

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

In the Matter of	)	
	)	File Number: EB-08-SD-0088
Playa Del Sol Broadcasters	)	
	)	NAL/Acct. No.: 200832940003
Licensee of K238AK	)	FRN: 0004256426
Palm Desert, California	)	

**FORFEITURE ORDER**

**Adopted: July 15, 2009****Released: July 17, 2009**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Playa Del Sol Broadcasters ("Playa"), licensee of FM Broadcast Translator station K238AK, in Palm Desert, California, for willful and repeated violations of Section 74.1236(c) of the Commission's Rules ("Rules").<sup>1</sup> On July 31, 2008, the Enforcement Bureau's San Diego Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to Playa for failing to ensure that emissions appearing outside the assigned channel greater than 600 kHz from the center frequency had a minimum attenuation below the unmodulated carrier of 60 dB.<sup>2</sup> Playa filed a response ("*Response*") on September 2, 2008. In this *Order*, we consider Playa's arguments that a forfeiture is not warranted in this case because it responded to the San Diego Office and addressed the issue "promptly and fully" and that the violation was not willful or repeated.

**II. BACKGROUND**

2. On March 12, 2008, the Enforcement Bureau's San Diego office received a complaint of interference from the Riverside County Sheriff's Department ("Sheriff's Department") regarding an aviation frequency, 122.875 MHz, in the Indian Wells, California area. The Sheriff's Department identified the interference as having the same audio as station KRCK, 97.7 MHz, Mecca, California, which is licensed to Playa del Sol Broadcasters. Playa was then contacted by the San Diego Office by telephone and advised of the complaint from the Riverside County Sheriff's Department which had been received and that all transmitter equipment operated by Playa should be examined to determine if that was the cause.

3. On March 13, 2008, an agent from the San Diego Office traveled to the Indian Wells, California, area to examine the interference complaint. The agent was able to detect the audio of KRCK on three separate frequencies in the VHF aviation band: 109.5 MHz, 122.2 MHz, and 136.1 MHz. The agent determined that the three signals were emanating from the studio of KRCK at 73-733 Fred Waring Drive, Palm Desert, California, which is collocated with FM Broadcast Translator station K238AK. The agent noted that FM Broadcast Translator station K238AK was rebroadcasting the audio of FM Broadcast station KRCK. Field strength measurements were made by the agent on the three signals found on 109.5 MHz, 122.2 MHz, and 136.1 MHz, as well as the assigned channel of K238AK of 95.5 MHz. The agent

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<sup>1</sup> 47 C.F.R. § 74.1236(c).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832940003 (Enf. Bur., Western Region, San Diego Office, released July 31, 2008).

determined that the 109.5 MHz signal was attenuated 18.0 db from the carrier of K238AK, the 122.2 MHz signal was attenuated 30.8 db from the carrier of K238AK and the 136.1 MHz signal was attenuated 20.9 db from the carrier of K238AK.

4. On March 14, 2008, the agent returned to the studio location of KRCK and the transmitter site of K238AK and conducted another set of measurements on the three previously observed signals transmitting KRCK audio on VHF aviation frequencies. The results of those measurements are as follows: the 109.5 MHz signal was attenuated 19.8 db from the carrier of K238AK, the 122.2 MHz signal was attenuated 23.4 db from the carrier of K238AK and the 136.1 MHz signal was attenuated 18.0 db from the carrier of K238AK. The agent then inspected FM Broadcast Translator station K238AK at the studio location of KRCK. During the inspection, the agent requested that the translator station be taken off the air and by using portable measurement equipment, determined that all three signals previously measured in the aviation band went off the air and returned whenever the K238AK transmitter was switched off. The agent determined that the measured signals on 109.5 MHz, 122.2 MHz, and 136.1 MHz, were spurious emissions emanating from station K238AK.

5. On July 31, 2008, the San Diego Office issued a *NAL* in the amount of \$4,000 to Playa, finding that Playa apparently willfully and repeatedly violated Section 74.1236(c) of the Rules by failing to adequately attenuate by at least 60 db the spurious emissions from its translator station, K238AK, on 109.5 MHz, 122.2 MHz, and 136.1 MHz. In its *Response*, Playa argues that a forfeiture is not warranted in this case because it responded to the San Diego Office and addressed the issue “promptly and fully,” and that the violation was not willful or repeated.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).<sup>5</sup> In examining Playa’s response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.<sup>6</sup>

7. Section 74.1236(c) of the Rules requires that “(T)he power of the emissions appearing outside the assigned channel shall be attenuated below the total power of the emission as follows: ... (Distance of emission from center frequency) Over 600 kHz ..... (Minimum attenuation below unmodulated carrier) 60 db.” The frequencies of the spurious emissions, 109.5 MHz, 122.2 MHz, and 136.1 MHz, are each more than 600 kHz from the K238AK assigned channel of 95.5 MHz. Consequently, each of the spurious emissions was required to be attenuated at least 60 db below the K238AK fundamental frequency of 95.5 MHz. On both March 13, 2008, and March 14, 2008, none of the three spurious emissions on 109.5 MHz, 122.2 MHz, and 136.1 MHz, were attenuated 60 db or more from the K238AK fundamental frequency. Playa was notified by the San Diego Office that transmissions containing the audio of station KRCK were transmitting in the aviation band. Further investigation by the San Diego Office revealed that a translator station, K238AK, licensed to Playa was the source of the spurious emissions on 109.5 MHz, 122.2 MHz, and 136.1 MHz. Playa was advised by the San Diego Office of the transmissions of the KRCK signal on aviation frequencies on March 12, 2008, yet Playa

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

failed to take action to respond to and eliminate the continuing unauthorized transmissions for more than two days.

8. In its *Response*, Playa does not deny that the emissions as described occurred or were generated from FM translator K238AK. Playa argues that it was first made aware of the “potential noncompliant emission” on March 13, 2008, but that the San Diego agent “did not indicate that the situation was urgent or that any Playa equipment should be immediately shut down due to any actual potential emergency.” Playa also states that it outlined a plan to test its instruments to determine if any noncompliant emissions were present and that it would obtain the proper equipment for testing in the next day and that Playa would contact the agent within 24 hours. Playa then states that on March 14, it tested the KRCK signal and found no problems. At that time, the San Diego agent arrived and used a hand held spectrum analyzer to determine that translator “K238AK’s recently installed amplifier was noncompliant.” Playa then shut down the translator. Playa argues that the violation was not repeated, because the violation was not a continuous violation that occurred for more than one day. Instead, Playa states that it was first notified of the emission from the San Diego agent on March 13, 2008, and that it shut down the translator on March 14, 2008, therefore, Playa reasons, “any noncompliant emissions did not occur for more than one day.” We disagree. Section 312(f)(2) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>7</sup> We first note that the San Diego Office records show that a complaint from the Sheriff’s Department regarding interference containing KRCK’s audio on 122.875 MHz to aviation frequencies was received by the San Diego Office on March 12, 2008, and the San Diego agent contacted Playa and spoke with Playa’s owner on March 12, 2008, about the complaint. On March 13, 2008, the San Diego agent drove to Palm Desert and located the source of the interference to the signals emanating from translator K238AK. The agent repeated these efforts again on March 14, 2008, and the agent located the signal to translator K238AK. After the agent determined that the emissions were occurring again on March 14, 2008, the agent conducted the inspection which resulted in Playa shutting off the K238AK translator. Even if we believe Playa’s assertion that it was not made aware of the violation until March 13, 2008, we conclude that the San Diego Office found the unauthorized emissions occurring on two days. Consequently, the violation was repeated under Section 312(f)(2) of the Act.

9. Playa also argues that its violation was not willful because it worked with the San Diego agent, was told that an immediate shut down was not necessary, and when the San Diego agent performed the inspection on March 14, 2008, and determined translator K238AK was the source of the unauthorized emissions, Playa immediately shut down the translator. Section 312(f)(1) of the Act, which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...”<sup>8</sup> Again, the San Diego Office record for this case indicates that the complaint was received on March 12, 2008, and that contact was made with Playa on March 12, 2008. At that point, Playa was aware of unauthorized emissions containing its station’s audio which appeared to be coming from its equipment. According to its *Response*, Playa was still unable to determine the origin of these emissions on March 14, 2008, when the San Diego agent determined that translator K238AK was the source of the emissions. Fundamentally, Playa’s responsibility for these emissions was confirmed when the translator was turned off, and the unauthorized emissions ceased. While the San Diego Office records dispute Playa’s assertions regarding when and what the San Diego agent advised Playa related to the interference, one fact is clear: Playa did not cease the unauthorized emissions until the San Diego agent confirmed Playa as the source of the

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<sup>7</sup> 47 U.S.C. § 312(f)(2).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

interference on March 14, 2008, and at that point, Playa acknowledges that it had been aware since at least March 13, 2008, that it was the likely source of unauthorized emissions causing interference to aviation frequencies. Consequently, we find that Playa's violation was willful.

10. Finally, Playa argues that it addressed the issue "promptly and fully" and that a forfeiture is not warranted. We remind Playa that the Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.<sup>9</sup>

11. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Playa willfully and repeatedly violated Section 74.1236(c) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$4,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Playa Del Sol Broadcasters, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 74.1236(c) of the Rules.<sup>10</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> 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.

<sup>9</sup> *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

<sup>10</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 74.1236(c).

<sup>11</sup> 47 U.S.C. § 504(a).

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Playa Del Sol Broadcasters, at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau