

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

In the Matter of	)	
	)	
Frandsen Media Company, LLC	)	File No: EB-09-DV-0090
	)	
Licensee of FM Broadcast Station KGNT	)	NAL/Acct.: No. 201132800002
Smithfield, Utah	)	
Facility ID #38274	)	FRN: 0007714009

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** May 2, 2011

**Released:** May 4, 2011

By the District Director, Denver District Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Frandsen Media Company, LLC (“Frandsen”), licensee of FM broadcast station KGNT in Smithfield, Utah, apparently willfully and repeatedly violated section 1.1310 of the Commission’s rules (“Rules”)<sup>1</sup> by failing to comply with radio frequency radiation (“RFR”) maximum permissible exposure limits applicable to facilities, operations, or transmitters, and apparently willfully and repeatedly violated section 73.1560(b) of the Rules<sup>2</sup> by operating its transmitter at a power level not authorized by its license. We conclude that Frandsen is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

**II. BACKGROUND**

2. On April 14, 2010, agents from the Enforcement Bureau’s Denver Office conducted an inspection at the Station KGNT transmitter site on Round Hill, between Hyde Park and Smithfield, Utah. At the time of the inspection, the agents observed that there was no perimeter fence at the base of Round Hill. The agents observed a one mile dirt road that allows unrestricted access up Round Hill to the Station KGNT transmitter site. The site is also reachable in a few minutes from the base of the hill by four-wheel drive all-terrain vehicle (“ATV”) or by hiking. However, at the top of Round Hill, the Station KGNT antenna structure and building is located inside a secure chain link fence, measuring approximately 22 feet by 12 feet. The antenna structure is located near the northwest corner inside the fenced area. The transmitter building is located just south of the antenna structure inside the enclosed fencing. No RFR caution signs were found posted anywhere on or near the transmitter site.

<sup>1</sup> 47 C.F.R. § 1.1310. *See also Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Report and Order, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), *recon. granted in part*, First Memorandum Opinion and Order, 11 FCC Rcd 17512 (1996), *recon. granted in part*, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 13494 (1997) (“*Guidelines*”).

<sup>2</sup> 47 C.F.R. § 73.1560(b).

3. During the inspection, the agents first employed personal RF monitors to identify and mark a 500 square foot rectangular area of potentially high RFR levels outside of the fenced-in transmitter site which was easily accessible to anyone at the top of Round Hill.<sup>3</sup> RFR warning signs were not posted to restrict access to this area.<sup>4</sup> The agents marked four spots within the accessible areas of concern outside the fence, ranging from 12 feet to 28 feet from the antenna structure tower and from 6 to 24 feet outside the fence. The agents then conducted detailed measurements in this accessible area of concern utilizing a calibrated RFR meter and probe and employing a spatial averaging measurement technique. Public RFR MPE levels were exceeded throughout the accessible area of concern, with measurements ranging from 0.33 mW/cm<sup>2</sup> to 0.63 mW/cm<sup>2</sup> (165 to 315% of the public MPE limits). No barriers to the area of concern were observed and no RFR caution or warning signs were found posted anywhere on or near the site.

4. On April 15, 2010, the Denver agents conducted a follow-up inspection at the Station KGNT transmitter site with the station's Director of Engineering and Information Technology engineer. Measurements were again conducted at the same four locations within the area of concern, ranging from 12 feet to 28 feet from the antenna structure tower and from 6 to 24 feet outside the fence, using the calibrated RFR meter and probe from the previous day. The agents employed the spatial averaging measurement technique, repeating measurements at each location. Again, public RFR MPE levels were exceeded in the same area of concern, with measurements ranging from 0.26 mW/cm<sup>2</sup> to 0.53 mW/cm<sup>2</sup> (130 to 265% of the public MPE limits). A frequency selective radiation meter was used to determine the sources of significant RFR power density. Station KGNT, operating on the frequency of 103.9 MHz, was the only signal observed that contributed 5% or more to the total peak power density. On this day, the Denver agents observed both a paraglider and riders of ATV vehicles freely accessing and using the top of Round Hill near the RFR area of concern. Again, no barriers to the area of concern were observed and no RFR caution or warning signs were found posted anywhere on or near the site.

5. Also on April 15, 2010, the Denver agents determined that, at the time of the inspection, the transmitter power output ("TPO") for Station KGNT was 3.2 kW. Using an antenna power gain of 1.50 as specified in the Phelps-Dodge Antenna Specification Engineering Data,<sup>5</sup> and a line loss factor of 1.03, the station's effective radiated power ("ERP") was determined to be 4.7 kW, which was 156% of Station KGNT's authorized ERP. Working with Station KGNT's Director of Engineering, as he gradually lowered the power of Station KGNT transmitter, the agents conducted RFR measurements at various power levels. It was determined that operating the Station KGNT transmitter at 73% of the authorized TPO would not produce RFR in excess of the public MPE limits in publicly accessible areas. The Director of Engineering set the Station KGNT TPO at 73% of its authorized value.<sup>6</sup>

### III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>7</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any

<sup>3</sup> On the west side of the fence, the agents marked a large rectangular area of concern that extended 24 feet out from the fence and ran about 10 feet in length from the center of the FM antenna to the north and extended about 13 feet to the south relative to the center of the FM antenna. In the rectangular area of concern, the fence enclosing the transmitter site was less than 2 feet from the tower.

<sup>4</sup> The personal RFR monitor LED lit continually throughout this area, and the unit emitted an audible warning, indicating the RFR in the area likely exceeded the public RFR MPE limits.

<sup>5</sup> The KGNT antenna is a three-bay, circular polarized antenna, Model CFM LP-3.

<sup>6</sup> See Letter from Brendan Holland, Davis Wright Tremaine, Counsel for Frandsen Media Company, LLC, to Marlene H Dortch, Secretary, Federal Communications Commission, dated April 26, 2010.

<sup>7</sup> 47 U.S.C. § 503(b).

license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. 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.<sup>8</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>9</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>10</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>11</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>12</sup>

7. Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits.<sup>13</sup> Table 1 in section 1.1310 of the Rules provides that the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 mW/cm<sup>2</sup>.<sup>14</sup> The general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.<sup>15</sup> Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits.<sup>16</sup>

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

<sup>10</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

<sup>11</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>12</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also 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>13</sup> 47 C.F.R. § 1.1310. The MPE limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (“NCRP”) in “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” NCRP Report No. 86, sections 17.4.1, 17.4.1.1, 17.4.2, and 17.4.3 (1986). In the frequency range from 100 MHz to 1500 MHz, the MPE limits are also generally based on guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) and adopted by the American National Standards Institute (“ANSI”) in section 4.1 of “IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” ANSI/IEEE C95.1-1992 (1992).

<sup>14</sup> 47 C.F.R. § 1.1310, Table 1 and Note 2. See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1307(b)(5); *Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13538, 13540. See also, *Public Notice*, Year 2000 Deadline for Compliance with Commission’s Regulations Regarding Human Exposure to Radiofrequency Emissions (released Feb. 25, 2000); *Public Notice*, Erratum to February 25, 2000 Public Notice, 15 FCC Rcd 13600 (released April 27, 2000); *Public Notice*, Reminder of September 1, 2000, Deadline for Compliance with Regulations for Human Exposure to Radiofrequency Emissions, 15 FCC Rcd 18900 (released Aug. 24, 2000).

<sup>15</sup> 47 C.F.R. § 1.1310. See *Entravision Holdings, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 21718 (Enf. Bur. 2007) (the public exposure limits apply when persons that are exposed as a consequence of their employment

(continued....)

8. The inspections conducted by the Denver agents on April 14 and 15, 2010, revealed a publicly accessible area of approximately 550 square feet that exceeded the public RFR MPE limits; that Station KGNT was the sole contributor of more than 5% of the RFR exceeding the public MPE limits; and that Frandsen did not restrict access to the areas of concern where RFR levels exceeded the public RFR MPE limits. Neither vehicular nor pedestrian access to the KGNT transmitter site was restricted, as the site can be accessed by four-wheel drive and ATV vehicles and by hikers. Frandsen bears the responsibility to restrict access to the noncompliant area that exceeds the RFR limits or to modify the facility and operation so as to bring the station's operation within the RFR exposure limits prior to public or worker access to the impacted area.<sup>17</sup> The Denver agents observed no RFR caution or warning signs at or near the Station KGNT site, particularly in the easily accessible area of concern, in which RFR levels ranged between 130% and 350% of the public MPE limits.<sup>18</sup> We therefore find that Frandsen's operation of Station KGNT exceeded the public RFR MPE limits in a large, publicly accessible area and violated section 1.1310 of the Rules.

9. In the 2005 renewal application for KGNT,<sup>19</sup> Frandsen certified that the Station KGNT facility complied with the maximum permissible radio frequency electromagnetic exposure limits for controlled and uncontrolled environments. In Exhibit 13 of the renewal application, Frandsen's report states the following:

Round Hill near Hyde Park, Utah is the transmitter site for KGNT. It is a mountain top location with fenced and locked access at the site. We have constructed a 40 meter squared fence outside of the occupational limit fence around the perimeter of this site with warning signs to enclose the area below occupational limits but above public exposure RFR limits. As such the occupational RFR limits apply inside the inner fence. Public limits apply outside the outer fence. The maximum RFR reading at the site was 0.89 milliwatts/cm<sup>2</sup> along the north inner fence at 0.5 meters from the ground. Levels along the other inner fence borders ranged from 0.13 milliwatts/cm<sup>2</sup> to 0.32 milliwatts/cm<sup>2</sup>. Additionally, one location outside the inner fence showed a reading of 0.79 milliwatts/cm<sup>2</sup>.

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may not be fully aware of the potential for exposure or cannot exercise control over their exposure); *Americom Las Vegas Limited Partnership*, Memorandum Opinion and Order, 21 FCC Rcd 14286, 14290 (2006) (the licensee of the transmitter emitting the excessive RFR is liable for the failure to provide appropriate signs in remote areas warning the public of excessive RFR).

<sup>16</sup> See, e.g., *OET Bulletin 65* at 53 ("Restricting access is usually the simplest means of controlling exposure to areas where high RF levels may be present. Methods of doing this include fencing and posting such areas or locking out unauthorized persons in areas, such as rooftop locations, where this is practical. There may be situations where RF levels may exceed the MPE limits for the general public in remote areas, such as mountain tops, that could conceivably be accessible but are not likely to be visited by the public. In such cases, common sense should dictate how compliance is to be achieved. If the area of concern is properly marked by appropriate warning signs, fencing or the erection of other permanent barriers may not be necessary.").

<sup>17</sup> 47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in *OET Bulletin 65*.

<sup>18</sup> *Americom Las Vegas Limited Partnership*, 21 FCC Rcd at 14290 ("when a licensee decides to depend on RFR warning signs rather than physical barriers to ensure that members of the public do not access areas of RFR in excess of the MPE public limits, the burden is on the licensee to ensure that the RFR warning signs are plainly visible to the public from every possible direction that the public may access the area of concern. The burden is not on the public to attempt to find RFR warning signs.")

<sup>19</sup> KGNT Application for Renewal of Broadcast Station License, FCC Form 303-S, File No. BRH-20050531BSN, granted September 28, 2005 ("KGNT Renewal Application").

This was 5 meters west northwest of the northwest corner of the fenced area at 0.5 meters from ground level. This was the highest level between the two fence borders. Levels at the entrance and inside the building were below these levels. All readings were below the occupational limit of 1.0 milliwatts/cm<sup>2</sup>. RFR warning signs are present on all sides of the perimeter fence. Readings outside the outer fence met the public exposure limits. The site is determined to be in compliance with the occupational and public RFR limits based on these readings. Survey readings were taken on May 25, 2005 . . . . The meter used was the Holaday HI-2200 digital model with E100 field probe. The instruments were calibrated on May 19, 2005.<sup>20</sup>

Based on the statements made by Frandsen in Exhibit 13 of Station KGNT's 2005 renewal application, Frandsen was aware of the high levels of RFR at the Station KGNT transmitter site since May 31, 2005, but failed to ensure that the area was not publicly accessible. Because Frandsen "consciously and deliberately" operated Station KGNT, we find that the violation of section 1.1310 of the Rules was willful.<sup>21</sup> The violation occurred on more than one day and was, therefore, repeated. Based on the evidence before us, we find that Frandsen apparently willfully and repeatedly violated section 1.1310 of the Rules<sup>22</sup> by exceeding the public RFR MPE limits in an area accessible by the public, and by failing to adequately take measures to prevent access to areas that exceeded the RFR exposure limits.

10. Section 73.1560(b) of the Rules states that, "[e]xcept as provided in paragraph (d) of this section, the transmitter output of an FM station . . . must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90%, nor more than 105% of the authorized power."<sup>23</sup> The authorization for Station KGNT authorizes a TPO of 2.05 kW.<sup>24</sup> As discussed above, at the time of inspection, Station KGNT's TPO was found to be 3.2 kW. Thus, on April 15, 2010, Frandsen was operating the Station KGNT transmitter at approximately 156% of the authorized TPO value, in violation of section 73.1560(b) of the Rules. The spatially averaged RFR measurements made by the Denver agents on both April 14 and April 15, 2010, reveal that the Station KGNT transmitter was operating on April 14, 2010, with a TPO approximately 1 dB higher than on April 15, 2010. Based on the evidence before us, that the Station KGNT transmitter power was higher than authorized for more than one day, we find that Frandsen willfully and repeatedly violated of section 73.1560(b) of the Rules.

11. The Commission has determined that an appropriate base forfeiture amount for violation of the RFR MPE limits is \$10,000, reflecting the public safety nature of the RFR rules.<sup>25</sup> The base

<sup>20</sup> KGNT Renewal Application at Exhibit 13.

<sup>21</sup> See note 8 *supra*.

<sup>22</sup> 47 C.F.R. § 1.1310.

<sup>23</sup> 47 C.F.R. § 73.1560(b).

<sup>24</sup> File No. BLH-830311AK.

<sup>25</sup> *A-O Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 24184 (2002) (the licensee of the transmitter emitting RFR in excess of the maximum public exposure limits, that does not restrict access to the RFR area of concern, is liable for a violation of Section 1.1310 of the Rules). The Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules do not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in section 1.1310. See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), ("Forfeiture Policy Statement"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act. *Id.*

forfeiture amount for exceeding power limits is \$4,000.<sup>26</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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>27</sup> Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Frandsen is apparently liable for a forfeiture in the amount of \$14,000.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, Frandsen Media Company, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of sections 1.1310 and 73.1560(b) of the Rules.<sup>28</sup>

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Frandsen Media Company, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN 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.<sup>29</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Frandsen Media Company, LLC, shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver District Office, 215 South Wadsworth Boulevard, Suite 303, Lakewood, Colorado, 80226, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be emailed to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

<sup>26</sup> *Forfeiture Policy Statement*, 12 FCC Rcd 17087 (1997); 47 C.F.R. § 1.80.

<sup>27</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>28</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.1310 and 73.1560(b).

<sup>29</sup> See 47 C.F.R. § 1.1914.

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 ("GAAP"); 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Frandsen Media Company, LLC, 810 West 200 North, Logan, Utah, 84323.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
District Director  
Denver District Office  
Western Region  
Enforcement Bureau