception. See 47 C.F.R. § 15.117(i)(1)(iv).

<sup>7</sup> *DTV Review Second Report and Order*, 17 FCC Rcd 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. § 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>8</sup> *Id.* at 15998-99.

<sup>9</sup> *Id.*

<sup>10</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*”).

<sup>11</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(b), 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.

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.

4. The Commission's 2005 *DTV Tuner Second Report and Order* also amended the rules to apply the DTV tuner requirement to new receivers with screen sizes smaller than 13" on this same schedule (*i.e.*, March 1, 2007).<sup>12</sup> 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, the Commission inadvertently failed to delete the exception in 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 subsequently corrected Section 15.117(i)(2) by striking the inappropriate language,<sup>13</sup> and the DTV tuner requirements for receivers with screen sizes smaller than 13" became effective on January 30, 2008.<sup>14</sup>

5. Invision is a retailer headquartered in Kissimmee, Florida that sells rear seat entertainment accessories to the automotive industry. Among the devices marketed by the company are monitors and television broadcast receivers with screen sizes less than 13" measured diagonally. A consumer wishing to purchase equipment marketed by Invision can do so only by placing an order through an automotive dealership. Invision imports the devices from a foreign manufacturer and ships them to automotive dealers. The equipment is then integrated into the vehicle by the dealer.

6. In February 2008, Enforcement Bureau ("Bureau") staff visited the Invision web site and observed that Invision was marketing television broadcast receivers that apparently did not comply with the DTV tuner requirements. Specifically, the Bureau observed the following models displayed on Invision's web site: (1) Revolution III (7" screen); (2) Revolution II (7" screen); (3) Revolution IIG (7" screen); (4) SL (7" or 8" screen); (5) G10 (10.2" screen); (6) G9 (9" screen); and (7) Camry Center Console (7" screen). The Bureau issued a letter of inquiry ("LOI") to Invision on March 4, 2008 regarding the importation and interstate shipment of these devices.<sup>15</sup> Invision filed a response to the LOI on April 18, 2008,<sup>16</sup> and in response to staff's request for clarification, an Amended Response on May 12, 2008.<sup>17</sup>

7. In its LOI Response, Invision stated that two of its models -- G10 and G9 -- contained a "built-in TV tuner" but did not state whether these models were equipped with DTV tuners.<sup>18</sup> The LOI

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<sup>12</sup> *DTV Tuner Second Report and Order*, 20 FCC Rcd at 18614-16.

<sup>13</sup> See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 23 FCC Rcd 2994, 3081 (2007).

<sup>14</sup> See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Final Rule, 73 Fed. Reg. 5634 (Jan. 30, 2008).

<sup>15</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Vitito, Director, Invision, Inc. (March 4, 2008) ("LOI").

<sup>16</sup> See Letter from Heather McLeod, Vice President of Marketing, Invision Industries, to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 18, 2008) ("LOI Response").

<sup>17</sup> See Heather McLeod, Vice President of Marketing, Invision Industries, to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 12, 2008) ("Amended Response").

<sup>18</sup> LOI Response at 1. Invision stated that the other five models did not include television tuners. *Id.*

Response further stated that for these models, since January 30, 2008, twelve units had been shipped interstate and zero units had been imported.<sup>19</sup>

8. After the Bureau contacted Invision for clarification on another issue in its LOI response, Invision clarified, in its Amended Response, that the G10 and G9 models were not equipped with DTV tuners and provided further information concerning two additional models -- the G8 (10.2" screen) and the G7 (10.4" screen) -- that contained television receivers that were not equipped with DTV tuners.<sup>20</sup> Invision stated that 4,115 units of the G10 and G9 units and 0 units of the G8 and G7 models were manufactured by its foreign manufacturer between January 2008 and April 30, 2008.<sup>21</sup> Invision further stated that it imported a total of 4,115 units and that it shipped interstate 2,968 units of the four subject models between January 30, 2008 and April 30, 2008.<sup>22</sup>

9. Invision asserted its belief that the non-DTV-compliant television receivers may lawfully be imported and shipped because the devices are "parts" specifically designed for use in the automotive industry.<sup>23</sup> Invision further submitted that the television reception capability of the devices is an option "that is, rarely, if ever utilized for its intended purpose."<sup>24</sup> Thus, it is Invision's belief that the devices are not subject to the DTV tuner requirements.<sup>25</sup>

### III. DISCUSSION

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

10. We conclude that Invision apparently willfully<sup>26</sup> and repeatedly<sup>27</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). Invision admits that, after January 30, 2008, it imported 4,115 and shipped interstate 2,968 television broadcast receivers that were not equipped with DTV tuners.

11. We reject Invision's argument that the DTV tuner requirement does not apply to the sale of television receivers designed specifically for the automotive industry. The DTV tuner requirement is clearly not limited to receivers produced for any particular segment of American commerce and provides

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

<sup>20</sup> *See* Amended Response at 1.

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

<sup>22</sup> *Id.* Invision stated that it shipped interstate 3,294 units but that 326 of these units were returned to its facility. *Id.*

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

<sup>24</sup> *Id.* at 2.

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

<sup>26</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>27</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.

no exception for the possibility of incidental use of the television tuning function.<sup>28</sup> In analogous situations, the Commission has rejected arguments that the DTV tuner requirement does not apply to television receivers that are part of a specialized video system distributed for use in the health care industry<sup>29</sup> and to television receivers that are used primarily as monitors.<sup>30</sup> In rejecting these arguments, the Commission noted that the DTV tuner requirement does not exclude television receivers used as monitors, that it was likely these devices would be used as television receivers at some point, and therefore, we would not assume that owners of these devices would never attempt to use them to receive over-the-air broadcasts.<sup>31</sup> Similarly, no exception to the DTV tuner requirements exists for units like those at issue here simply because they are sold for use in cars and might not be used to receive over-the-air broadcasts by the consumer. The rule applies to all receivers imported into the United States or shipped interstate that are capable of receiving over-the-air television broadcast signals. Accordingly, the rule covers the Invision devices and the company is subject to enforcement for violating the rule.

## B. Provision of Incorrect Material Information to the Commission

12. Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>32</sup> Any person who has received a letter of inquiry from the Commission or its staff or is otherwise the subject of a Commission investigation is subject to this rule.<sup>33</sup> In expanding the scope of Section 1.17 in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.<sup>34</sup> Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading.<sup>35</sup>

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<sup>28</sup> Under our rules, “[a]ll TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public, shall comply” with the regulations set forth by the Commission. See 47 C.F.R. § 15.117(a).

<sup>29</sup> See *Requirements for Digital Television Receiving Capability*, Order, 21 FCC Rcd 9478, 9479-80 (2006) (“*PDI Order*”).

<sup>30</sup> See *Precor, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6361, 6369 (2008) (forfeiture paid) (proposing a forfeiture for violation of DTV tuner requirement where “personal viewing screens” sold to fitness facilities were designed to be used in a closed circuit video system) (“*Precor NAL*”); *Regent U.S.A., Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10526 (2007) (forfeiture paid) (proposing a forfeiture for violation of DTV tuner requirement where devices were used primarily as monitors by commercial customers) (“*Regent NAL*”); see also 47 C.F.R. § 15.3(w).

<sup>31</sup> See *Precor NAL*, 23 FCC Rcd at 6369; *Regent NAL*, 22 FCC Rcd at 10526; see also *PDI Order*, 21 FCC Rcd at 9480.

<sup>32</sup> 47 C.F.R. § 1.17(a)(2).

<sup>33</sup> 47 C.F.R. § 1.17(b)(4).

<sup>34</sup> *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-4017, 4021 (2003), recon. denied, Memorandum Opinion and Order, 19 FCC Rcd 5790, further recon. denied, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

<sup>35</sup> See *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd at 4017 (stating that the revision to Section 1.17 is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).



13. As noted above, Invision stated in its LOI response that it had imported zero units and shipped interstate twelve units of the G10 and G9 models between January 30, 2008 and April 15, 2008.<sup>36</sup> In its Amended Response, however, which was submitted only *after* Bureau staff contacted Invision to clarify another statement provided in its LOI Response, Invision stated that it had imported 4,115 units and shipped interstate 2,928 units between January 30, 2008 and April 30, 2008.<sup>37</sup> Invision did not proffer any explanation in its Amended Response for its submission of incorrect information in its earlier LOI Response.

14. As we have stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”<sup>38</sup> Though provided ample time to compile a very limited amount of data from its business records, Invision inexplicably provided the Commission with grossly inaccurate information.<sup>39</sup> We think that, had it exercised even minimal diligence prior to the submission of its initial LOI Response, Invision would not have submitted the incorrect and misleading material factual information that it submitted in its LOI response.<sup>40</sup> We conclude, therefore, that Invision apparently lacked a reasonable basis for its belief that its LOI Response was correct and not misleading in violation of Section 1.17(a)(2) of the Rules.

### C. Proposed Forfeiture

15. 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

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<sup>36</sup> LOI Response at 1; *see also* paragraph 7, *supra*. Invision provided this information in response to question 1(b) of the LOI, which stated “State the total number of receivers imported into the United States (“these receivers”) and the dates of importation,” and question 1(d) of the LOI, which stated “State the total number of these receivers that were shipped interstate.” LOI at 2.

<sup>37</sup> Amended Response at 1. Invision did not provide a specific breakdown, for each model, of the number of units imported, as directed in the LOI. Nevertheless, based on Invision’s statement that 4,115 units of the G10 and G9 models and zero units of the G8 and G7 models were manufactured between January 30, 2008 and April 30, 2008, it appears that most, if not all, of the 4,115 units imported during this period were units of the G10 and G9 models. Invision also failed to provide a specific breakdown, for each model, of the number of units shipped interstate, as directed in the LOI. Based on the attachment submitted with Invision’s Amended Response, however, it appears that, although some units of the G8 and G7 models may have been shipped interstate between January 30, 2008 and April 30, 2008, the bulk of the 2,968 units shipped interstate during this period were units of the G10 and G9 models. *Id.* at Attachment. Invision’s disregard for our LOI instructions by itself is a violation of a Commission order and therefore subject to enforcement action, *see SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (“*SBC Communications*”). Based on the totality of the circumstances, including the fact that we are already proposing a forfeiture related to Invision’s LOI response, however, we will exercise our prosecutorial discretion here and not propose an additional penalty.

<sup>38</sup> *Amendment of Section 1.17*, 18 FCC Rcd at 4021.

<sup>39</sup> The Bureau afforded Invision a total of six weeks’ time in which to compile information for its LOI Response regarding its interstate shipping and importation of seven models of television receivers. We note that an importer is expected to have ready access to such information in its records.

<sup>40</sup> *See, e.g., In re Applications of Citicasters License, L.P., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19338 (2007) (forfeiture paid) (finding that a licensee’s false certification that it had not violated the Act or any Commission rules during the preceding license term had no reasonable basis but was not made with the intent to deceive Commission and, therefore, violated Section 1.17(a)(2) of the rules) (“*Citicasters*”). As stated above, in its Amended Response, Invision proffered no explanation for the incorrect information it provided. Thus, Invision has not articulated a reasonable basis for its belief that the import and interstate shipment data in its LOI Response were correct, nor has it provided any reason for its provision of incorrect or misleading information.

order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>41</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>42</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>43</sup> Based on the analysis set forth below, we conclude that Invision is apparently liable for a forfeiture in the amount of \$324,000 for its willful and repeated violation of Section 15.117(i)(1)(iii) of the Rules and a forfeiture in the amount of \$4,000 for its willful violation of Section 1.17(a)(2), for a total proposed forfeiture of \$328,000.

16. Under Section 503(b)(2)(D) of the Act,<sup>44</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 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>45</sup>

17. The Commission’s *Forfeiture Policy Statement*<sup>46</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>47</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>48</sup>

18. 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>49</sup> DTV receivers are a necessary element of digital broadcast television service. Consumers must have the

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<sup>41</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>42</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>43</sup> See, e.g., *SBC Communications*, 17 FCC Rcd at 7591.

<sup>44</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).

<sup>45</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>46</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>47</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 Globcom Global Commun.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723-24 (2006).

<sup>48</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>49</sup> *Syntax-Brilliant Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10530, 10535 (2007), *forfeiture ordered*, 23 FCC Rcd 6323 (2008) (“*Syntax-Brilliant NAL*”); *Regent NAL*, 22 FCC Rcd 10520 (2007).

capability to receive DTV signals for the DTV transition to move forward to successful completion.<sup>50</sup> The DTV tuner requirement is intended to protect consumers by ensuring that their TV receivers will provide over-the-air TV reception of digital signals when analog TV operation ceases.<sup>51</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>52</sup>

19. In the *Syntax-Brilliant NAL* and the *Regent 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>53</sup> This approach, we noted, “gets to the root of the apparent violation – non-compliant televisions in the hands of American consumers.”<sup>54</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 would propose forfeitures on a tier-by-tier basis, applying an escalating per-unit forfeiture amount separately to each successive tier.<sup>55</sup>

20. 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>56</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.

21. In the *Precor NAL*, we noted that the DTV tuner requirement imposes two distinct prohibitions on responsible parties: it prohibits both the importation and the interstate shipment of television receivers that do not contain digital tuners.<sup>57</sup> We found, however, that treating the importation and subsequent interstate shipment of the *same* television receiver as two separate violations is not

<sup>50</sup> See *DTV Tuner Report and Order*, 20 FCC Rcd at 11199; *DTV Tuner Second Report and Order*, 20 FCC Rcd at 18608.

<sup>51</sup> See *id.*

<sup>52</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>53</sup> *Id.*

<sup>54</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535; *Regent NAL*, 22 FCC Rcd at 10525.

<sup>55</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535-36; *Regent NAL*, 22 FCC Rcd at 10525-26.

<sup>56</sup> *Syntax-Brilliant NAL*, 22 FCC Rcd at 10535; *Regent NAL*, 22 FCC Rcd at 10525.

<sup>57</sup> *Precor NAL*, 23 FCC Rcd at 6367.



warranted.<sup>58</sup> Given that the DTV tuner rule is meant to ensure that all television receiving devices are equipped with a digital tuner, we concluded 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.<sup>59</sup> We determined, therefore, that in future forfeiture actions taken for violations of the DTV tuner requirement, we would assess the facts of each case in determining how best to enforce the requirements of Section 15.117.<sup>60</sup> In this case, we propose a forfeiture only for those non-compliant television receivers that Invision imported after the January 30, 2008 deadline for television receivers with screen sizes less than 13 inches.

22. Based on the record in this case, Invision's violations merit a significant proposed forfeiture. The unlawful importation was substantial in terms of the number of non-DTV compliant units -- more than 4,000 -- between the January 30, 2008 deadline and Invision's May 12, 2008 Amended Response. Moreover, many of these units were imported after receipt of our LOI, which provided the company with explicit and individualized notice of the regulation over and above its publication in the Federal Register.

23. Invision imported 4,115 non-DTV-compliant television receivers between January 30, 2008 and April 30, 2008. Applying the forfeiture calculation methodology outlined above results in a proposed forfeiture of \$324,000 for Invision's willful and repeated importation and 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.<sup>61</sup>

24. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules, the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum,<sup>62</sup> or, in this case, \$11,000.<sup>63</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(E) of the Act, including "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>64</sup>

25. Considering all of the enumerated factors and the particular circumstances of this case, we find that forfeiture of \$4,000 is warranted here for Invision's apparent willful violation of Section 1.17(a)(2). The Commission has stated that "[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our

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

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

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

<sup>61</sup> We derived this amount as follows: (1000 units \* \$50/unit) + (1500 units \* \$75/unit) + (1615 units \* \$100/unit) = \$324,000.

<sup>62</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

<sup>63</sup> See 47 U.S.C. § 503(b)(2)(D) (setting forth the statutory maximum forfeiture for entities other than broadcasters and common carriers). See also *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 forfeiture amounts for entities other than broadcasters and common carriers to \$11,000/\$97,500). See also *Syntax-Brilliant Forfeiture Order*, 23 FCC Rcd at 6343; *Citicasters*, 22 FCC Rcd at 19339 (both using the base forfeiture amount for misrepresentation/lack of candor as the base forfeiture for violation of Section 1.17 of the rules).

<sup>64</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

statutory responsibilities.”<sup>65</sup> Invision’s failure to exercise due diligence to ensure that the information provided in its LOI Response was correct and not misleading hampered our ability to properly carry out our statutory responsibilities. Although Invision provided the correct information, against its interest, in a relatively timely manner and prior to any formal Commission action, it did so only after the Bureau contacted the company for clarification of another issue in its LOI Response and ultimately requested that Invision submit an amended response. Nevertheless, given that Invision disclosed the full scope of its apparent violations in a timely manner without a specific request from the Bureau, we find that a significant downward adjustment to the base forfeiture amount is warranted. Based on all of the above circumstances, we find that a \$4,000 forfeiture is appropriate for Invision’s apparent willful violation of Section 1.17(a)(2).

26. Finally, we note that Invision is apparently continuing to market non-DTV-compliant television broadcast receivers. On July 15, 2008, Bureau staff again observed that the company was marketing on its website the same non-DTV-compliant television receivers that were earlier observed. We strongly caution Invision that any continued importation and interstate shipment of these receivers will subject it to additional and potentially much higher forfeiture penalties. We direct Invision to submit a report within 10 days of the release of this *NAL* certifying that it has ceased all unlawful importation and interstate shipment of non-DTV-compliant television receivers.

#### IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Invision Industries, Incorporated is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three hundred twenty-four thousand dollars (\$324,000) for willful and repeated violation of Section 15.117(i)(1)(iii) and four thousand dollars (\$4,000) for willful violation of Section 1.17(a)(2), for a total proposed forfeiture of three hundred and twenty-eight thousand dollars (\$328,000).

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

29. 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. Invision will also send electronic notification on the date said payment is made to JoAnn Lucanik at JoAnnLucanik@fcc.gov and to Kevin M. Pittman at Kevin.Pittman@fcc.gov.

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<sup>65</sup> *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297 (2002).

30. 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.

31. 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.

32. **IT IS FURTHER ORDERED** that Invision **IS** hereby **DIRECTED** to submit the report described in paragraph 26 within 10 days of the release of this *NAL*.

33. **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 Heather McLeod, Invision Industries, Incorporated, 1170 Celebration Boulevard, Suite 100, Kissimmee, FL 34747.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary