

Federal Communications Commission

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

In the Matter of
Visionary Related Entertainment, L.L.C.
Licensee of FM Broadcast Station KAOI-FM
Wailuku, Hawaii
Facility ID #70375
File Number: EB-04-HL-049
NAL/Acct. No. 200532860001
FRN: 0005410295

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 4, 2005

By the Resident Agent, Honolulu Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Visionary Related Entertainment, L.L.C. ("Visionary"), licensee of FM Broadcast station KAOI-FM, in Wailuku, Hawaii, apparently willfully and repeatedly violated Section 1.1310 of the Commission's Rules ("Rules") by failing to comply with radio frequency radiation ("RFR") maximum permissible exposure limits applicable to facilities, operations, or transmitters. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), that Visionary is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). We also consider a complaint filed by D.T. Fleming Arboretum and Martha Vockrodt-Moran against Visionary.

II. BACKGROUND

2. The RFR Rules. Section 1.1310 of the Rules defines the maximum permissible exposure ("MPE") limits for electric and magnetic field strength and power density for transmitters operating on towers at frequencies from 300 kHz to 100 GHz. These MPE limits include limits for

147 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").

247 U.S.C. § 503(b).

3See 47 C.F.R. § 1.1310, Table 1. 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).

“occupational/controlled” exposure and limits for “general population/uncontrolled” exposure. The occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.<sup>4</sup> The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. The more stringent 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>5</sup> Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits.<sup>6</sup>

3. The MPE limits specified in Table 1 of Section 1.1310 are used to evaluate the environmental impact of human exposure to RFR and apply to “...all facilities, operations and transmitters regulated by the Commission.”<sup>7</sup> Table 1 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>8</sup> Broadcast stations that filed applications after October 15, 1997, for an initial construction permit, license, renewal or modification of an existing license were required to demonstrate compliance with the new RFR MPE limits, or to file an Environmental Assessment and undergo environmental review by Commission staff.<sup>9</sup> In addition, all existing licensees were required to come into compliance with the new RFR MPE limits by September 1, 2000, or to file an Environmental Assessment.<sup>10</sup>

4. On July 19, 2004, Visionary filed an application to modify KAOI-FM’s antenna height from the licensed height of 25 meters AGL to 14 meters AGL.<sup>11</sup> Visionary also proposed modifying

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<sup>4</sup>47 C.F.R. § 1.1310, Note 1 to Table 1.

<sup>5</sup>47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>6</sup>See, for example, *OET Bulletin 65*.

<sup>7</sup>See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

<sup>8</sup>47 C.F.R. § 1.1310.

<sup>9</sup>*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13538; 47 C.F.R. § 1.1307(b).

<sup>10</sup>*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13540; 47 C.F.R. § 1.1307(b)(5). 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>11</sup>See File No. BPH-20040716ABZ, accepted July 19, 2004 (“July 2004 Application”). During an inspection on January 26, 2004, Honolulu agents observed that the KAOI-FM’s antenna height of radiation center above ground level (AGL) was approximately 14 meters, as opposed to the authorized 25 meters. Consequently, the Honolulu Resident Agent Office issued a Notice of Violation (“NOV”) to Visionary on February 26, 2004, for modifying the KAOI-FM transmission systems without authorization pursuant to 47 C.F.R. § 73.1690(c)(1). Visionary responded to the NOV on April 19, 2004, stating that the authorized center of radiation of 25 meters, as shown on the Commission’s data base, was a typo or transposition and that it would take action to correct the error. Visionary also states, in the July 2004 Application that a 1995 license grant to Visionary used parameters underlying an older construction permit, and that the license issued by the Commission on October 19, 1995 contained the alleged typographical error. July 2004 Application, Engineering Statement at p. 1 – 2. Commission’s records reveal, however, that in correspondence dated October 18, 1995, John Detz, President, KAOI Radio Group, wrote that

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KAOI-FM's licensed effective radiated power from 100 kW to 55 kW. This application was dismissed on November 18, 2004.<sup>12</sup> As part of the application, Visionary indicated that it was unable to certify that "the facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments."<sup>13</sup> Visionary attached a "detailed explanation of the RFR situation at the KAOI-FM site" as part of the application. In the explanation, Visionary stated that the current antenna system, operating at 100 kW, at a height of 14 meters above ground, "produces a maximum field intensity of 4614.37 microwatts per squared centimeter at a distance of 2.8 meters from the base of the tower."<sup>14</sup>

5. On September 7, 2004, a Honolulu agent spoke to the President of Visionary, and requested that KAOI-FM be made available for inspection on September 8, 2004. The Honolulu agent was later informed by the station engineer that KAOI-FM was running at reduced power due to transmitter technical problems. On October 14, 2004, the Honolulu Office issued a Letter of Inquiry ("LOI") to Visionary regarding reduced power operations throughout calendar year 2004. Visionary's October 26, 2004 response delineated a series of eight separate instances between January and October of 2004 when equipment issues resulted in reduced power operations. In a supplemental November 2, 2004 response to the LOI, Visionary stated that the station had been operating at full licensed power levels since October 29, 2004, and pledged to notify the Honolulu Office of any further problems.

6. On October 20, 2004, Martha Vockrodt-Moran, along with the D.T. Fleming Arboretum, filed a complaint with the Commission's Enforcement Bureau requesting that the Bureau "order KAOI-FM to cease transmitting because its operations pose a significant threat to health and safety."<sup>15</sup> Specifically, the complaint alleged that "for the past fourteen years, [Visionary] has operated KAOI in violation of the RF exposure rules" and that the property adjacent to the KAOI transmitter site "is regularly used by Arboretum workers, residents, children, campers and hikers."<sup>16</sup> Visionary filed a Motion to Dismiss the Complaint on December 14, 2004.<sup>17</sup> Vockrodt-Moran and the Arboretum filed a response to the Motion to Dismiss on December 23, 2004.<sup>18</sup>

7. Honolulu agents inspected the KAOI-FM facility on November 17, 2004, accompanied by KAOI-FM station engineers, as well as a broadcast consultant. KAOI-FM is authorized to operate with 100 kW ERP. The KAOI-FM antenna system is a Jampro JHPC-8, eight bay circular "Double V"

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"item 9 d [radiation center above ground] on Form 302-FM, page 4 as corrected should read the accurate 25 meters RCAGL." Letter of John Detz to Dan Fontaine, Federal Communications Commission, October 18, 1995.

<sup>12</sup>See "Media Bureau Announces Dismissal of Unamended Form 301, 314, and 315 AM and FM Applications" (DA 04-3647, Released November 18, 2004.) ("Public Notice"). According to the Public Notice, the application was dismissed pursuant to Section 73.3568(a)(1) of the Commission's Rules for failure to prosecute. Specifically, Visionary failed to amend its application to show compliance with the new local ownership rules or to request a waiver of those rules. Visionary filed a petition for reconsideration of the dismissal on December 15, 2004.

<sup>13</sup>July 2004 Application, Item 17.

<sup>14</sup>July 2004 Application, Engineering Statement at p. 3. 4614.37 microwatts per squared centimeter is equivalent to 4.614 mW/cm<sup>2</sup>.

<sup>15</sup>Complaint of D.T. Fleming Arboretum and Martha Vockrodt-Moran, filed October 20, 2004 ("Complaint"). Ms. Vockrodt-Moran had previously telephoned the Honolulu resident Agent Office in November, 2003, about the potential RFR hazards from the KAOI-FM antenna. She also filed informal complaints in August, 2004.

<sup>16</sup>Complaint at 5.

<sup>17</sup>Visionary Related Entertainment LLC Motion to Dismiss Complaint, filed December 14, 2004 ("Motion to Dismiss").

<sup>18</sup>Response of D.T. Fleming Arboretum and Martha Vockrodt-Moran, filed December 23, 2004 ("Response").

antenna, mounted on a 25 meter/83 foot tall wooden pole at the edge of a cinder cone building overlooking a steep hilltop. A roadway passes within 30 feet of the KAOI-FM antenna. The roadway is gated on both entrances to the antenna. There is a locked gate on the access road north of the transmitter site that bars routine public vehicular access to the entire area. A portion of the D.T. Fleming Arboretum property, Ulupalakua, Maui, is adjacent to the site, and Arboretum visitors and maintenance personnel are able to access the area. A second gate, bordering on Arboretum property and limiting access between the transmitter site area and the Arboretum property, is approximately 35 to 42 feet south of the antenna. A cell tower with multiple antennas is located approximately 100 feet east of the KAOI-FM antenna site. Although vehicular access to the antenna site is restricted by means of a locked gate, pedestrian access is not restricted, and there is a private residence past the locked gate.

8. The agents observed no fence restricting public access to the antenna support pole, and no RFR warning signs posted. The KAOI-FM transmitter was running at a power output of 96,732 watts, a representative level in view of the mountaintop commercial power fluctuations. The agents employed a personal RF monitor to initially identify a seventy foot long, twenty foot wide area in front of the transmitter building with potential high RFR levels.<sup>19</sup> Measurements were conducted at four locations using a calibrated meter. The measurements employed a spatial averaging measurement technique, where measurements in four quadrants are averaged to give a representative reading for each location.<sup>20</sup> Public RFR MPE levels were exceeded in a twenty foot by ten foot rectangular area in front of the antenna support pole. Measurements indicated RFR levels of 1.2 mW/cm<sup>2</sup> or 609% of the public RFR MPE levels in areas within three feet of the pole.<sup>21</sup> Agents repeated the measurements at the same four designated locations with the transmitter running at a reduced output power of 56,350 watts. Measurements indicated RFR levels of 0.48 mW/cm<sup>2</sup> or 240% of the public RFR MPE levels in the areas of the immediate vicinity of the support pole. At the conclusion of the inspection, the station engineers reduced the transmitter power and stated that the station would operate at a reduced power level until the RFR issue was resolved. The station engineers informed the agents that the station intended to install fencing to restrict public access, and also intended to submit a request for special temporary authority (“STA”) to operate at reduced power levels.<sup>22</sup> A review of Commission records reveals that no STA request has been filed regarding KAOI-FM during the last twelve months.<sup>23</sup>

### **III. DISCUSSION**

#### **A. Visionary’s Apparent Violation of Section 1.1310 of the Rules**

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply

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<sup>19</sup>The personal RF 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.

<sup>20</sup>The result was then multiplied by a probe calibration factor of 0.58 for measurements in the 100 MHz FM band.

<sup>21</sup>The area in the immediate vicinity of the antenna support pole also exceeded the occupational RFR MPE limits, with a reading of 122%.

<sup>22</sup> In the Motion to Dismiss, filed December 14, 2004, Visionary notes that its engineers met with the Honolulu agents on November 17, 2004, to take RFR measurements and that Visionary is “constructing a four foot fence extending out from the tower site as an added buffer, which construction should be completed shortly.” Motion to Dismiss at 4. On January 17, 2005, Visionary notified the Commission’s Honolulu Office that they had “constructed a fence at the base of the tower that complies with the full Class C power level at the currently licensed allocation.” Letter of Visionary Related Entertainment to Federal Communications Commission, Honolulu Office, January 17, 2005.

<sup>23</sup>Despite Visionary’s response to the LOI, and the station engineers’ statement to the Honolulu agents on November 17, 2004, Visionary has not filed any requests for STA with the Commission for KAOI-FM during the past year.

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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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>24</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>25</sup>

10. Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits.<sup>26</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>.

11. As part of the July 2004 Application, filed on July 19, 2004, Visionary was unable to certify that the facility complied with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments, and attached a detailed explanation of the RFR situation at the KAOI-FM site as part of the application. Specifically, Visionary predicted that its antenna system produced a maximum field intensity of 4.6 mW/cm<sup>2</sup> within nine feet of the base of the tower. According to the supplemental November 2, 2004, response filed by Visionary to a Honolulu Office LOI, KAOI-FM had been at "normal power" of approximately 100 kW since October 29, 2004. On November 17, 2004, Honolulu agents took actual field measurements and found publicly accessible areas measuring 1.2 mW/cm<sup>2</sup> or 600% of the public RFR MPE limits within three feet of the KAOI-FM antenna tower. The area found to exceed the public MPE limits, which included the KAOI-FM antenna support pole, was not enclosed within protective fencing, and no RFR warning signs were posted. As of December 14, 2004, Visionary indicated that it was in the process of building a four foot fence coming out from the tower.

12. Although vehicular access to the site was restricted by means of a locked gate, pedestrian access was relatively unrestricted, and there is a private residence past the locked gate. In addition, D.T. Fleming Arboretum visitors and maintenance personnel can access the area. We therefore find that Visionary did not restrict public access to an area where RFR exceeded the public MPE limits between October 29, 2004 and November 17, 2004. Visionary bears the responsibility to restrict access to areas that exceed 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>27</sup> Visionary apparently took no action to comply with public RFR MPE limits within this time span, although it is evident from their July 2004 Application that they were aware of their responsibilities.<sup>28</sup> Visionary

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<sup>24</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which 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...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>25</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>26</sup>47 C.F.R. § 1.1310.

<sup>27</sup>47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in OET Bulletin 65.

<sup>28</sup>The July 2004 Application Engineering Statement states that "[b]ecause the predicted field intensity exceeds the maximum levels for controlled and uncontrolled exposure at ground level, procedures for the existing and proposed facilities will help bring the facility into compliance . . ." Engineering Statement at p.4 The Engineering Statement also indicates that "[p]roper RF Warning signs and a full list of RF safety procedures for tower maintenance posted on site should be sufficient to satisfy Federal Regulations concerning the controlled/occupied [sic] standards." *Id.* During the November 17, 2004 inspection, the Honolulu agents found no signs warning the public or workers of

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acknowledges in the July 2004 Application that the RFR level in close proximity to the antenna site exceeded the public MPE, therefore, Visionary's violation is willful. The violation occurred on more than one day, therefore, it is repeated.

13. Based on the evidence before us, we find that Visionary apparently willfully and repeatedly violated Section 1.1310 of the Rules<sup>29</sup> by exceeding the public RFR MPE limits in a publicly accessible area and by failing to adequately take measures to prevent the public from accessing an area that exceeded the RFR exposure limits.

14. The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")<sup>30</sup> does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.<sup>31</sup> However, 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 rules.<sup>32</sup>

15. We propose the \$10,000 base forfeiture amount for Visionary, who apparently failed to comply with Section 1.1310 of the Rules, failed to take measures to adequately prevent the public from accessing areas that exceeded the RFR exposure limits, and produced power density levels exceeding the public MPE limits. Consequently, it is appropriate to hold Visionary apparently liable for a \$10,000 forfeiture.

16. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>33</sup> Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we conclude that Visionary is apparently liable for a \$10,000 forfeiture.

17. We also direct Visionary to file, within 30 days of release of this NAL, a sworn statement describing: 1) what, if any, steps it took between July, 2004, and November, 2004, to ensure compliance with the Commission's RFR Rules at the KAOI-FM transmitter site; 2) what, if any, steps it has taken since the Honolulu agents' inspection in November, 2004, to ensure compliance with the Commission's RFR Rules at the site; and 3) its current plan to ensure compliance with the Commission's RFR Rules at the site. The statement must be filed with the response to this NAL, or separately if Visionary does not

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RFR in the vicinity of the antenna system or even on the antenna support pole.

<sup>29</sup> 47 C.F.R. 1.1310

<sup>30</sup> *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

<sup>31</sup> 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.*

<sup>32</sup> *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

<sup>33</sup> 47 U.S.C. § 503(b)(2)(D).

respond and pays the proposed forfeiture. Further, we direct Visionary to place a copy of this plan in the KAOI-FM Public Inspection File.

**B. Complaint of D.T. Fleming Arboretum and Martha Vockrodt-Moran**

18. The Complaint filed by the Arboretum and Vockrodt-Moran (“Complainants”) requests that the “Enforcement Bureau order KAOI to immediately cease operation until the Bureau has determined the facts and circumstances surrounding the radiation exposure to humans in close proximity to the antenna . . . .”<sup>34</sup> In its Motion to Dismiss the Complaint, Visionary states that the Complaint contains substantially the same allegations as an informal objection filed by the Arboretum and Vockrodt-Moran against Visionary’s July 2004 Application, and that it should be dismissed to avoid duplicative proceedings.<sup>35</sup> In their Response to the Motion to Dismiss, the Complainants argue that the pleadings are not duplicative and that the Bureau should order Visionary to reduce power, cease operations, or at “the very least” give Visionary “a substantial fine.”<sup>36</sup>

19. We will consider the Complainants’ Complaint as an informal request for action pursuant to Section 1.41 of the Commission’s Rules.<sup>37</sup> The investigation that culminated in this NAL began prior to the filing of the Complaint. However, at least one of the remedies requested by the Complainants, that of a substantial fine, is being proposed against Visionary. This remedy is consistent with our proceedings under the RFR Rules.<sup>38</sup> In addition, we are requiring Visionary to file a plan detailing its efforts to comply with the RFR Rules, and to place a copy of the plan in the KAOI-FM Public Inspection File, so that members of the public, like the Complainants, may view it. Because we have already begun enforcement action against Visionary for its apparent violation of the Commission’s RFR Rules, we dismiss the Complaint.

**IV. ORDERING CLAUSES**

20. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission’s Rules, Visionary Related Entertainment L.L.C. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violations of Section 1.1310 of the Rules.<sup>39</sup>

21. 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, Visionary Related Entertainment, L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

22. IT IS FURTHER ORDERED that, the Complaint of the D.T. Fleming Arboretum and Martha Vockrodt-Moran, against Visionary Related Entertainment, L.L.C. IS DISMISSED.

23. 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/Acct. No. and FRN No.

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<sup>34</sup>Complaint at 5.

<sup>35</sup>Motion to dismiss at 1.

<sup>36</sup>Response at 2.

<sup>37</sup>47 C.F.R. § 1.41.

<sup>38</sup>See, e.g., *Radio One, et al*, 2004 WL 2848616 (FCC 04-281, Released December 10, 2004).

<sup>39</sup>47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.1310.

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referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

24. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Resident Agent Office, P.O. Box 971030, Waipahu, HI 96797-1030, and must include the NAL/Acct. No. referenced in the caption.

25. 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.

26. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>40</sup>

27. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Visionary Related Entertainment L.L.C.

FEDERAL COMMUNICATIONS COMMISSION

John R. Raymond  
Resident Agent  
Honolulu Office  
Western Region  
Enforcement Bureau

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<sup>40</sup> See 47 C.F.R. § 1.1914.