

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

In the Matter of	)	
	)	
Clear Channel Broadcasting Licenses, Inc.	)	File No. EB-05-IH-0160
	)	NAL/Acct. No. 200632080163
Licensee of Station WRUM(FM)	)	Facility ID No. 59976
Orlando, Florida	)	FRN No. 0001587971
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: June 16, 2006**

**Released: June 20, 2006**

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the “Act”), and section 1.80 of the Commission’s rules,<sup>1</sup> we find that Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”), licensee of Station WRUM(FM), Orlando, Florida, broadcast information about a contest without fully and accurately disclosing all material terms thereof and failed to conduct the contest substantially as announced or advertised, in apparent willful violation of section 73.1216 of the Commission’s rules.<sup>2</sup> Based upon our review of the facts, we find, pursuant to section 503(b) of the Act, that Clear Channel is apparently liable for a forfeiture in the amount of \$6,000.

**II. BACKGROUND**

2. The Commission received a written complaint dated February 28, 2005, (hereinafter “the Complaint”) from Mega Communications of Daytona Beach Licensee, L.L.C. (“Mega”), licensee of Station WNUE-FM, Orlando, Florida.<sup>3</sup> In the Complaint, Mega alleges that the morning talk show hosts on Station WRUM(FM) had conducted a contest on February 24, 2005 in violation of section 73.1216 of the Commission’s rules. The Complaint states that, beginning at approximately 7:40 a.m. and repeatedly over the next several hours, Station WRUM(FM) hosts announced that the 100<sup>th</sup> listener to call and state the name of the show, “John Musa Y Los Anormales De La Mañana” (translated as “John Musa And The Abnormals Of The Morning”), would win a cash prize in the amount of \$1,000.<sup>4</sup> According to the Complaint, the hosts urged listeners to call either of two telephone numbers, failing to disclose that those telephone numbers belonged to rival Orlando Spanish-language Station WNUE-FM.<sup>5</sup> Shortly thereafter, according to the Complaint, Station WNUE-FM was inundated with telephone calls from WRUM(FM) listeners hoping to win the announced cash prize. The Complaint states that many such callers became

<sup>1</sup> 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.1216.

<sup>3</sup> Letter from Arthur H. Harding, Esq., counsel for Mega Communications of Daytona Beach Licensee, L.L.C., to David H. Solomon, Chief, Enforcement Bureau, Federal Communications Commission, dated February 28, 2005 (“Complaint”).

<sup>4</sup> Complaint at 1.

<sup>5</sup> *Id.* at 2.

angry when they were informed by WNUE-FM personnel that no such contest was being conducted and that no money would be awarded.<sup>6</sup> After Mega determined the cause of the situation, it promptly contacted Station WRUM(FM), which had already ceased making further announcements about the contest.<sup>7</sup>

3. By Letter of Inquiry dated June 28, 2005, the Enforcement Bureau directed Clear Channel to provide information about the contest.<sup>8</sup> On July 18, 2005, Clear Channel Communications Inc. (“CCCI”), the ultimate parent company of Clear Channel, responded on the licensee’s behalf.<sup>9</sup> CCCI does not dispute the accuracy of the Complaint (including the transcript of a portion of the broadcast provided by Mega) and confirms that its morning show hosts did air information about a false contest and urged listeners to call Station WNUE-FM’s toll-free and local telephone numbers.<sup>10</sup> CCCI contends, however, that the broadcast in question did not involve an actual contest, but instead, was only a “prank” and therefore does not fall within the purview of section 73.1216 of the Commission’s rules.<sup>11</sup> CCCI further states that the WRUM(FM) show hosts disclosed there was no actual contest near the end of their program and were thereafter “admonished” by station management that the broadcast was unacceptable.<sup>12</sup> In its Reply, Mega states that, contrary to the assertion of CCCI, the broadcast was more than just an isolated prank, noting that the Clear Channel hosts continued their solicitation of calls for over two hours and that it was only at the end of the show that they disclosed that the contest was a prank, by which time the Mega phonelines were inundated with calls from upset and disappointed Station WRUM(FM) listeners.<sup>13</sup>

### III. DISCUSSION

4. Section 73.1216 of the Commission's rules provides that “[a] licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading, or deceptive with respect to any material term.”<sup>14</sup> Material terms include those factors which define the operation of the contest and which affect participation therein, including, among other things, “how to enter or participate; eligibility restrictions; [and] time and means of selection of winners . . . .”<sup>15</sup> The Commission enacted section 73.1216 to proscribe broadcasting practices that deceive audiences, are contrary to the public interest, or unfair to competitors.<sup>16</sup>

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

<sup>7</sup> *Id.*

<sup>8</sup> Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Clear Channel Broadcasting Licenses, Inc., dated June 28, 2005 (“LOI”).

<sup>9</sup> Letter from Andrew W. Levin, Esquire, Executive Vice President and Chief Legal Officer, Clear Channel Communications Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 18, 2005 (“Response”). On August 10, 2005, Mega filed a reply to the Response. Letter from Mark B. Denbo, Esq., counsel for Mega Communications LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission dated August 10, 2005 (“Reply”).

<sup>10</sup> Response at 2.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Reply at 2.

<sup>14</sup> 47 C.F.R. § 73.1216.

<sup>15</sup> *Id.*

<sup>16</sup> *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 FCC 2d 934, 934-35, ¶ 3 (1975), *proposed rule adopted in pertinent part*, Report and Order, 60 FCC.2d 1072 (1976).

5. The Commission has held that licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading, or deceptive contest announcements.<sup>17</sup> A broadcast announcement concerning a contest is false, misleading, or deceptive “if the net impression of the announcement has a tendency to mislead the public.”<sup>18</sup> In enforcing this rule, the Enforcement Bureau has repeatedly held that licensees are responsible for broadcasting accurate statements as to the nature and value of contest prizes, and will be held accountable for any announcement that tends to mislead the public.<sup>19</sup>

6. In this case, we find that Clear Channel apparently violated section 73.1216 by not fully and accurately disclosing the material terms of its contest and by not conducting the contest substantially as announced.<sup>20</sup> CCCI admits that the station failed to disclose in its announcements promoting the contest that the contest was false, and CCCI further concedes that it provided listeners with telephone numbers of a competing station that would not actually be utilized to award the announced prize. Furthermore, the licensee failed to conduct the contest as announced or advertised as offering a prize of \$1,000: the station did not award any such prize.

7. We reject CCCI’s contention that Clear Channel should not be subject to liability under section 73.1216 of the rules because the broadcast was merely a prank. Note 1(a) to the rule expressly states that “[a] contest is a scheme in which a prize is offered or awarded, based on chance, diligence, knowledge or skill, to members of the public.”<sup>21</sup> The hosts of Station WRUM(FM)’s morning show offered listeners an opportunity to win \$1,000 based on the chance that they would be the 100<sup>th</sup> caller.<sup>22</sup> Although they eventually informed their listeners that the contest was a prank and that no prize would be awarded, they misled their listeners for over two hours before they broadcast that acknowledgement. Under the circumstances, section 73.1216 clearly applies.

8. Based upon the evidence before us, we find that Clear Channel failed to conduct the contest as announced and advertised, in apparent violation of section 73.1216 of the Commission’s rules. Pursuant to the Commission’s *Forfeiture Policy Statement*<sup>23</sup> and section 1.80 of the rules,<sup>24</sup> the base

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<sup>17</sup> *Application of WMJX, Inc., WMJX-FM Miami, Florida For Renewal of License*, Decision, 85 FCC 2d 251, 269 (1981) (“*WMJX*”) (forfeiture paid).

<sup>18</sup> *Id.* at 269-70. “The Commission stated in *Eastern Broadcasting Corp.*, 144 FCC 2d 228, 229 (1968): ‘Deception may result from the use of statements which are not technically false or which may be literally true, since only the relevant consideration is the impact of the statements to the public.’” *WMJX, Inc.*, 85 FCC 2d at 270, n. 82.

<sup>19</sup> *See, e.g., Citicasters, Co.*, Notice of Apparent Liability, 15 FCC Rcd 16612, 16613-14 (Enf. Bur. 2000) (forfeiture paid); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 2734, 2735 (Enf. Bur. 2000) (forfeiture paid).

<sup>20</sup> 47 C.F.R. § 73.1216.

<sup>21</sup> 47 C.F.R. § 73.1216 Note 1(a).

<sup>22</sup> Note 1(b) to section 73.1216 provides further guidance relating to a licensee’s obligation to accurately disclose the material terms of a contest:

Material terms include those factors which define the operation of the contest and which affect participation therein . . . and they generally include: how to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; nature and value of prizes; basis for valuation of prizes; time and means of selection of winner; and/or tie breaking procedures.

The Complaint establishes, and Clear Channel does not deny, that the broadcast provided the rules of the contest and identified the prize to be awarded. Complaint at 1.

<sup>23</sup> *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), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

forfeiture amount for failing to fully and accurately disclose the material terms of a contest and failing to conduct the contest substantially as announced or advertised is \$4,000. The *Forfeiture Policy Statement* and section 1.80 provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, and section 1.80(a)(4) of the Commission's rules, 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."<sup>25</sup>

9. Based upon our review of all the pertinent factors as required by Section 503(b)(2)(D) of the Act, we believe a \$6,000 proposed forfeiture is appropriate. Station WRUM(FM)'s broadcast of a "prank" contest misled the public, thus violating the rule and undermining the public's trust in broadcasters. During the over two hours of the broadcast, a substantial number of listeners took the time to call the telephone numbers broadcast by Clear Channel based upon the fraudulent and irresponsible representations of the station's on-air hosts. Additionally, the licensee's actions were intentional and maliciously harmed the listener goodwill of its competitor, Station WNUE-FM. Station WRUM(FM) made no on-air apology and took no disciplinary action against its employees, instead sending an email apology to Station WNUE-FM and informing the Program Director and station hosts that such behavior was "unacceptable." Finally, we note that Clear Channel has a history of violations of the Commission's rules, including this rule.<sup>26</sup> Accordingly, the violation warrants an upward adjustment of the base forfeiture amount. Based on the factors described above, we find that Clear Channel is apparently liable for a \$6,000 forfeiture.

#### IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,<sup>27</sup> that Clear Channel Broadcasting Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$6,000 for apparently willfully and repeatedly violating section 73.1216 of the Commission's rules.

11. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, Clear Channel Broadcasting Licenses, Inc. 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 appropriate *NAL*/Acct. No. and *FRN* No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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

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<sup>24</sup> 47 C.F.R. § 1.80(b).

<sup>25</sup> 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4).

<sup>26</sup> See, e.g., *Capstar TX Limited Partnership*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636 (Enf. Bur. 2005) (forfeiture paid); *Citicasters, Co.*, Notice of Apparent Liability, 15 FCC Rcd 16612, 16613-14 (Enf. Bur. 2000) (forfeiture paid); *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 2734, 2735 (Enf. Bur. 2000) (forfeiture paid).

<sup>27</sup> 47 C.F.R. § 1.80.

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 *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>28</sup>

16. Accordingly, IT IS ORDERED, that the Complaint in this proceeding IS GRANTED, and the Complaint proceeding IS HEREBY TERMINATED.<sup>29</sup>

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class Mail and Certified Mail - Return Receipt Requested, to Andrew W. Levin, Esquire, Executive Vice President and Chief Legal Counsel, Clear Channel Communications, Inc., 200 East Basse Road, San Antonio, Texas, 78209 and to its counsel, John Fiorini, Esquire, Wiley, Rein, & Fielding LLP, 1776 K Street N.W. Washington, D.C. 20006; and, by regular mail, to Arthur H. Harding, Esquire, and Mark B. Denbo, Esquire, counsel for Mega Communications of Daytona Beach Licensee, L.L.C., Fleischman and Walsh L.L.P., 1919 Pennsylvania Ave, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport  
Chief, Investigations and Hearings Division  
Enforcement Bureau

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<sup>28</sup> See 47 C.F.R. § 1.1914.

<sup>29</sup> Consistent with section 503(b) of the Act and consistent Commission practice, for the purposes of the forfeiture proceeding initiated by this *NAL*, Clear Channel Broadcasting Licenses, Inc. shall be the only party to this proceeding.