

Federal Communications Commission

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

In the Matter of)	
)	
Entravision Holdings, LLC)	File No. EB-04-TP-161
)	
Licensee of Station WVEA-LP)	NAL/Acct. No. 200532700004
Tampa, Florida)	
Facility ID # 3602)	FRN 0001529627

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 5, 2005

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Entravision Holdings, LLC (“Entravision”), licensee of station WVEA-LP, 662-668 MHz, in Tampa, Florida, apparently willfully and repeatedly violated Section 1.1310 of the Commission’s Rules (“Rules”)¹ by failing to comply with radio frequency radiation (“RFR”) maximum permissible exposure (“MPE”) limits applicable to facilities, operations, or transmitters. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Entravision is apparently liable for forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. Entravision, licensee of station WVEA-LP, certified compliance with the RFR MPE limits in its application for a minor change to its licensed facility granted January 20, 2004.³ The application contained an exhibit stating that station WVEA-LP would create a worst case field of 0.0037 mw/cm², which is 0.84% of the 0.44 mw/cm² general public limit, at the Park Tower Office Building located at 400 North Tampa Street, Tampa, Florida. An exhibit to the application stated that access to the transmitting site would be restricted and properly marked with warning signs. In addition, the exhibit stated that an agreement between and among the other licensees at the Park Tower Office Building

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).

³All broadcast licensees were required to come into compliance with RFR MPE limits as of September 1, 2000 or file an Environmental Assessment. See *Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13540; 47 C.F.R. § 1.1307(b)(5). In addition, all broadcast licensees must demonstrate compliance with the RFR MPE limits, or file an Environmental Assessment and undergo environmental review by Commission staff, when filing for an initial construction permit, license, renewal or modification of an existing license. See *Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13538; 47 C.F.R. § 1.1307(b).

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containing appropriate measures to assure worker safety would be in effect in the event that workers or authorized personnel enter the restricted area.

3. On May 25, 2004, agents from the Commission's Tampa Office of the Enforcement Bureau ("agent" or "agents") inspected the rooftop of the Park Tower Office Building. Access to the main rooftop was restricted to individuals with special keycards. Signs on the rooftop access doors stated that areas on the rooftop exceed the Commission's public RFR limits. However, the signs did not indicate which areas on the rooftop exceeded the public or general population RFR limits. Using a calibrated RFR meter, an agent found areas on the rooftop that exceeded the general population limit by 75-200%. The agents continued to the penthouse rooftop, which was restricted by an additional lock controlled by the front desk and accessed without passing by the warning signs on the main rooftop access doors. There were no RFR warning signs found on the penthouse rooftop, penthouse rooftop access door to the stairwell, inside the stairwell, or on the hatch itself. While surveying the penthouse rooftop, an agent, using a calibrated RFR meter, found that approximately 75% of the penthouse rooftop exceeded the RFR MPE general population limit. The agent also found an unmarked and un-posted area exceeding the RFR MPE occupational limit within an 8-10 foot radius of a tower containing a UHF TV antenna, later identified as belonging to station WVEA-LP. The average power density level for this area measured 1700% of the general population RFR MPE limit or 340% of the RFR MPE occupational limit. The bottom of the antenna was approximately three feet above the rooftop. The agent determined that there was a second UHF-TV and two FM radio stations all on separate towers located on the penthouse rooftop at the time of inspection. The Park Tower Office Building's chief engineer, who accompanied the agents on this inspection, stated he and his personnel were not aware of areas exceeding the general population and occupational limits on the penthouse rooftop pointed out to him by the agent. The building's chief engineer stated that he and his personnel access this rooftop on a fairly regular basis to inspect it for maintenance and to conduct roofing repairs. He also stated that neither he nor any of his maintenance crew or subcontractors had received any training with respect to RFR hazards.

4. On June 18, 2004, an agent returned to the penthouse rooftop of the Park Tower Office Building, gathered more information, and made additional measurements. The agent found power density levels in excess of the RFR MPE general population and occupational limits, similar to those detected on May 25, 2004. There were no RFR warning signs posted in the stairwell that accessed the penthouse rooftop or on the penthouse rooftop itself.

5. On July 1, 2004, the WVEA-LP station engineer accompanied agents on their inspection of the penthouse rooftop. Before conducting any testing, the station engineer stated he knew areas near his antenna exceeded the occupational limits and that the area should have been posted with warning signs to alert those accessing the roof of the hazard. To determine if Entravision was responsible for the high fields in the area around station WVEA-LP's antenna, the station engineer was asked to take the station off the air. With station WVEA-LP on the air, the fields around the antenna measured 1,865% of the general population limit or 373% of the occupational limit. After station WVEA-LP was taken off the air, the fields measured 110% of the general population limit or 22% of the occupational limit. Therefore, station WVEA-LP was causing 1,755% of the general population limit, 351% of the occupational limit, or 7.75 mW/cm². The agents verbally warned the station engineer of this RFR violation. The agent informed the station engineer that to comply with the RFR requirements the station should post warning signs in the stairwell entrance and the rooftop to identify the areas exceeding the RFR limits, especially those exceeding the occupational limit. The agent also suggested that the station work with the building's chief engineer to restrict access to the specific area exceeding the occupational limits and only allow those having RFR training to access the area. Finally, the agent suggested that, in addition to the required RFR training, the station could offer building workers, who access the rooftop, individual RFR warning devices.

6. On July 16, 2004, agents conducted another inspection of the penthouse rooftop.

Entravision placed a small, framed caution sign in the stairwell to the penthouse roof hatch that listed contact information for the station engineer. Entravision marked with yellow paint the penthouse rooftop area exceeding the occupational RFR MPE limit, but did not place warning signs on the penthouse rooftop itself. Agents conducted measurements similar to those conducted on July 1 with the four licensees located at the site.⁴ When all four stations were on the air, the overall field was 1,950% of the general population limit and 390% of the occupational limit. On/off measurements were then conducted with each of the four stations, which found that station WVEA-LP was solely causing 1850% of the general population limit, 370% of the occupational limit, or 8.2 mw/cm².⁵ The station engineer for WVEA-LP was warned that the sign posted in the stairwell was inadequate due to its size and its poor visibility in the darkened stairwell. The agents again explained to the station engineer the RFR requirements.

7. On July 20, 2004, an agent contacted the WVEA-LP station engineer to discuss the July 16th inspection. The station engineer stated he had not yet posted a sign on the rooftop or spoken with the building's chief engineer. The agent reminded the station engineer of the station's responsibility to comply with the Commission's RFR requirements.

8. On August 17, 2004, an agent re-inspected the penthouse rooftop of the Park Tower Office Building. There was no sign posted on the penthouse rooftop as requested on July 1, 16, and 20 or on the tower itself as requested on July 16, and 20. The building's chief engineer stated the WVEA-LP engineer spoke to him regarding the yellow lines painted on the roof, but had not discussed any policy to limit rooftop access only to those with RFR training.

9. On September 30, 2004, agents re-inspected the penthouse rooftop. The agents found power density levels in excess of the RFR MPE general population and occupational limits, similar to those previously detected. Entravision had placed a sign on its tower that cautioned workers that the yellow striped area exceeds safe occupational levels. The sign, however, did not list any station contact information.

10. On October 26, 2004, the building's chief engineer stated that Entravision had not yet contacted him to restrict access to the penthouse rooftop only to workers who had received RFR training. On November 5, 2004, the building's chief engineer contacted the Tampa office and stated that station WVEA-LP told him that the transmitter power had been reduced and the penthouse rooftop was now well below the occupational limits. Agents made measurements the same day and confirmed there were no areas on the penthouse rooftop that exceeded the occupational/controlled RFR MPE limit. There were areas, however, that were still well above the general population/uncontrolled limits.

III. DISCUSSION

11. Section 1.1310 of the Rules requires licensees to comply with occupational and general population MPE limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz.⁶ 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

⁴Another station's transmitter was found to produce power density levels that exceeded 5% of the power density exposure limit applicable to its particular transmitter. This station is also responsible for ensuring the penthouse rooftop's compliance with the RFR limits. *See* 47 C.F.R. § 1.1307(b)(3).

⁵Although the agents stood in the same general area on the penthouse rooftop, the measurements taken on May 25, June 18, July 1 and July 16 differed slightly because the measuring spots were not exactly identical.

⁶*See* 47 C.F.R. § 1.1310, Table 1.

facilities, operations and transmitters regulated by the Commission.”⁷ Table 1 in Section 1.1310 of the Rules provides that the general population/uncontrolled RFR maximum permissible exposure limit given in terms of mW/cm^2 for a station operating in the frequency range of 300 MHz to 1500 MHz is determined by the calculation of $f/1500$ where f is the frequency in MHz.⁸ Because station WVEA-LP is licensed to operate on 662-668 MHz, its general population limit is $0.44 \text{ mW}/\text{cm}^2$. Table 1 in Section 1.1310 of the Rules provides that the occupational/controlled RFR maximum permissible exposure limit given in terms of mW/cm^2 for a station operating in the frequency range of 300 MHz to 1500 MHz is determined by the calculation of $f/300$ where f is the frequency in MHz.⁹ Because station WVEA-LP is licensed to operate on 662-668 MHz, its occupational limit is $2.2 \text{ mW}/\text{cm}^2$. Licensees bear the responsibility to restrict access to areas that exceed the RFR MPE limits or to modify the facility and operation so as to bring the station's operation into compliance with the RFR exposure limits prior to worker or public access to the impacted area.¹⁰

12. According to the building's chief engineer, none of his workers, who accessed the penthouse rooftop on a fairly regular basis in the course of their duties, were aware of the areas that exceeded the general population RFR MPE limit on the penthouse rooftop. In addition, the building's chief engineer stated none of these workers received any RFR training. Moreover, the areas on the penthouse rooftop that exceeded the general population RFR MPE limit were not marked in any way. Although a generic warning sign was placed by the entrance to the main rooftop, this sign could not be seen by workers approaching the penthouse rooftop and was insufficient to warn workers of the hazards on the penthouse rooftop.¹¹ Thus, these workers were “exposed as a consequence of their employment, [were not] fully aware of the potential for exposure, and [could] not exercise control over their exposure.”¹² Therefore, even though access was controlled by locks, the penthouse rooftop was subject to the Commission's general population limits.¹³

13. On May 25, June 18, July 1, July 16, and September 30, 2004, agents determined that approximately 75% of the penthouse rooftop exceeded the general population RFR MPE limit. The agents also found that Entravision's transmitter for station WVEA-LP produced power density levels that were as much as 1850% of its general population limit. Accordingly, Entravision was responsible for ensuring compliance with the RFR Rules. Entravision, however, failed to limit worker access to the areas on the penthouse rooftop that exceeded the general population limit. Workers were able to gain entrance to the penthouse rooftop on a fairly regular basis and had complete access to all areas on the penthouse

⁷See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

⁸The 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. See 47 C.F.R. § 1.1310, Note 2 to Table 1.

⁹The 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. 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. See 47 C.F.R. § 1.1310, Note 1 to Table 1.

¹⁰47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields* (1997) (“OET Bulletin 65”).

¹¹See *Americom Las Vegas Limited Partnership*, 19 FCC Rcd 9643 (Enf. Bur. 2004).

¹²47 C.F.R. § 1.1310, Note 2 to Table 1.

¹³See *id.* See also *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

rooftop, including the area that was 1,950% of the general population limit. Entravision also did not post any RFR warning signs on the penthouse rooftop or its entrance and did not contact the building's chief engineer about the hazard prior to the agents' inspection. Thus, Entravision failed to provide workers knowledge of and control over their exposure. Based on the evidence, we find that Entravision produced power density levels in excess of the general population RFR MPE limit and failed to warn adequately workers of the areas that exceeded the general population RFR MPE limit in apparent willful¹⁴ and repeated¹⁵ violation of Section 1.1310 of the Rules.

14. On May 25, June 18, July 1, July 16, and September 30, 2004, agents determined that certain areas of the penthouse rooftop exceeded both the general population and occupational/controlled RFR MPE limits. Specifically, the area within an 8-10 foot radius around station WVEA-LP's tower measured 390% of the occupational/controlled RFR MPE limit. Agents determined that Entravision's transmitter produced power density levels that were 370% of its occupational limit in this area. However, Entravision did not in any way highlight, mark, or limit access to the areas on the penthouse rooftop that exceeded the occupational limit or alert the building engineer of the RF levels, prior to the Commission's July 1st inspection and warning. Because the workers had no knowledge of the RFR levels on the penthouse rooftop, they did not have the ability to control or limit their exposure. Although Entravision highlighted in yellow the affected areas by July 16, it did not post an obvious RFR warning sign on the penthouse rooftop until after August 17, 2004, more than a month after their first oral warning. Thus, we find that Entravision also apparently willfully and repeatedly violated Section 1.1310 of the Rules by producing power density levels in excess of its occupational limit and failing to warn adequately workers of the RFR hazard.

15. The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("*Forfeiture Policy Statement*")¹⁶ does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.¹⁷ 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.¹⁸ In assessing the proposed 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 violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and

¹⁴Section 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁵The 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." 47 U.S.C. § 312(f)(2).

¹⁶*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).

¹⁷The 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.*

¹⁸*A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

other such matters as justice may require.¹⁹

16. We are troubled with Entravision's apparent disregard for the Commission's RFR requirements. Areas on the penthouse rooftop exceeded the general population/uncontrolled limit by over 1,850 percent and the occupational/controlled RFR MPE limit by over 290 percent. Entravision's station engineer admitted that he was aware that areas exceeded the occupational limits and should have been marked with warning signs, but he did not inform the building's engineer or workers of this safety hazard and did not in any way highlight, mark, or limit access to the areas prior to the agents' inspection. Even though it painted the areas exceeding the occupational level with yellow lines by July 16, 2004, Entravision waited more than 30 days after receiving an oral warning on July 1, 2004 before alerting the building's chief engineer of the affected areas and posting an obvious RFR warning sign on its tower. Entravision failed to correct these violations even though it was aware of the RFR requirements. In its application granted January 20, 2004, Entravision certified that it was compliant with the RFR Rules. Moreover, it specifically asserted in an exhibit to its application that the transmitting site would be "appropriately marked with warning signs" and that an agreement would be in effect to ensure worker safety with respect to RFR exposure. Accordingly, we believe a significant upward adjustment of the base forfeiture amount is warranted, even though Entravision has since come into compliance.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and statutory factors to the instant case, we conclude that it is appropriate to increase the base forfeiture amount for Entravision's apparent violations. Therefore, we find Entravision apparently liable for a forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²¹ and Sections 0.111, 0.311, and 1.80 of the Commission's Rules,²² Entravision Holdings, LLC, licensee of station WVEA-LP, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Section 1.1310 of the Rules by failing to comply with general population and occupational radio frequency radiation maximum permissible exposure limits.

18. **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, Entravision Holdings, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 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. The payment should note NAL/Acct. No. 200532700004, and FRN 0001529627. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445

¹⁹47 U.S.C. § 503(b)(2)(D).

²⁰See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866 (2002) (base forfeiture amount tripled); *American Tower Corporation*, 16 FCC Rcd 1282 (2002) (base forfeiture amount doubled).

²¹47 U.S.C. § 503(b).

²²47 C.F.R. §§ 0.111, 0.311, 1.80 and 1.1310.

Federal Communications Commission

12th Street, S.W., Washington, D.C. 20554.²³

20. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, Suite 1215, 2203 North Lois Avenue, Tampa, FL 33607-2356 within thirty days of the release date of this *NAL*, and must include the *NAL*/Acct. No. referenced in the caption.

21. 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.

22. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Entravision Holdings, LLC, Suite 6000 West, 2425 Olympic Boulevard, Santa Monica, CA 90404.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director
Tampa Office
Enforcement Bureau

cc: WVEA-LP

²³See 47 C.F.R. § 1.1914.