

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
AMFM Radio Licenses, LLC	)	File No. EB-04-IH-0172
	)	NAL Account No. 200532080023
Licensee of Station WKQI(FM),	)	Facility ID No. 6592
Detroit, Michigan	)	FRN No. 0011675014
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** December 21, 2004

**Released:** December 21, 2004

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that AMFM Radio Licenses, LLC (“AMFM”), licensee of Station WKQI(FM), Detroit, Michigan, apparently violated section 73.1206 of the Commission’s rules<sup>1</sup> by broadcasting a telephone conversation without first informing the other party to the conversation of its intention to do so. Based upon our review of the facts and circumstances of this case, we find that AMFM is apparently liable for a forfeiture of Eight Thousand Dollars (\$8,000) for its willful violation of section 73.1206.

**II. BACKGROUND**

2. We received a complaint that, on January 21, 2004, at approximately 7:51 p.m., AMFM broadcast a telephone conversation over Station WKQI(FM) between an AMFM radio personality and a volunteer answering telephone calls to the prayer hotline for the Word of Faith International Christian Center (“Word of Faith”), without the volunteer’s knowledge.<sup>2</sup> The AMFM radio personality allegedly called the prayer hotline, and a volunteer answered the telephone. The AMFM radio personality, allegedly pretending to be a female caller, asked the volunteer for a prayer.<sup>3</sup> The volunteer was suspicious that this was a prank call, based upon the nature of request, but nevertheless offered a prayer.<sup>4</sup> This telephone call was simultaneously monitored by a Word of Faith supervisor.<sup>5</sup> After the call had concluded, Word of Faith was notified by one of its members who was listening to the station that the AMFM radio personality had broadcast his expressed intention to call the prayer hotline, and

<sup>1</sup> 47 C.F.R. § 73.1206.

<sup>2</sup> See Letter from Word of Faith International Christian Center to the Federal Communications Commission, dated February 19, 2004 (“Complaint”).

<sup>3</sup> *Id.* at 6

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5.

subsequently aired over the station his conversation with the volunteer.<sup>6</sup>

3. On August 25, 2004, we sent a letter of inquiry to AMFM, enclosing a copy of the complaint.<sup>7</sup> AMFM was directed to state whether it initiated and/or participated in the telephone call to Word of Faith referenced in the complaint. If so, AMFM was directed to state, among other things, if it had informed all parties to the conversation that it was going to be broadcast, the identity of the individuals who had, on its behalf, placed or participated in the call, whether the telephone conversation with the Word of Faith volunteer had been recorded, and if so, whether there had been other broadcasts of the telephone conversation over Station WKQI(FM).<sup>8</sup> The letter of inquiry also directed AMFM to state whether it had broadcast all or any part of the telephone conversation over any stations licensed to it other than Station WKQI(FM).<sup>9</sup>

4. In its response to the letter of inquiry, Clear Channel Communications, Inc. (“Clear Channel”), the ultimate parent company of AMFM, states that the radio personality who was on the air on the date and at the time identified in the complaint no longer works at Station WKQI(FM), and that no current employee had any recollection of the alleged incident.<sup>10</sup> Clear Channel also states that it has no records, such as tapes or transcripts, and thus cannot confirm or deny whether the complained-of matter occurred.<sup>11</sup> Finally, Clear Channel argues that, even if such a telephone call had been in fact broadcast, the complaint was filed by a third party with no direct knowledge as to whether the volunteer who received the call on the prayer hotline had provided consent to the broadcast.<sup>12</sup>

5. On December 7, 2004, Word of Faith filed an additional statement of its volunteer who received from the station the call that was broadcast, supplementing information initially provided in the Complaint. The volunteer affirmatively states that the AMFM radio personality never identified that the call was from a radio station or that the conversation was being broadcast or recorded for a future broadcast.<sup>13</sup> Furthermore, the volunteer states that he did not consent to the broadcast of the conversation.<sup>14</sup> On December 15, 2004, Clear Channel filed a response to Word of Faith’s December 7, 2004, filing. Clear Channel reiterates that the radio personality is no longer employed at the station, no current employee has any recollection of the alleged incident, and it has no records, such as tapes or transcripts, relating to this matter that would enable it to explicitly confirm or deny whether the matter occurred as alleged.<sup>15</sup>

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to AMFM Radio Licenses, L.L.C., dated August 25, 2004.

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Letter from Andrew W. Levin, Chief Legal Officer, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 23, 2004, at 1 (“AMFM Response”).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Letter from Word of Faith International Christian Center to the Federal Communications Commission, dated November 19, 2004.

<sup>14</sup> *Id.*

<sup>15</sup> Letter from John M. Burgett, Esquire, Counsel for Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 15, 2004.

### III. DISCUSSION

6. Under section 503(b)(1) of the Act,<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> As we set forth in greater detail below, we conclude under this standard that AMFM is apparently liable for a forfeiture in the amount of \$8,000.

7. 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.<sup>19</sup>

Thus, section 73.1206 requires a licensee to so notify parties to a telephone call *before* it initiates recordings for simultaneous or later broadcast. 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 . . . .”<sup>20</sup> The rule reflects the Commission's longstanding belief that prior notification is essential to protect individuals' legitimate expectation of privacy, as well as to preserve their dignity by avoidance of nonconsensual broadcasts of their conversations.<sup>21</sup> Thus, the Commission has held that the prior notification requirement ensures the

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<sup>16</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). 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, 97<sup>th</sup> 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.

<sup>17</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>18</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

<sup>19</sup> 47 C.F.R. § 73.1206.

<sup>20</sup> *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”).

<sup>21</sup> *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*, 23 FCC 2d 1, 2, ¶

(continued....)

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.<sup>22</sup> 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.<sup>23</sup>

8. Based upon the information before us, it appears that, on January 21, 2004, AMFM broadcast a telephone conversation between an AMFM radio personality and a Word of Faith volunteer, without informing the volunteer that AMFM intended to broadcast the conversation, which constitutes an apparent willful violation of section 73.1206 of the Commission's rules. Although AMFM contends that it cannot "explicitly confirm or deny" whether the broadcast of the telephone conversation occurred without the prior notice required by section 73.1206,<sup>24</sup> the Commission previously has ruled that a licensee may not avoid liability for a rule violation by claiming ignorance as to what was broadcast over its station.<sup>25</sup> Moreover, we reject AMFM's assertion that there is an insufficient basis upon which to find an apparent rule violation because "the complaint was filed by a third party with no direct knowledge of whether the person who received the call provided consent to the broadcast."<sup>26</sup> The record contains statements of the Word of Faith volunteer who received the telephone call from the station. The volunteer indicates that he believed the call to be a prank, but that he proceeded to fulfill the prayer request. In addition, the volunteer has affirmatively stated that required notice was not given.<sup>27</sup> The Commission has emphasized that it expects strict adherence to section 73.1206 notice requirements, particularly in situations in which broadcast stations engage in pranks or "practical jokes" to provide entertainment programming in order to protect legitimate privacy expectations and the dignity of parties whose conversations may be recorded for simultaneous or later broadcast.<sup>28</sup> These considerations are particularly germane to the facts at issue here.<sup>29</sup> Under these circumstances, we find that an apparent violation of section 73.1206 and that it is appropriate to propose that AMFM be assessed a monetary forfeiture.

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5 (1970); see also *EZ Sacramento, Inc. (KHTK(AM)) and Infinity Broadcasting Corp. of Washington, D.C. (WJFK-FM)*, Memorandum Opinion and Order, 16 FCC Rcd 4958, ¶ 2 (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. (WKTQ(AM))*, Memorandum Opinion and Order, 52 FCC 2d 1005, 1006 ¶ 7 (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).

<sup>22</sup> *1988 Order*, 3 FCC Rcd at 5463, ¶ 19.

<sup>23</sup> *Hefel Broadcasting-Contemporary, Inc.*, 52 FCC 2d at 1006, ¶ 5 (emphasis added).

<sup>24</sup> AMFM Response at 1.

<sup>25</sup> See *Infinity Broadcasting Corporation of Los Angeles (KROQ-FM)*, Memorandum Opinion and Order, 17 FCC Rcd 9892, 9896, ¶ 18 (2002), citing *Community Broadcasters, Inc. (WGHN(AM)/WGHN-FM)*, Memorandum Opinion and Order, 55 FCC Rcd 28, 35 (1975).

<sup>26</sup> AMFM Response at 1.

<sup>27</sup> In any event, we have rejected the argument that a licensee cannot be held liable for an unauthorized broadcast of a telephone conversation if a third party, and not the recipient of the telephone call, complains to the Commission. See *WXJD Licensing, Inc. (WXJD(FM))*, Forfeiture Order, DA 04-2543 (Enf. Bur. Nov. 24, 2004).

<sup>28</sup> See *1972 Public Notice*, 35 FCC 2d at 940-41.

<sup>29</sup> See, e.g., *WXJD Licensing, supra*; *Mid-Missouri Broadcasting, Inc. (KOQL(FM))*, Notice of Apparent Liability for Forfeiture, DA 04-3683 (Enf. Bur. Nov. 24, 2004).

9. Section 503(b) of the Act and section 1.80(a) of the Commission's rules both state that any person who willfully or repeatedly fails to comply with the provisions of the Act, the rules or Commission orders shall be liable for a forfeiture penalty.<sup>30</sup> The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.<sup>31</sup> The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, such as "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."<sup>32</sup> Based upon the entire record, including the prior history of multiple violations of section 73.1206 by AMFM, its corporate parent, Clear Channel, and other licensees controlled by Clear Channel,<sup>33</sup> we believe that an upward adjustment of the forfeiture amount for the unauthorized telephone conversation, to \$8,000, is warranted.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>34</sup> and sections 0.111, 0.311 and 1.80 of the Commission's rules,<sup>35</sup> AMFM Radio Licenses, LLC, licensee of Station WKQI (FM), Detroit, Michigan, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of Eight Thousand Dollars (\$8,000) for apparently willfully violating section 73.1206 of the Commission's rules on January 21, 2004.<sup>36</sup>

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the rules,<sup>37</sup> within thirty (30) days of this NOTICE OF APPARENT LIABILITY, AMFM Radio Licenses, 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 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

<sup>30</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>31</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b). The Commission recently amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates, in *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000). However, the new rates apply to violations that occur or continue after September 7, 2004. See *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

<sup>32</sup> 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 27.

<sup>33</sup> See *Clear Channel Broadcasting Licenses, Inc. (WGBF(FM))*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 5893 (Enf. Bur. 2002) (forfeiture paid); *AMFM Radio Licenses, LLC (WWDC-FM)*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 5032 (2002) (forfeiture paid); *Clear Channel Broadcasting Licenses, Inc. (WINZ(AM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 23839 (Enf. Bur. 2000) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13805 (Enf. Bur. 2000) (forfeiture paid).

<sup>34</sup> 47 U.S.C. § 503(b).

<sup>35</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>36</sup> 47 C.F.R. § 73.1206.

<sup>37</sup> 47 C.F.R. § 1.80.

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, 8<sup>th</sup> Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and also should note the NAL/Acct. No. referenced above.

13. 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.

14. 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.<sup>38</sup>

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail - Return Receipt Requested to Andrew W. Levin, Chief Legal Officer, Clear Channel Communications, Inc., 200 East Basse Road, San Antonio, Texas, 78209-8328, with a copy to Clear Channel Communications, Inc.'s counsel, John M. Burgett, Esquire, Wiley Rein & Fielding LLP, 1776 K Street, NW, Washington, D.C. 20006 and to Word of Faith International Christian Center.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>38</sup> 47 C.F.R. § 1.1914.