

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

In the Matter of	)	
	)	
<b>NOBLE BROADCAST LICENSEES, INC.</b>	)	File No. EB-00-IH-0046
	)	NAL/Acct. No. X32080006
Licensee of Station WVKS(FM)	)	
Toledo, Ohio	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 7, 2000**

**Released: March 9, 2000**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Noble Broadcast Licensees, Inc. ("Noble") has apparently violated Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, by broadcasting a live telephone conversation without first informing the party to the conversation of its intention to do so. We conclude that Noble is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On January 17, 2000, Ms. WilliAnn Moore, the President of the Toledo Branch of the NAACP, sent a complaint to the Commission directed against WVKS(FM) and co-owned station WSPD(AM). Ms. Moore stated that in July 1999, Denny Schaffer, a morning host on WVKS(FM), called her at home. According to the tape submitted with her complaint, Ms. Moore said "Hello," Mr. Schaffer identified himself, and she then hung up. Mr. Schaffer then called back. He played Ms. Moore's voice mail message over the air, and, when Ms. Moore did not answer the phone, he made a series of comments addressed to Ms. Moore. Ms. Moore stated in her complaint that Mr. Schaffer played a recording of this exchange on the air on or about November 30, 1999 without notifying her of his intention to broadcast the exchange.

3. On February 9, 2000, the Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, sent Noble a letter of inquiry regarding Ms. Moore's complaint. In its February 25, 2000 response, Noble admits that the conversation between Ms. Moore and Mr. Schaffer, and Ms. Moore's voice mail message, were broadcast live on WVKS(FM) on July 30, 1999, and were rebroadcast on November 29, 1999. According to Noble, Ms. Moore was first informed that she was on the air when Mr. Schaffer greeted her on the air. Noble admits that "[t]here are no underlying circumstances that would have led Ms. Moore to presume that the conversation or the voice mail message would be broadcast prior to the broadcast." Noble also states that the initiation of telephone calls without "prior, off-air notification of and consent to an on-air broadcast or recording is contrary to the licensee's policy." Noble admits "that it is responsible for the conduct of its employees."

### III. DISCUSSION

4. Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, provides, in pertinent part, that before recording a telephone conversation for broadcast 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, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast.

5. In this case, Noble clearly violated Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, by calling Ms. Moore on the air and broadcasting the conversation without giving her prior notice of its intent to broadcast the conversation. The Commission has specifically stated that "it is reasonable and desirable to retain for individuals the right to answer the telephone without having their voices or statements transmitted to the public" in the absence of prior notice. *Amendment of Section 73.1206: Broadcast of Telephone Conversations (Report and Order)*, 3 FCC Rcd 5461, 5463 (1988). Thus, to ensure such privacy rights, the Commission has determined that it is not sufficient for a station to give notice that a conversation is being recorded or broadcast at the beginning of a telephone call, if the conversation is already being taped or broadcast. Rather, "notice of intent to broadcast a conversation [must] actually precede the recording or transmission of the telephone call." *Id.*, see also *KIDS-TV 6*, 14 FCC Rcd 13351 (MMB 1999).

6. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991). Furthermore, a violation is "repeated" if it occurs more than once. *Id.*, 6 FCC Rcd at 4388.

7. Based on the evidence before us, we find that Noble broadcast an exchange between Ms. Moore and Mr. Schaffer on July 30, 1999, and rebroadcast the same exchange on November 29, 1999, in apparent willful and repeated violation of Section 73.1206 of the Commission's rules. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied* FCC 99-407 (released December 28, 1999). We have reviewed Noble's response to our letter of inquiry, and we do not find any basis for either increasing or decreasing the forfeiture from the base forfeiture amount. We believe that the clear nature of the violations and Noble's decision to replay the conversation in November 1999 without giving prior notification to Ms. Moore make a forfeiture the appropriate enforcement action in this case.

### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that Noble Broadcast Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Noble SHALL PAY to the United States the full amount

of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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.

11. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

12. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to David E. Crawl, Senior Vice President, Noble Broadcast Licenses, Inc., 50 East RiverCenter Boulevard, Suite 1200, Covington, Kentucky 41011, and to Noble's counsel, Marissa G. Repp, Esq., Hogan & Hartson, L.L.P., 555 13<sup>th</sup> Street, N.W., Washington, DC 20004-1109.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau