

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

In the matter of)	
)	
Entercom New Orleans License, LLC)	File No. EB-01-IH-0099
)	NAL/Acct. No. 2002 3208 0006
Licensee of Station WEZB-FM,)	FRN # 0006-1143-42
New Orleans, Louisiana)	Facility # 20346
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 5, 2001

Released: February 6, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Entercom New Orleans License, LLC ("Entercom"), licensee of Station WEZB-FM, New Orleans, Louisiana, has apparently violated Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, by recording a telephone conversation for broadcast without informing the other party of its intention to do so, even though the circumstances required it. Based on our review of the facts and circumstances in this case, we conclude that Entercom is apparently liable for a monetary forfeiture in the amount of Four Thousand Dollars (\$4,000.00).

II. BACKGROUND

2. The complainant states that she attempted to call the parents of an acquaintance of her son, and that the answering party identified himself as the acquaintance's father. After a brief conversation and termination of the call, both she and her son received word from friends that the conversation had been broadcast on Station WEZB-FM.

3. After reviewing the complaint, we issued a letter of inquiry on April 19, 2001. Entercom confirms that its on-air personality for a music and talk show at that hour recorded and broadcast the conversation. Entercom claims that the on-air personality twice told the complainant that she had reached a radio station.

III. DISCUSSION

4. Section 73.1206 of the rules provides, in pertinent part, that:

Before recording a telephone conversation for broadcast . . . a licensee shall inform any party to the call of the licensee's 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. Such awareness is presumed to exist [where the non-licensee party] originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

5. Entercom argues that WEZB-FM's on-air personality was entitled to presume that the complainant was aware that her call was being recorded for broadcast. Specifically, Entercom contends that: (1) the complainant originated the call; and (2) the on-air personality reasonably believed that it was obvious to the complainant that the call might be recorded for broadcast.

6. We disagree. Entercom does not contest the key elements of complainant's description of the call. We believe that the complaint clearly shows that the complainant was understandably confused during most of the call and she did not intend to call a broadcast station. At no time in the call did she realize that the conversation might be broadcast.¹ Moreover, we find that this should have been evident to the on-air personality by the time he finished the call and broadcast the recording. Thus, although the complainant originated the call, the on-air personality could not reasonably have presumed that the complainant had the awareness required by the rule. Therefore, Entercom's recording of the conversation and subsequent broadcast thereof without sufficient notice violated Section 73.1206 of the rules.²

7. Section 503(b) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 503(b), and Section 1.80 of the rules, 47 C.F.R. § 1.80, both state that any person who willfully or repeatedly fails to comply with the Act or the 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 any specific intent to violate the Commission's rules.³ Here, there is no question that Entercom, through its employee, knew that it broadcast a recorded telephone conversation without having previously informed the complainant of its intention to do so. Moreover, as detailed above, Entercom was not entitled to presume that the complainant was aware that her call was being recorded for later broadcast.

8. In assessing a monetary forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act. 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.⁴ The Commission's *Forfeiture Guidelines* set a base forfeiture amount of \$4,000 for recording a telephone conversation for broadcast without informing the other party of its intention to do so. After considering all the facts and circumstances, we find no reason for reducing that amount. We find that a \$4,000 proposed forfeiture is appropriate.

¹ In this regard, Brad Cummings, the Entercomm on-air personality who received and recorded the call at issue, himself acknowledges that he thought the complainant was a "prank" caller and that he "decided to play along."

² Entercom's reliance on *Dontron, Inc.*, 6 FCC Rcd 2560 (Aud. Serv. Div. 1991) in support of a contrary result is misplaced. In *Dontron*, concerning a religious call-in show, callers knew that their substantive conversation would be broadcast, but the host did not tell them that the portion of the call in which they gave their addresses and phone numbers was also on the air. The decision found no violation of Section 73.1206 because the callers were generally aware that they would be broadcast and, in fact, being broadcast was their intention. Here, complainant had no knowledge or intention of being on the air.

³ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 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. demed*, 15 FCC Rcd 303 (1999) ("Forfeiture Guidelines").

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the rules,⁶ Entercom is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$4,000 for willfully violating Section 73.1206 of the rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the rules,⁷ within thirty days of this NOTICE OF APPARENT LIABILITY, Entercom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. 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.

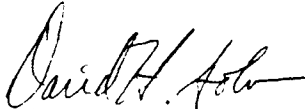
11. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenues and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail – Return Receipt Requested to Entercom New Orleans License, Radio Station WEBZ(FM), 401 City Avenue, Suite 409, Bala Cynwyd, PA, 19004; with a copy to Leventhal, Senter & Lerman, Suite 600, 2000 K. Street N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION



David H. Solomon
Chief, Enforcement Bureau

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ 47 C.F.R. § 1.80.

⁸ See 47 C.F.R. § 1.1914.