

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

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

FORFEITURE ORDER

Adopted: July 28, 2014

Released: July 29, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$9,200 against Frandsen Media Company, LLC (Frandsen) for operating its transmitter at an unauthorized power level and exceeding the Commission's radio frequency exposure limits. Frandsen does not deny the violations, but requests cancellation or reduction of the forfeiture, alleging vandalism at the transmitter site and noting its good faith compliance efforts as well as its history of compliance with the Commission's rules. For the reasons stated below, we decline to cancel the proposed \$14,000 forfeiture, but reduce it to \$9,200 based on Frandsen's good faith compliance efforts and history of compliance.

2. Specifically, we issue a monetary forfeiture to Frandsen, licensee of FM broadcast station KGNT in Smithfield, Utah, for willfully and repeatedly violating: (1) 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; and (2) Section 73.1560(b) of the Rules by operating the Station KGNT transmitter at a power level higher than authorized by its license.¹

II. BACKGROUND

3. On May 4, 2011, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*) to Frandsen proposing a \$14,000 forfeiture against it for apparently violating Section 1.1310 of the Rules by failing to comply with the Commission's RFR maximum permissible exposure limit, and Section 73.1560(b) of the Rules by operating the Station KGNT transmitter at a power level not authorized by its license.² As reflected in the *NAL*, agents from the Denver Office inspected the Station KGNT transmitter site on April 14 and 15, 2010, and found that RFR measurements taken in an easily accessible, unfenced area at the transmitter exceeded the maximum permitted RFR exposure limits. The agents also determined that Station KGNT's effective radiated power (ERP) was 156% of the stations authorized ERP.³

¹ 47 C.F.R. §§ 1.1310, 73.1560(b).

² *Frandsen Media Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6600 (Enf. Bur. 2011) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ *NAL*, 26 FCC Rcd at 6600-01, paras. 2-5.

4. Frandsen submitted a response to the *NAL* requesting cancellation or reduction of the forfeiture.⁴ In its *NAL Response*, Frandsen argues that the transmitter site was vandalized prior to the Denver Office inspection, and the RFR warning signs that were previously posted at the site were stolen.⁵ Frandsen also argues that it made good faith efforts to comply with the Rules and has a history of compliance with the Rules.⁶

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Frandsen's *NAL Response*, Section 503(b)(2)(E) 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.¹⁰ As discussed below, we have fully considered Frandsen's *NAL Response* in light of these statutory factors and find that reduction of the forfeiture is warranted.

6. Frandsen first argues that the area exceeding the RFR maximum permitted exposure limits was appropriately marked with RFR warning signs the "previous Fall," but was subsequently vandalized with all of the signs removed from the multiple posts that marked the area.¹¹ Consequently, Frandsen argues the proposed forfeiture should be cancelled consistent with the Commission's decision in *Vernon Broadcasting*,¹² where the Commission cancelled a forfeiture concerning an AM tower fencing violation after the licensee provided evidence that the fence had been vandalized in between the licensee's regularly recurring inspections and "shortly before the [FCC] inspection."¹³ We disagree that a cancellation is appropriate here. While Frandsen may be correct that its RFR signs were stolen in an act of vandalism, we note that its last inspection of the site was at least five months prior to the Denver Office inspection, unlike the regularly occurring inspections referenced in *Vernon Broadcasting*. As detailed in the *NAL*, Frandsen was aware since at least 2005 that a publicly accessible unfenced area existed around the Station KGNT transmitter that exceeded the RFR exposure limits.¹⁴ Given that Frandsen cannot show that the vandalism of

⁴ See Response of Frandsen Media Company, LLC, to Denver Office, Western Region, Enforcement Bureau (June 3, 2011) (on file in EB-09-DV-0090) (*NAL Response*).

⁵ *Id.* at 3–8.

⁶ *Id.* at 9.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ Response at 3–5.

¹² *Vernon Broadcasting Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1275 (1986) (cancelling an AM tower fencing violation forfeiture where licensee could show it inspected the fence just prior to the FCC inspection, and there was no indication that the licensee was aware of the broken fence or that it had failed to monitor the condition of the tower site) (*Vernon Broadcasting*). See Response at 7–8.

¹³ *Vernon Broadcasting*, 60 Rad. Reg. 2d at 1275, para. 2.

¹⁴ *NAL*, 26 FCC Rcd at 6603, para. 9. In its 2005 renewal application for KGNT, Frandsen detailed the area at the site which exceeded the RFR maximum permitted limit and explained the signage and fencing it was maintaining to (continued....)

the RFR warning signs posted around the area of concern occurred shortly before the Denver Office April 2010 inspections, we do not believe that *Vernon Broadcasting* requires that we cancel the proposed forfeiture. However, we do find that the evidence provided by Frandsen shows that the licensee made a good faith effort to comply with the RFR Rules, and we reduce forfeiture assessed for the Section 1.1310 violation by \$2,000.¹⁵

7. Frandsen also argues for a forfeiture reduction based on its history of compliance with the Rules. After reviewing the Commission's records, we agree that a reduction based on Frandsen's history of compliance is warranted, and we reduce the proposed forfeiture by \$2,800. Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we assess a forfeiture of \$9,200 against Frandsen.

IV. ORDERING CLAUSES

8. 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(f)(4) of the Rules, Frandsen Media Company, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand, two hundred dollars (\$9,200) for violations of Sections 1.1310 and 73.1560(b) of the Rules.¹⁶

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁸ Frandsen Media Company, LLC, shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

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restrict access to the area. KGNT Application for Renewal of Broadcast Station License, FCC Form 303-S, File No. BRH-20050531BSN, granted September 28, 2005, at Exhibit 13.

¹⁵ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission has "generally provided reductions based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965, para. 4 (2003) (reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation). By contrast, we decline to reduce the forfeiture for the Section 73.1560(b) violation because of the Chief Engineer's "good faith error" of increasing the power of the transmitter immediately before the arrival of the Denver Office agents. *NAL Response* at 2. Inadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction. See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991).

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.1310, 73.1560(b).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Frandsen Media Company, LLC, 810 West 200 North, Logan, Utah, 84323, and to its counsel, Kelly A. Donohue, Esquire, Wilkinson Barker Knauer, LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁰ See 47 C.F.R. § 1.1914.