

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Visionary Related Entertainment, L.L.C.	)	File Number: EB-08-HL-0096
	)	
Licensee of FM Broadcast Station KNUQ	)	NAL/Acct. No. 200832860002
Paauilo, Hawaii	)	FRN: 0005410295
Facility ID #15969	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: June 20, 2008

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 KNUQ(FM), in Paauilo, Hawaii, 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. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Visionary is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**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.<sup>3</sup> These MPE limits include limits for "occupational/controlled" exposure and limits for "general population/uncontrolled" exposure. The

<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 U.S.C. § 503(b).

<sup>3</sup> See 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 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. **KNUQ(FM) Renewal Application.** In its most recent application for renewal of the KNUQ(FM) license, Visionary included an *Engineering Statement* concerning the RFR levels at and around the KNUQ(FM) transmitter site.<sup>11</sup> In the *Engineering Statement*, Visionary acknowledged that at 100kW ERP, the KNUQ(FM) antenna will produce a calculated maximum field intensity level of 1934.47 microwatts per square centimeter [(1.934 mW/cm<sup>2</sup>)] at a distance of 5 meters [16.4 feet] from the base of the tower . . . , 969.85 microwatts per squared centimeter [(0.969 mW/cm<sup>2</sup>)] at 8.3 meters [27.22 feet] from the base of the tower . . . [and] 187.79 microwatts per squared centimeter [(0.187 mW/cm<sup>2</sup>)] at 10.1 meters [33.12 feet] from the base of the tower."<sup>12</sup> Visionary also states that "[p]recautions and procedures have been formulated to deal with workers involved in tower and antenna maintenance. . . . The site is

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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> File No. BRH-20051003CFD, Engineering Statement ("*Engineering Statement*").

<sup>12</sup> *Engineering Statement* at 1.

isolated and remote, and not accessible by the general public. . . . A secure fence further restricts access to areas above the public and occupied limits.”<sup>13</sup>

5. **The KNUQ(FM) Inspection.** The KNUQ(FM) transmitter site is located at the Uluapalakua Ranch, in Maui, Hawaii. KNUQ(FM) is licensed to operate at 100 kW ERP. The KNUQ(FM) antenna system is a seven bay Jampro JHCP-7, circularly polarized, and side mounted on a self-supporting steel tower. Although vehicular access to the transmitter site is restricted by means of a locked gate, pedestrian access is not restricted, and there are private residences past the locked gate. The property is fenced throughout to contain cattle, and ranch and winery storage buildings are adjacent to the site. There is a residence down a steep hillside, some 1000 yards from the antenna, and the main road continues up the hill to an arboretum and other residences. The antenna is enclosed by irregular fencing, as close as 15 feet from the antenna structure on the south and west sides. Three RF radiation warning signs are posted on the fence.

6. On April 9, 2008, Honolulu agents conducted an inspection at the KNUQ(FM) transmitter site with the KNUQ(FM) Chief Engineer. At the time of inspection, the transmitter power output (TPO) was 18,200 watts. Using an antenna power gain of 3.8, as specified in the KNUQ(FM) License Application Engineering Data, and assuming a transmission line loss of 1 kW, the station’s effective radiated power (“ERP”) was 68.16 kW, well below the authorized power of 100 kW ERP. The agents employed a personal RF monitor to identify and mark an “L” shaped area of high RFR outside the fence which enclosed the KNUQ(FM) transmitter site. In this “L” shaped area, the fence enclosing the transmitter site is less than 15 feet from the tower. The “L” shaped area with potential high RFR levels extended approximately 36 feet along the western face of the fence, and 54 feet along the southern face of the fence.<sup>14</sup> Measurements were conducted at four locations throughout this area, ranging from 20 to 40 feet from the tower, and from 5 to 25 feet from the fence, using a calibrated RFR meter. The agents employed a spatial averaging measurement technique, where measurements in four quadrants are averaged to give a representative reading for each location.<sup>15</sup> Public and occupational RFR MPE levels were exceeded throughout this area of approximately 1100 square feet, ranging from 0.9 mW/cm<sup>2</sup> to 1.95 mW/cm<sup>2</sup> (90 to 195% of the occupational MPE limits, and 450 to 975% of the public MPE limits). The agents informed the KNUQ(FM) Chief Engineer that KNUQ(FM) had exceeded the RFR limits in the area of concern.

7. On May 13, 2008, Honolulu agents conducted a follow-up inspection at the KNUQ(FM) transmitter site. Again, the agents employed a personal RF monitor to identify the same general “L” shaped area of concern, of approximately 1100 square feet, outside the fence which enclosed the KNUQ(FM) transmitter site where high levels of RFR were previously detected. The area of concern extended approximately 40 feet along the western face of the fence, and 50 feet along the southern face of the fence with potential high RFR levels.<sup>16</sup> In this area of concern, the fence enclosing the transmitter site is less than 15 feet from the tower. Measurements were conducted at four locations throughout this area, each approximately 30 feet from the tower, using a calibrated RFR meter. The agents employed a spatial averaging measurement technique, where measurements in four quadrants are averaged to give a representative reading for each location.<sup>17</sup> Again, both public and occupational RFR MPE levels were

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<sup>13</sup> *Engineering Statement* at 1 – 2.

<sup>14</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>15</sup> The result was then multiplied by a probe calibration factor of 1.6 for measurements in the 100 MHz FM band.

<sup>16</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>17</sup> The result was then multiplied by a probe calibration factor of 1.6 for measurements in the 100 MHz FM band.

exceeded in this area of concern, ranging from 1.36 mW/cm<sup>2</sup> to 2.3 mW/cm<sup>2</sup> (136 to 230% of the occupational MPE limits, and 680 to 1150% of the public MPE limits).

8. During the May 13, 2008, inspection, the agents noted ranch workers in a fenced area adjacent to the KNUQ(FM) transmitter, and interviewed Ulupalakua Ranch personnel to confirm that the Ulupalakua Winery was still using the storage building next to the KNUQ(FM) site. There is no fence prohibiting free access to the high level RFR areas of concern by ranch workers, winery employees, arboretum visitors, residents, or other members of the public.

### III. DISCUSSION

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 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>18</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>19</sup>

10. Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits.<sup>20</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. Although vehicular access to the site is restricted by means of a locked gate, pedestrian access is relatively unrestricted, and there are private residences past the locked gate. In addition, employees of Ulupalakua Ranch and Ulupalakua Winery, D.T. Fleming Arboretum visitors, and maintenance personnel can access the area. As indicated above, the general population or public exposure limits apply in situation where 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>21</sup> Given the statements made by Visionary in its *Engineering Statement*, we find that Visionary was aware of the levels of RFR in the area of concern surrounding the transmitter site. While it appears that Visionary made its workers and those maintaining its transmitter aware of the RFR exposure potential, and gave them the ability to control their exposure, we find no evidence that Visionary made other workers who could access the area of concern, or the general public, aware of the potential for exposure in the 1100 square foot area of concern outside the fence enclosing the KNUQ(FM) transmitter site. We also find that Visionary did not restrict access to an area of concern where RFR exceeded both the public and occupational MPE limits on April 9 and May 13, 2008. 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

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<sup>18</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>19</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>20</sup> 47 C.F.R. § 1.1310.

<sup>21</sup> 47 C.F.R. § 1.1310. See *Entravision Holdings, LLC*, 22 FCC Rcd 21718 (EB 2007).

or worker access to the impacted area.<sup>22</sup> As Visionary was aware of the KNUQ(FM) RFR exposure issues and failed to take subsequent corrective action even after the Honolulu agents' initial inspection on April 9, 2008, Visionary's violation is willful. The violation occurred on more than one day, and is therefore repeated.

12. Based on the evidence before us, we find that Visionary apparently willfully and repeatedly violated Section 1.1310 of the Rules<sup>23</sup> by exceeding the public RFR MPE limits in an area accessible by the public or by workers who were not fully aware of the potential for exposure, and by failing to adequately take measures to prevent access to an area that exceeded the RFR exposure limits. We note that if Visionary had been operating at its full authorized power, the RFR levels would be significantly higher.

13. 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>24</sup> does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.<sup>25</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 RFR rules.<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, and 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 Visionary is apparently liable for a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

14. 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>28</sup>

15. **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

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<sup>22</sup> 47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in OET Bulletin 65.

<sup>23</sup> 47 C.F.R. 1.1310

<sup>24</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>25</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>26</sup> *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

<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, 0.311, 0.314, 1.80, 1.1310.

## Federal Communications Commission

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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.

16. 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.<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. Visionary Related Entertainment, L.L.C., shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

17. 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. An electronic copy shall be sent to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

18. 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.

19. **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>29</sup> See 47 C.F.R. § 1.1914.