

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

In the Matter of )
) File Number EB-00-IH-0287
)
CLEAR CHANNEL BROADCASTING )
) LICENSES, INC. NAL/Acct. No. x200132080007
)
)
Licensee of Station WINZ(AM) )
)
Miami, Florida )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 29, 2000

Released: November 30, 2000

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") has apparently violated Section 73.1206 of the Commission's rules, by broadcasting a live telephone conversation without first informing the party to the conversation of its intention to do so. We conclude that Clear Channel is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On August 24, 2000, Lee Schwartz sent a complaint to the Commission directed against Station WINZ(AM), Miami, Florida. Mr. Schwartz alleged that on or about July 21, 2000, station announcer Liz Wilde called his home seeking his permission to broadcast a conversation concerning a personal matter. However, the station apparently broadcast the conversation simultaneously with the placement of the call, which was prior to notifying Mr. Schwartz. In response to a letter of inquiry from

1 47 C.F.R § 73.1206.

2 The licensee indicates that the incident actually occurred on July 5, 2000, and that Mr. Schwartz is mistaken. We accept the licensee's explanation because the earlier date appears to be more consistent with documented evidence concerning a later-occurring event, e.g., the July 21, 2000, news account of the firing of Liz Wilde.

Bureau staff dated September 15, 2000, Clear Channel admits that the call took place, and that no advance notice was given before its broadcast. Furthermore, Clear Channel does not claim that there were any underlying circumstances that would have led Mr. Schwartz to believe that his conversation was being or would be broadcast. The licensee submits that the station has strict policies in place concerning broadcast telephone conversations, and that the incident in question was an isolated lapse on the part of a member of its staff, Liz Wilde, who has since been terminated. Clear Channel contends that this action should prevent the recurrence of similar incidents.

### III. DISCUSSION

3. Section 73.1206 of the Commission's rules,<sup>3</sup> provides, in pertinent part, that before recording a telephone conversation for broadcasting or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of its intention to broadcast the conversation.

4. In this case, Clear Channel clearly violated Section 73.1206 of the Commission's rules by calling Mr. Schwartz and broadcasting the conversation without giving him prior notice of its intent to broadcast such conversation. Section 503(b) of the Communications Act of 1934, as amended ("the Act"),<sup>4</sup> and Section 1.80(a) of the Commission's rules,<sup>5</sup> each provide that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, without regard to whether it had the specific intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

5. Based on the evidence before us, we find that Clear Channel's broadcast of an exchange between its then-employee, Liz Wilde, and Mr. Schwartz on or about July 5, 2000, is a willful violation of Section 73.1206 of the Commission's rules.<sup>6</sup> The Commission's *Forfeiture Policy Statement*<sup>7</sup> sets a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation. We have reviewed Clear Channel's response to our letter of inquiry, and we find no basis for decreasing the instant penalty from the base forfeiture amount. In this connection, although Clear Channel asserts that it has acted to prevent the recurrence of similar incidents by terminating the employee in question, it has not specifically

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<sup>3</sup> 47 C.F.R. § 73.1206.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80(a).

<sup>6</sup> We note that the statute requires only that the conduct in question, in order to be sanctionable, be either "willful" or "repeated," not both. *See* 47 U.S.C. § 503(b)(1)(B).

<sup>7</sup> *See Report and Order*, In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

argued that its efforts in this regard warrant consideration as a mitigating factor. Even considering that factor, we have consistently held that licensees are responsible for the selection and presentation of program material over their stations, as well as for the acts and omissions of their employees. *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970), citing *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962). In sum, we believe that the nature of the apparent violation requires the imposition of the base monetary forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's rules,<sup>9</sup> Clear Channel Broadcasting Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000.00) for violating Section 73.1206 of the Commission's rules,<sup>10</sup> which prohibits broadcasters from airing telephone conversations without first informing the parties to such conversations of their intention to do so.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,<sup>11</sup> within thirty days of the RELEASE DATE of this NOTICE OF APPARENT LIABILITY, Clear Channel Broadcasting Licenses, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

9. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 3 B-443, Washington, D.C., and MUST INCLUDE the file number listed above.

10. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail -- Return Receipt Requested to the licensee's counsel of record, Eve Klindera, Esq., Wiley Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.

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<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>10</sup> 47 C.F.R. § 73.1206.

<sup>11</sup> 47 C.F.R. § 1.80.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley  
Chief, Investigations and Hearings Division  
Enforcement Bureau