

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

In the Matter of)	
)	
)	File No. EB-06-IH-2500
AMFM Broadcasting Licenses, LLC)	FRN: 0012325395
)	NAL/Acct. No. 200932080029
)	Facility ID No. 34424
Licensee of Station KOST(FM))	
Los Angeles, California)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 12, 2009

Released: February 12, 2009

By the Chief, Investigations and Hearings Division:

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”),¹ we find that AMFM Broadcasting Licenses, LLC (“AMFM” or “Licensee”), Licensee of Station KOST(FM), Los Angeles, California (the “Station”), apparently willfully and repeatedly violated Section 73.1216 of the Commission’s rules by failing to “fully and accurately disclose the material terms of a contest” and to conduct the contest “substantially as announced or advertised.”² Based on our review of the facts and circumstances, we find the Licensee liable for a monetary forfeiture in the amount of \$6,000.

II. BACKGROUND

2. The Commission received a complaint dated August 23, 2006 (the “Complaint”), alleging that the Station failed to conduct its “KOST Rewards ‘Les Miserables’” contest (the “Contest”) in accordance with its advertised terms and the Commission’s rules.³ Specifically, the Complainant states that the Station conducted a drawing through its KOST Rewards program whereby participants could win tickets to the musical “Les Miserables.”⁴ The Complainant alleges that contestants were able to enter the Contest on the Station’s webpage beginning on May 29, 2006 at 3:50 p.m. and ending on June 2, 2006 at 8:50 p.m., but that, on June 2nd, at approximately 3:00 p.m., and prior to the time advertised for the close of the Contest, the names of three Contest winners were already broadcast over KOST(FM) and that, by

¹ See 47 U.S.C. § 503.

² 47 C.F.R. § 73.1216 (the “Contest Rule”).

³ See Letter from Complainant to Federal Communication Commission, received June 3, 2006 (“Complaint”). Included as a part of the Complaint are pages from the Complainant’s KOST Rewards Program account webpage which states that the Contest “Raffle Opens” at 3:50 p.m. on May 29, 2006 and that the “Raffle Closes” at 8:50 p.m. on June 2, 2006. One such page states: “Congratulations to our winners: Mary Abbett Alex Bernstein Joe Ramirez” and contains a notation by the Complainant that this page was posted “On website about 4:00 pm 6/02.”

⁴ See Complaint at 1 (Participants in the KOST Rewards program “earn points by listening [to KOST(FM)] and doing various things on the KOST Rewards website such as identifying a song played at a certain time. You can then buy raffle tickets [to enter contests] with the points you have earned.”). See *id.*

4:00 p.m., the winners' names were posted on the Station's website.⁵ The Complainant states that only one additional winner was chosen after that time.⁶ The Complaint further states that, because of the premature selection of winners, the Contest was not conducted fairly and as advertised. The Complainant states that: "[b]y its very nature a 'random' drawing held at 3:00 p.m. would not have the same results as one held after the stated running time of the Contest."⁷

3. Based on the allegations contained in the Complaint, the Enforcement Bureau ("Bureau") sent a letter of inquiry (the "LOI") to the Licensee.⁸ Clear Channel Communications ("Clear Channel"), the ultimate parent company of AMFM, responded on January 19, 2007 (the "LOI Response").⁹ In its LOI Response, the Licensee claims that the Contest is not governed by Section 73.1216 because it "was conducted solely via the Station's website" and was one of "numerous contests conducted on the site under the Station's 'Rewards' program, which allows listeners to register online to earn 'points' . . . [that can be used to compete] for prizes in on-line contests such as the one at issue."¹⁰

4. The Licensee states that "[t]he only on-air reference to the Contest was an announcement for the Rewards program that promoted the Program generally and included examples of what was available to participants on the website at that time, including the Contest at issue."¹¹ The LOI Response includes a transcript of the on-air announcement¹² and a schedule showing when the announcements were scheduled to be broadcast.¹³ The Event Manager for the Station, Daria Linville, confirms that the Contest opened at 3:50 p.m. on May 29, 2006, and closed at 8:50 p.m. on June 2, 2006. Ms. Linville further confirms that drawings were conducted on June 2nd and June 5th, and that a winner was selected on June 2nd at 9:39 a.m., two additional winners were selected on June 2nd at 1:03 p.m., and the final winner was selected on June 5th at 9:03 a.m.¹⁴ The Licensee argues that while contestants knew they had a chance to win tickets, they did not know how many pairs of tickets would be awarded in total, nor when the drawings would be held, and, therefore, no one was misled.¹⁵

5. The Licensee contends that, although listeners were told on-air that they could enter on the Station's website to win tickets to "Les Miserables," the Contest is not governed by Section 73.1216 of the Commission's Rules because "substantive information" about the Contest was not broadcast on-

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to AMFM Broadcasting Licenses, LLC, dated December 20, 2006 ("LOI").

⁹ See Letter from Andrew W. Levin to Marlene H. Dortch, Secretary, Federal Communications Commission, dated January 19, 2007 ("LOI Response").

¹⁰ See *id.* at 1.

¹¹ See *id.* The LOI Response also states that "[p]romotions and/or announcements and/or material concerning the Contest were not promoted and/or broadcast on any other Clear Channel station." *Id.* at 2.

¹² See *id.* at 6 (Attachment A).

¹³ See *id.* at 7 (Attachment B).

¹⁴ See *id.* at 4 (Exhibit 1) (Declaration of Daria Linville).

¹⁵ See *id.* at 4 (Exhibit 1).

air.¹⁶ Also, the Licensee disputes the Complainant's statement that the names of some winners were announced on-air; it asserts that the Station makes such on-air announcements "only when the prizes are large,"¹⁷ and that, in this case, the names of the prize winners were posted on the Station's website on the same date the names were drawn.¹⁸

II. DISCUSSION

6. Under Section 503(b)(1) of the Act, 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 forfeiture penalty.¹⁹ 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.²⁰ 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,²¹ and the Commission has so interpreted the term in the Section 503(b) context.²² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²³ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²⁴ In order to impose such a 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 penalty should be imposed.²⁵ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²⁶ As described in greater detail below, we conclude under this procedure that AMFM is apparently liable for a forfeiture in the amount of \$6,000 for its apparent willful and repeated failure to fully and accurately disclose the material terms of its Contest and to conduct the Contest substantially as announced or advertised.

7. Section 73.1216 of the Commission's rules provides: "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

¹⁶ *See id.* at 2.

¹⁷ *Id.* at 4 (Exhibit 1).

¹⁸ *See id.* at 2. The Licensee notes that tickets for a performance that were not picked up before the close of business on the day of that performance were given to a Station staff member. *See id.*

¹⁹ *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²² *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²³ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

²⁵ *See* 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁶ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

shall be false, misleading or deceptive with respect to any material term.”²⁷ The material terms of a contest include, among other things, the time and method of selecting prize winners, when prizes can be won, and the value of the prizes being awarded.²⁸ Additionally, “the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate [in the contest] and continues thereafter.”²⁹ Licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements,³⁰ and to conduct their contests substantially as announced.³¹ The Commission has noted that “[t]he standards are high, for while contests are particularly susceptible to abuse, abuses can be prevented by diligent licensee attention to the planning and the conduct of contests.”³²

8. AMFM’s contention that the Contest at issue here does not fall under Section 73.1216 because “no substantive information concerning the Contest or how to participate in it was provided over the air” is unavailing. As the Commission has stated, “[t]he rule applies to all contests conducted by the licensee and broadcast to the public.”³³ Although the rule does not apply to licensee-conducted contests that are not broadcast or advertised to the public (*e.g.*, a station contest limited in its participation to station employees), AMFM acknowledges that the Station broadcast on-air promotions and announcements about its rewards program, which included the opportunity to participate in a drawing to win tickets to *Les Miserables*.³⁴ Although the Licensee categorizes these on-air promotions and advertisements as non-substantive, and claims, therefore, that the Contest was conducted “exclusively” via the Station’s website (*i.e.*, KOST1035.com), the transcript used to broadcast the promotion indicates

²⁷ 47 C.F.R. § 73.1216.

²⁸ See 47 C.F.R. § 73.1216, Note 1(b) (“Material terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending upon the exact nature of the contest, they will generally include: how to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; *when prizes can be won*; the extent, nature and value of prizes; basis for valuation of prizes; *time and means of selection of winners*; and/or tie-breaking procedures.”) (emphasis added).

²⁹ *Id.*, Note 2.

³⁰ See *WMJX, Inc.*, Decision, 85 FCC 2d 251, 269 (1981) (holding that proof of actual deception is not necessary to find violations of contest rules, and that the licensee, as a public trustee, has an affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements); *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072 (1976).

³¹ See *Headliner Radio, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2962 (Mass Media Bur. 1993) (finding that the airing of a misleading advertisement concerning a licensee’s contest violated the Commission contest rules because the contest was not then conducted “substantially as announced or advertised”); *Lincoln Dellar*, Memorandum Opinion and Order, 8 FCC Rcd 2582, 2585 (Mass Media Bur. 1993) (finding that the cancellation of a pre-announced contest violated the pertinent Commission rules because the contest was not then conducted “substantially as announced”).

³² *Honeyradio, Inc.*, Memorandum Opinion and Order, 69 FCC 2d 833 (1978), quoting *Licensee-Conducted Contests*, Proposed Rulemaking, 40 Fed. Reg. 26692 (1975) (holding licensee responsible for mistakes made during its conduct of a contest, and affirming forfeiture and denying petition for reconsideration of a letter of admonishment for violation of the Commission’s rules).

³³ See *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 FCC 2d 934 (1975).

³⁴ See *LOI Response* at 1, 4 (Exhibit 1 Declaration) (stating that on-air promotions about the Rewards Program included announcements of prizes available to Rewards Program participants), 6 (Attachment A) (providing a transcript of a contest announcement that was broadcast over the air). See also *LOI Response* at 7 (Attachment B) (providing the 6 scheduled time slots of the daily on-air announcements during a 3-day period).

otherwise.³⁵ We find that the promotion of the Contest over the air and the requirement that listeners stay tuned to the radio station belie Licensee's assertion that the Contest was conducted exclusively over the website and that Section 73.1216 does not apply. We find that the rule does apply.

9. In this case, AMFM promoted the Contest over the air, but did not fully disclose to the listening audience the Contest's material terms, including the time and means of selection of winners, when prizes can be won, and the total number of prizes.³⁶ Therefore, we find that AMFM violated the rule. In this regard, AMFM states in its LOI Response that "no substantive information concerning the Contest or how to participate in it was provided over the air."³⁷ It appears that the Licensee expected listeners to go to its website to learn the material terms of the Contest, but we find that the Station's website information also failed to include all the material terms of the Contest, resulting in participant confusion. As AMFM acknowledges: "the website did not disclose how many pairs of tickets would be awarded or when the drawings were held."³⁸ The Licensee admits, and documentation submitted by the Complainant shows, that the Contest closed at 8:50 p.m. on June 2, 2006, yet drawings to select prize winners were conducted several hours before the Contest closed (*i.e.*, at 9:39 a.m. and 1:03 p.m. on June 2, 2006). Based upon the extent of the information provided to Contest participants (which did not include the time by which winners would be selected), contestants such as the Complainant might reasonably conclude that the drawing to select Contest winners would not be conducted until after the close of the Contest, and that continued participation in the Contest until 8:50 p.m. on June 2nd would provide him the same chance of winning as other participants. The award of Contest prizes prior to that time, when the Contest remained open for contestants to enter it, is both misleading and deceptive when done, as here, without clarification to the public of the Contest's rules and procedures that would allow it.³⁹ As such, we conclude that AMFM violated Section 73.1216 of the Commission's rules.

10. Based upon the evidence before us, we find that the Licensee apparently willfully and repeatedly violated Section 73.1216 of the Commission's rules when the Station's "KOST Rewards Program's 'Les Miserables' Contest" broadcast information about a Contest it conducted but failed to fully disclose the material terms of that Contest or to conduct the Contest substantially as advertised. The Commission's Forfeiture Policy Statement and Section 1.80 of the Commission's rules specify a base forfeiture amount of \$4,000 for each violation of Section 73.1216.⁴⁰ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act and

³⁵ See *id.* at 2, 6 (Attachment A). Specifically, the transcript invites listeners "to become a member of our new 'KOST Rewards Program!!'" and "earn Rewards Points just by listening to 'Coast 103!!'," and instructs audience members to "then log on and use those points for great rewards and 'exclusive' contests!!" In one of the promotions offered during the week of the broadcast, members could "enter-to-win tickets to see Les Miserables at the Pantages Theatre on June 7th . . ." Further, the promotion directs listeners to the Station's website to enter the KOST Rewards Program's "exclusive contests," but states that listeners are required to listen to the Station's on-air broadcasts – "at 8:50 a.m., 12:50, 2:50, 3:50, and 8:50 p.m. for the KOST 'rewards songs'" -- in order to earn the "points" necessary to enter these contests.

³⁶ See *id.* at 2, 4 (Exhibit 1).

³⁷ *Id.* at 2.

³⁸ See *id.*

³⁹ The Licensee admits that three Contest winners were chosen prior to the close of the Contest entry time period. See *id.*

⁴⁰ See *The 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), *recons. denied* 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); 47 C.F.R. § 1.80(b).

Section 1.80(c)(4) of the Commission's rules,⁴¹ which 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 other such matters as justice may require.⁴² In reviewing our case precedent, we find that Clear Channel has a history of violations of the Commission's rules, including Section 73.1216.⁴³ Accordingly, the violation here warrants an upward adjustment of the base forfeiture amount. After consideration of all the foregoing factors, and in view of the particular facts of this case, we find that AMFM is apparently liable for a forfeiture in the amount of \$6,000.⁴⁴

III. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁴⁵ and Sections 0.111, 0.311, and 1.80 of the Commission's rules,⁴⁶ that AMFM Broadcasting Licenses, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully and repeatedly violating Sections 73.1216 of the Commission's rules.

12. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this Notice, AMFM Broadcasting 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.

13. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. AMFM shall also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Rebecca.Hirselj@fcc.gov and Judy.Lancaster@fcc.gov.

⁴¹ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(c)(4).

⁴² See *id.*

⁴³ See *Clear Channel Broadcasting Licenses, Inc.*, Licensee of Station WRUM(FM), Orlando, Florida, Notice of Apparent Liability, 21 FCC Rcd 6808, 6811 & n.26 (2006) (citing cases) (imposing a \$6,000 forfeiture for failure to conduct a contest as announced and advertised).

⁴⁴ See *id.* We note that Clear Channel has violated our contest rule multiple times, which could serve as a basis for imposing an even higher forfeiture assessment in future items.

⁴⁵ See 47 U.S.C. § 503(b).

⁴⁶ See 47 C.F.R. §§ 0.111, 0.311 and 1.80.

14. The response, if any, must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C330, Washington, D.C. 20554, and must include the NAL/Account Number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Hillary.DeNigro@fcc.gov, Rebecca.Hirselj@fcc.gov, and Judy.Lancaster@fcc.gov.

15. 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.

16. Requests for full payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.⁴⁷

17. **IT IS FURTHER ORDERED** that the complaint filed by the Complainant **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.⁴⁸

18. **IT IS FURTHER ORDERED** that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to AMFM Broadcasting Licenses, LLC, 2625 S. Memorial Drive, Suite A, Tulsa, Oklahoma 74129 and to Andrew W. Levin, Executive Vice President and Chief Legal Officer, Clear Channel, 200 East Basse Road, San Antonio, Texas 78209-8328.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

⁴⁷ See 47 C.F.R. § 1.1914.

⁴⁸ For purposes of the forfeiture proceeding initiated by this *NAL*, AMFM Broadcasting Licenses, LLC shall be the only party to this proceeding.