

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

In the Matter of)	
)	
)	
Results Radio Licensee, LLC)	File No. EB-02-IH-0134
)	NAL/Acct. No. 200232080013
Licensee of Station KHRD(FM),)	FRN 0001-5424-55
Weaverville, California)	Facility ID # 82720
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 11, 2002

Released: June 13, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Results Radio Licensee, LLC, (“Results”) has apparently violated Section 73.1206 of the Commission’s rules¹ by broadcasting a live telephone conversation without first informing the party to the conversation of its intention to do so. Based on our review of the facts and circumstances in this case, we conclude that Results is apparently liable for a forfeiture in the amount of three thousand two hundred dollars (\$3,200).

II. BACKGROUND

2. On February 19, 2002, James T. Davison, an announcer on KRRX(FM), Redding, California, submitted a complaint alleging that Station KHRD(FM), Weaverville, California, violated Section 73.1206 of the Commission’s rules. Mr. Davison alleged that KHRD(FM)’s on-air personality “Adamic” had a man visit his office with a cellular telephone. When the phone was handed to Mr. Davison, he was immediately engaged in the conversation with Adamic, and this conversation was recorded and later broadcast by KHRD(FM). Mr. Davison included a tape of the broadcast with his complaint. According to the complaint, Adamic never informed Mr. Davison of KHRD(FM)’s intent to record or broadcast their conversation.

3. In response to a Commission letter of inquiry,² Results Radio Licensee, LLC, (“Results”), the licensee of KHRD(FM), admitted that during the afternoon of February 14, 2002, KHRD(FM) did air the conversation at issue once. Results admits that Adamic recorded the telephone conversation and broadcast it on the air, yet did not inform Mr. Davison of his intention to broadcast the conversation prior to its airing.

¹ 47 C.F.R. § 73.1206.

² Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Results Radio Licensee, LLC, dated March 19, 2002.

4. According to the licensee, Results places the highest priority on their stations operating in full compliance with FCC and other legal requirements. Results contends that it reminds its personnel about compliance issues through a number of means, including frequent management meetings. Results states that, since receipt of our letter of inquiry, it has circulated a memorandum to the senior local managers that plainly sets forth the scope of Section 73.1206, including the requirement not to broadcast (or record for later broadcast) any telephone conversation without first obtaining the explicit consent of any other party to the conversation. Finally, Results states that it has not received any FCC citation or admonishment since it went on the air in 1999.

III. DISCUSSION

5. Section 73.1206 of the Commission's rules provides 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.³ The Commission has stated, "we believe that there is a legitimate expectation of privacy that telephone calls will not be broadcast without the consent of the parties involved." *In the Matter of Amendment of Section 1206: Broadcast of Telephone Conversations*, 3 FCC Rcd 5461, 5463 (1988).

6. In this case, we find that Results apparently violated Section 73.1206 of the Commission's rules by broadcasting Mr. Davison's conversation without giving him prior notice of its intent to broadcast such conversation.

7. Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ and Section 1.80(a) of the Commission's rules,⁵ 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 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, 4387-88 (1991).

8. Based on the evidence before us, we find that Results broadcast a conversation on February 14, 2002, in apparent willful violation of Section 73.1206 of the Commission's rules. The Commission's Forfeiture Policy Statement sets a base forfeiture of \$4,000 for the unauthorized broadcast of a telephone conversation. In assessing a monetary forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D). Those factors 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 such other matters as justice may require.⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's*

³ 47 C.F.R. § 73.1206.

⁴ 47 U.S.C. § 503 (b).

⁵ 47 U.S.C. § 1.80 (a).

⁶ 47 U.S.C. § 503(b)(2)(D). See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01 (1997), recon. denied, 15 FCC Rcd 303 (1999).

Rules, 12 FCC Rcd 17087 (1997). Taking into account Results' prior compliance record, we find that a reduction in the base forfeiture amount is warranted. Based upon these facts and considering all of the circumstances present here, we find \$3,200 to be the appropriate proposed forfeiture amount.

9. We commend Results' efforts to remind its management of the obligations of Section 73.1206. However, Results' subsequent remedial efforts do not alter the fact that the violation took place or justify further mitigation or cancellation of the proposed forfeiture penalty. *See Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules,⁷ Results Radio Licensee, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand two hundred dollars (\$3,200) for violating Section 73.1206 of the Commission's rules, which prohibits broadcasters from airing telephone conversations without first informing the parties to such conversations of their intention to do so.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,⁸ within thirty days of this NOTICE OF APPARENT LIABILITY, Results Radio Licensee, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁸ Id.

⁹ *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Jack W. Fritz II, President, Results Radio Licensee, LLC, 1355 N. Dutton Avenue, Suite 225, Santa Rosa, CA 95401-7107 with a copy to counsel for Results Radio Licensee, LLC, attn: William Fitz, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2401.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau