

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

In the Matter of)	
)	
MID-MISSOURI BROADCASTING, INC.)	File No. EB-03-IH-0150
)	NAL Account No. 200532080013
Licensee of Station KOQL(FM),)	Facility ID No. 60731
Ashland, Missouri)	FRN No. 0005088505

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 23, 2004

Released: November 24, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that, on March 25, 2003, Mid-Missouri Broadcasting, Inc. (“Mid-Missouri”), licensee of Station KOQL(FM), Ashland, Missouri, apparently willfully violated Section 73.1206 of the Commission’s rules regarding the broadcast of telephone calls.¹ Based upon our review of the facts and circumstances in this case, and for the reasons discussed below, we conclude that Mid-Missouri is apparently liable for a monetary forfeiture in the amount of \$4,000.

II. BACKGROUND

2. The Commission received a complaint from the Interim Director of Life Crisis Services, Inc. (“Life Crisis Services”), which operates a gambling hotline for the State of Missouri, alleging that Station KOQL(FM) broadcast a telephone conversation on March 25, 2003, from approximately 8:10 to 8:15 a.m., during “The Cosmo & JC Radio Show” between a station radio personality and one of the complainant’s hotline crisis counselors that was a prank.²

3. After reviewing the complaint, we issued a letter of inquiry to Mid-Missouri.³ In its response,⁴ Mid-Missouri admitted that it recorded and broadcast the telephone conversation as alleged in the complaint, and that it did not inform the hotline counselor that the conversation was being recorded for broadcast. The transcript of the broadcast provided by Mid-Missouri reveals that, during the aired call to the hotline counselor, the radio personality pretended to have a gambling problem. After posing a series of

¹ 47 C.F.R. § 73.1206.

² Life Crisis Services, Inc. operates 888-BETS-OFF, a telephone hotline for those Missouri residents with gambling addictions.

³ See Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mid-Missouri Broadcasting, Inc., dated June 4, 2004.

⁴ Letter from Mark N. Lipp, Esq., counsel for Mid-Missouri Broadcasting, Inc., to the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 6, 2004 (“Response”).

questions to the radio personality, the counselor determined the call was a prank and abruptly terminated the discussion.⁵

4. Mid-Missouri states that this was an isolated incident; that it has taken the necessary steps to ensure that such incidents do not reoccur; that the radio personality responsible for the prank apologized publicly and on the air to the employee and Life Crisis Services; and that Mid-Missouri has provided a link to the Life Crisis Services hotline on its station website.⁶

III. DISCUSSION

5. Under section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”),⁷ any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty. In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁹ As we set forth in greater detail below, we conclude under this standard that Mid-Missouri is apparently liable for a forfeiture for its apparent willful violation of section 73.1206 of the Commission’s rules.

6. Section 73.1206 of the Commission’s rules provides, in pertinent part:

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 only when the other party to the call is associated with the station (such as [sic] employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

Thus, section 73.1206 requires licensees to notify any party to a telephone call, before recording a call for broadcast or simultaneously airing the call of its intention to record and/or broadcast the conversation.

⁵ *Id.* at 5-6.

⁶ *Id.* at 2.

⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

The Commission has stated that “[t]he recording of such conversation with the intention of informing the other party later – whether during the conversation or after it is completed but before it is broadcast -- does not comply with the Rule”¹⁰ The rule reflects the Commission’s longstanding policy that prior notification is essential to protect an individual’s legitimate expectation of privacy, as well as to preserve their dignity by avoidance of nonconsensual broadcasts of their conversations.¹¹ Thus, the Commission has held that the prior notification requirement ensures the protection of an individual’s “right to answer the telephone without having [his or her] voice or statements transmitted to the public by a broadcast station” live or by recording for delayed airing.¹² Applying this reasoning, the Commission has defined “conversations” broadly “to include any word or words spoken during the telephone call,” and specifically has rejected arguments that “utterances made by parties called in answering the phone” are not subject to the rule’s prior notification requirement.¹³

7. As noted above, Mid-Missouri does not dispute that it violated the telephone broadcast rule. Based upon the information before us, we conclude that, on March 25, 2003, Mid-Missouri broadcast over Station KOQL(FM) a conversation between its radio personality and the helpline counselor without providing the counselor with prior notice that he intended to record and subsequently air the conversation, in apparent willful violation of section 73.1206 of the Commission’s rules. In light of this apparent misconduct, we find that Mid-Missouri apparently liable for a monetary forfeiture.

8. The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation¹⁴ and provides that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(D) and 1.80(a)(4), which include “the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁵ As noted above, Mid-Missouri states that it “believes this was an isolated incident and it is taking the necessary steps to prevent an incident like this from happening again. Additionally, Mid-Missouri, . . . made an on-air apology to Life Crisis Services on April 4, 2003, and provided a link to the Life Crisis Hotline on its website. . . .”¹⁶ Although such efforts are laudable, post-violation actions are not relevant to our

¹⁰ *Station-Initiated Telephone Calls which Fail to Comply with Section 73.1206 of the Rules*, Public Notice, 35 FCC 2d 940, 941 (1972) (“1972 Public Notice”).

¹¹ *See Amendment of Section 1206: Broadcast of Telephone Conversations*, Report and Order, 3 FCC Rcd 5461, 5463-64 (1988) (“1988 Order”); *1972 Public Notice*, 35 FCC 2d at 941; *Amendment of Part 73 of the Commission’s Rules and Regulations with Respect to the Broadcast of Telephone Conversations*, Report and Order, 23 FCC 2d 1, 2 (1970); *see also EZ Sacramento, Inc. and Infinity Broadcasting Corporation of Washington, D.C.*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4958 (2002) (finding that prior notifications “effectively cease” when callers are put on hold, and that thus explicit notice must be given if stations plan to continue such broadcasts or record such conversations for later broadcasts); *Hefel Broadcasting-Contemporary, Inc.*, Memorandum Opinion and Order, 52 FCC 2d 1005, 1006 (1975) (finding that “cash call” promotions that simultaneously broadcast, and award prizes based on, parties’ responses in answering the telephone are subject to section 73.1206’s prior notification requirement).

¹² *1988 Order*, 3 FCC Rcd at 5463.

¹³ *Hefel Broadcasting-Contemporary, Inc.*, 52 FCC 2d at 1006.

¹⁴ *See Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997) (“*Forfeiture Policy Statement*”), Memorandum Opinion and Order, *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁵ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

¹⁶ *See Response at 2.*

determination of appropriate forfeiture amount.¹⁷ Based upon the facts and circumstances presented here, we find the base amount of \$4,000 to be the appropriate proposed forfeiture amount.¹⁸

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,¹⁹ and sections 0.111, 0.311 and 1.80 of the Commission's rules,²⁰ Mid-Missouri Broadcasting, Inc., licensee of Station KOQL(FM), Ashland, Missouri, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$4,000 for willfully violating section 73.1206 of the Commission's rules on March 25, 2003.²¹

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the rules,²² within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY, Mid-Missouri Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. 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. 20554.²³

14. Accordingly, IT IS ORDERED that the complaint filed against Mid-Missouri Broadcasting, Inc., licensee of Station KOQL(FM), Ashland, Missouri, IS GRANTED to the extent set forth herein.²⁴

15. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY shall

¹⁷ See, e.g., *AT&T Wireless Services, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259 (1973).

¹⁸ See, e.g., *El Mundo Broadcasting Corp.*, Notice of Apparent Liability, 15 FCC Rcd. 20377 (Enf. Bur. 2000), Forfeiture Order, 16 FCC Rcd 4513 (Enf. Bur. 2001) (forfeiture lowered from \$6,000 to \$4,000).

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²¹ 47 C.F.R. § 73.1206.

²² 47 C.F.R. § 1.80.

²³ 47 C.F.R. § 1.1914.

²⁴ Consistent with section 503(b) of the Act and Commission practice, for the purpose of the forfeiture proceeding initiated by this NAL, Mid-Missouri Broadcasting, Inc. shall be the only party to this proceeding, 47 U.S.C. § 503(b).

be sent by Certified Mail - Return Receipt Requested to Mid-Missouri Broadcasting, Inc., 503 Old Highway 63 North, Columbia, Missouri 65201, with copy to its counsel, Mark N. Lipp, Esq., Vinson & Elkins, L.L.P., 1455 Pennsylvania Ave., N.W., Washington, D.C. 20004 and to the complainant, Susan M. Self, LCSW, Interim Director, Life Crisis Services, 1423 S. Big Bend Blvd., St. Louis, Missouri 63117.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau