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**Federal Communications Commission**

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

In the Matter of	)	
	)	
Infinity Broadcasting Corporation of Florida	)	File No. EB-04-TP-478
	)	
Licensee of Station WQYK-FM	)	NAL/Acct. No. 200532700005
Tampa, Florida	)	
Facility ID # 28619	)	FRN 0004036711

**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 Infinity Broadcasting Corporation of Florida (“Infinity”), licensee of station WQYK-FM, 99.5 MHz, serving St. Petersburg, Florida, 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 (“MPE”) 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 Infinity is apparently liable for forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. Infinity, licensee of station WQYK-FM, certified compliance with the RFR MPE limits in its renewal application for a licensed facility granted January 29, 2004.<sup>3</sup> The application contained an RFR exhibit for their location at the Park Tower Office Building at 400 North Tampa Street, Tampa, Florida. The exhibit stated that areas on the penthouse rooftop where the station is located exceed the Commission’s MPE limits for controlled environments and that the areas are clearly identified and marked. The exhibit also stated that a plan is in effect and understood by all licensees at the antenna site to protect workers accessing the penthouse roof. Finally, the exhibit stated that access to the transmitting

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<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>All 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).

site is restricted and properly marked with warning signs and thereby classified as a controlled environment.

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 agent determined that there was a second UHF-TV and two FM radio stations, one of which belonged to station WQYK-FM, 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, agents again took measurements on the penthouse rooftop of the Park Tower Office Building. When all four stations were on the air, the RFR fields within an 8-10 foot radius around station WVEA-LP's tower measured 1,865% of the general population limit or 373% of the occupational limit.

6. On July 15, 2004, an agent spoke with the engineer for station WQYK-FM to set up a meeting to conduct an RFR inspection at the transmitter site. The station engineer stated he knew of areas on the penthouse rooftop that exceeded the occupational limits and that station WQYK-FM was contributing more than 5% to those fields.

7. On July 16, 2004, agents conducted measurements with the four licensees located on the penthouse rooftop of the Park Tower Office Building. When all four stations were on the air, the average field for the area within an 8-10 foot radius around station WVEA-LP's tower was 1,950% of the general population limit or 390% of the occupational limit.<sup>4</sup> With station WVEA-LP off the air, the new baseline

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<sup>4</sup>Although 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.

measurements were 100% of the general population limit or 20% of the occupational limit.<sup>5</sup> After station WQYK-FM was taken off the air, the readings dropped from 20% of the occupational limit to 5.76%, which means station WQYK-FM was causing 71.2% of the general population limit, 14.24% of the occupational limit, or 0.1424 mW/cm<sup>2</sup>. Before leaving, the agent told the station WQYK-FM engineer of his station's contribution. Although station WVEA-LP had marked the areas on the penthouse rooftop that exceeded the occupational limit with yellow paint and placed a framed warning sign in the stairwell, the engineer for station WQYK-FM was warned that the area was still not properly marked. The agents also suggested that the station WQYK-FM engineer speak with the building's chief engineer to see what else needed to be done to give the workers knowledge and control over their exposure. The agents again explained to the station WQYK-FM engineer the RFR requirements.

8. On July 20, 2004, an agent contacted the station WQYK-FM engineer to discuss the July 16<sup>th</sup> inspection. The station engineer had not posted any warning signs on the penthouse rooftop and had not contacted the building's engineer. The agent reminded the station engineer of the station's responsibility to comply with the Commission's RFR requirements.

9. 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 16 and 20. The building's chief engineer stated the station WQYK-FM engineer spoke to him briefly about the high fields on the penthouse roof, but had not discussed any policy to limit rooftop access only to those with RFR training.

10. 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. Station WVEA-LP 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.

11. On October 26, 2004, the building's chief engineer stated that Infinity 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 limit. 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 limit.

### **III. DISCUSSION**

12. 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.<sup>6</sup> Further, the Commission's Rules require that if the MPE limits are exceeded in an accessible area due to the emissions of multiple transmitters, actions necessary to bring the area into compliance "are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density

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<sup>5</sup>On July 16, Station WVEA-LP solely caused 1,850% of the general population limit, 370% of the occupational limit, or 8.2 mW/cm<sup>2</sup>. Station WVEA-LP is also responsible for ensuring the penthouse rooftop's compliance with the RFR limits. See 47 C.F.R. §§ 1.1307(b)(3), 1.1310.

<sup>6</sup>See 47 C.F.R. § 1.1310, Table 1.

exposure limit applicable to their particular transmitter.”<sup>7</sup> 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>8</sup> Table 1 in Section 1.1310 of the Rules provides that the general population/uncontrolled RFR maximum permissible exposure limit given in terms of  $\text{mW}/\text{cm}^2$  for a station operating in the frequency range of 30-300 MHz is  $0.2 \text{ mW}/\text{cm}^2$ .<sup>9</sup> Table 1 in Section 1.1310 of the Rules provides that the occupational/controlled RFR maximum permissible exposure limit given in terms of  $\text{mW}/\text{cm}^2$  for a station operating in the frequency range of 30 MHz to 300 MHz is  $1 \text{ mW}/\text{cm}^2$ .<sup>10</sup> 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.<sup>11</sup>

13. 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.<sup>12</sup> 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.”<sup>13</sup> Therefore, even though access was controlled by locks, the penthouse rooftop was subject to the Commission's general population limits.<sup>14</sup>

14. 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

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<sup>7</sup>*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13520-21, 13524; 47 C.F.R. § 1.1307(b)(3). Power density is equal to the square of the electric field strength divided by the characteristic impedance of free space (377 ohms). Similarly, power density is equal to the square of the magnetic field strength times the characteristic impedance of free space. The power density is expressed in milliwatts per square centimeter. *Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at n.74. See also *Radio One Licenses, LLC, Licensee of FM Radio Station KKBT et al*, Forfeiture Order, FCC 04-281 (rel. Dec. 10, 2004).

<sup>8</sup>See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

<sup>9</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. See 47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>10</sup>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. 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.

<sup>11</sup>47 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”).

<sup>12</sup>See *Americom Las Vegas Limited Partnership*, 19 FCC Rcd 9643 (Enf. Bur. 2004).

<sup>13</sup>47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>14</sup>See *id.* See also *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

agents also found that Infinity's transmitter for station WQYK-FM produced power density levels that were as much as 71.2% of its general population limit. Accordingly, Infinity was responsible for ensuring compliance with the RFR Rules. Infinity, 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 rooftop, including the area that was 1,950% of the general population limit. Infinity 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. Infinity contributed more than 5% to areas that exceeded the general population limit and failed to provide workers knowledge of and control over their exposure.

15. 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 8-10 foot area around station WVEA-LP's tower measured 390% of the occupational/controlled RFR MPE limit. Agents determined that Infinity's transmitter produced power density levels that were 14.24% of its occupational/controlled RFR MPE limit in this area. As detailed above, however, Infinity did not post any warning signs regarding the occupational limits on the penthouse rooftop and did not provide any RF training to the building's workers. Infinity contributed more than 5% to an area that exceeded the occupational limit and failed to provide workers knowledge of and control over their exposure.

16. It is the unique intention of Section 1.1310 of the Rules that the contribution of one station alone may not violate the rule, while that station, when joined by the RF contribution of other stations whose total RFR contributions exceed the MPE limits, may find itself in violation. Consequently, we require licensees to work together to ensure compliance. As Infinity contributed over 5% of the total RFR exceeding the general population and occupational MPE limits, it is equally responsible for bringing the area into compliance, according to Section 1.1307 of our Rules.<sup>15</sup> Based on the evidence, we find that Infinity produced power density levels more than 5% of its general population and occupational limits and failed to bring the areas into compliance in apparent willful and repeated violation of Section 1.1310 of the Rules.

17. 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>16</sup> does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.<sup>17</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>18</sup> 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

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<sup>15</sup>See 47 C.F.R. § 1.1307(b)(3).

<sup>16</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>17</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>18</sup>*A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

other such matters as justice may require.<sup>19</sup>

18. We are troubled with Infinity'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. Infinity's station engineer admitted that he was aware that areas exceeded the general population and occupational limits and that station WQYK-FM was a contributor in these areas, 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. Even though another licensee painted the areas exceeding the occupational level with yellow lines, Infinity did not post an obvious warning sign in the affected areas or warn the building's chief engineer in a timely manner after receiving oral warnings on July 16 and July 20, 2004. Infinity failed to correct these violations even though it was aware of the RFR requirements. In its application granted January 29, 2004, Infinity certified that it was compliant with the RFR Rules. Moreover, it specifically asserted in an exhibit to its application that the transmitting site was "clearly identified and marked" and that a plan was in effect and understood by all licensees at the site to protect workers on the penthouse roof. We also note that a company affiliated with Infinity recently violated Section 1.1310 of the Rules.<sup>20</sup> Accordingly, we believe a significant upward adjustment of the base forfeiture amount is warranted, even though Infinity has since come into compliance.<sup>21</sup> 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 Infinity's apparent violations. Therefore, we find Infinity apparently liable for a forfeiture in the amount of \$20,000.

#### **IV. ORDERING CLAUSES**

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>22</sup> and Sections 0.111, 0.311, and 1.80 of the Commission's Rules,<sup>23</sup> Infinity Broadcasting of Florida, licensee of station WQYK-FM, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) 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.

20. **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, Infinity Broadcasting of Florida **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

21. 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

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<sup>19</sup>47 U.S.C. § 503(b)(2)(D).

<sup>20</sup>See *Radio One Licenses, LLC, Licensee of FM Radio Station KKBT et al*, Forfeiture Order, FCC 04-281 (rel. Dec. 10, 2004).

<sup>21</sup>See, 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).

<sup>22</sup>47 U.S.C. § 503(b).

<sup>23</sup>47 C.F.R. §§ 0.111, 0.311, 1.80 and 1.1310.

## Federal Communications Commission

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Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note NAL/Acct. No. 200532700005, and FRN 0004036711. 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 12th Street, S.W., Washington, D.C. 20554.<sup>24</sup>

22. 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.

23. 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.

24. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Infinity Broadcasting Corporation of Florida, Suite 725, 2000 K Street, NW, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow  
District Director  
Tampa Office  
Enforcement Bureau

cc: WQYK-FM

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<sup>24</sup>See 47 C.F.R. § 1.1914.