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

In the Matter of	)	
	)	
GOOD KARMA BROADCASTING, LLC	)	File No. EB-09-IH-0756
	)	FRN: 0015043227
Licensee of Station WKNR(AM), Cleveland,	)	NAL/Account No.: 201132080018
Ohio	)	Facility ID No. 28509

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 8, 2010 **Released: December 8, 2010**

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("*NAL*"), we propose a monetary forfeiture in the amount of $4,000 against Good Karma Broadcasting, LLC ("Good Karma" or the "Licensee"), licensee of Station WKNR(AM), Cleveland, Ohio (the "Station"), for its apparent willful and repeated violation of Section 73.1216 of the Commission's rules.[1] As discussed below, we find that Good Karma violated the contest rule requirements by broadcasting information about a contest without fully and accurately disclosing all of its material terms.

II. BACKGROUND

2. The Enforcement Bureau (the "Bureau") received a complaint (the "Complaint") alleging that the Station had conducted a "bogus" contest called "Who Said That" (the "Contest") during the "Really Big Show" on weekdays from 10:00 a.m. to noon, since approximately November 2007.[2] Specifically, the Complainant alleged that the Station provided no clues, cut-off callers on-air, stopped discussing prizes, and provided "no real payoff" for Contest winners.[3]

3. On June 19, 2009, and August 26, 2009, the Bureau sent letters of inquiry to the Licensee.[4] In response, Good Karma admitted that, regularly during early 2007 to the summer of 2008, and then

[1] *See* 47 C.F.R. § 73.1216.

[2] *See* Form 2000E Complaint, filed on February 13, 2009.

[3] *Id*.

[4] *See* Letter from Rebecca A. Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Good Karma Broadcasting, LLC, dated June 19, 2009; Letter from Rebecca A. Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Good Karma Broadcasting, LLC, dated August 26, 2009.

sporadically thereafter until September 4, 2009, the Station aired a "bit" called "Who Said That?"[5] during "The Really Big Show with Tony Rizzo."[6] Good Karma states that, during broadcasts of the Contest, the Station aired a voice recording of an unnamed individual in the sports world and listeners called in or sent an e-mail to the Station to try to correctly identify the speaker.[7] If the listener correctly identified the speaker, the Station awarded a prize to the winner.[8] After a winner was named, the Station aired a clip of another unnamed individual, and the Contest continued.[9]

4. The Licensee asserts that Station staff mentioned certain basic "material terms" on-air as they discussed the Contest.[10] According to the Licensee, these "material terms" included certain facts about how the Contest worked, including that: (1) the program host airs the clip; (2) listeners call the studio telephone line or send an e-mail and attempt to correctly identify the voice in the clip; (3) if the listener correctly identifies the voice in the clip, a prize is awarded; and (4) once the voice in the clip is correctly identified, a new clip is selected and the bit continues.[11] The Licensee also notes that it posts general contest rules applicable to all Station contests on its website.[12]

5. The Station conducted the Contest regularly and as planned with certain sports clips, but that practice changed when the Station began airing the last clip, which aired from the fall of 2007 until the Station concluded the Contest on September 4, 2009.[13] Good Karma notes that no one correctly identified the speaker in the last clip for more than twenty months.[14] Good Karma states that when the Station began airing the last clip from the fall of 2007 continuing until the summer of 2008, the Station aired a prize announcement during each weekday, two-hour program and notified listeners that additional prizes would be added each week.[15] The Licensee admits, however, that the Station did not announce the entire list of accumulated prizes, instead "identify[ing] the new prize and emphasiz[ing] material prizes in the package."[16] Between the summer of 2008 and September 4, 2009, announcements concerning the Contest became more infrequent, limited to approximately three or four times per week and then only when callers

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[5] *See* Letter from Nancy A. Ory, Lerman Senter PLLC, Counsel for Good Karma Broadcasting, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, 4, 5, dated September 11, 2009 ("*Second LOI Response*"). Good Karma states that while it views "Who Said That?" more as a program feature than a traditional radio contest, it nevertheless complied with the requirements of Section 73.1216 by disclosing material terms of the "contest" on air and by awarding prizes in accordance with such material terms. *See* Letter from Nancy A. Ory, Lerman Senter PLLC, Counsel for Good Karma Broadcasting, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 6, dated July 20, 2009 ("*First LOI Response*").

[6] *See First LOI Response* at 2; *Second LOI Response* at 2. We note that the Licensee refers to the Contest throughout its pleadings in this case as a "scheme" or a "bit." *See*, *e.g.*, *First LOI Response* at 3.

[7] *See First LOI Response* at 2.

[8] *See id.* at 2-3.

[9] *See id.* at 3.

[10] *Id.* at 3-4.

[11] *See id.* at 3.

[12] *See id.*

[13] *See id.* at 2; *Second LOI Response* at 5.

[14] *See First LOI Response* at 3.

[15] *See Second LOI Response* at 2, 3.

[16] *Id.* at 2. Good Karma notes that, "[f]or example, if the new prize was a t-shirt or coffee mug, it would generally be disclosed that week, but would not be repeated on air each following week." *Id.*

brought up the topic.[17] At that time, according to Good Karma, some originally-identified prizes were no longer available.[18] Although the Station did not announce any change in the prizes, Good Karma claims that if someone had correctly identified the speaker in the last clip, the Station would have offered a similar package of prizes to what was originally announced based on what was available in the Station's prize closet or offered by an advertiser at that time.[19]

III. DISCUSSION

6. Under Section 503(b)(1) of the Communications Act of 1934, as amended (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.[20] 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.[21] 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,[22] and the Commission has so interpreted the term in the Section 503(b) context.[23] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[24] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[25] 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.[26] 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.[27] As described in greater detail below, we conclude under this procedure that Good Karma is apparently liable for a forfeiture in the amount of $4,000 for its apparent willful and repeated violation of Section 73.1216 of the Commission's rules.

7. Section 73.1216 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 shall be false, misleading, or deceptive with respect to any material term."[28] Material terms under the rule "include those factors which define the operation of the contest and which affect participation therein,"[29] and generally include, among

[17] *See id.* at 4.

[18] *See id.* at 3.

[19] *See id.*

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

[21] 47 U.S.C. § 312(f)(1).

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

[23] *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

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

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

[26] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

[28] 47 C.F.R. § 73.1216.

[29] *Id.*, Note 1(b).

other things, instructions on "how to enter or participate; eligibility restrictions; . . . whether prizes can be won; when prizes can be won; . . . *the extent, nature and value of prizes*; [and] time and means of selection of winners; . . . ."[30] Although licensees have discretion in determining the time and manner of disclosing a contest's material terms, and need not enumerate the terms each time it airs an announcement promoting a contest, "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."[31] Finally, disclosure of material terms must be by announcements broadcast on the station; non-broadcast disclosures of material terms can be made to supplement, but not substitute for, broadcast announcements.[32]

8. Licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements,[33] and to conduct their contests substantially as announced.[34] 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."[35] In enforcing this rule, the 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.[36]

9. As an initial matter, we reject Good Karma's characterization of "Who Said That?" as a program feature or "bit," as opposed to a contest subject to the Commission's rules. We find that "Who Said That?" is a contest under Section 73.1216 because it was a licensee-conducted scheme in which prizes were offered, based upon knowledge of the identity of the speaker in the clip, to members of the public.[37] We further hold that Good Karma failed to fully and accurately disclose all material terms of the Contest.[38] In particular, the Licensee apparently failed to periodically make on-air announcements of the Contest's material terms throughout the course of the Contest, as required.[39] The Licensee admitted that for over a

[30] *Id*. (emphasis added).

[31] *Id.*, Note 2.

[32] *See id.* ("material terms should be disclosed periodically by announcements broadcast on the station conducting the contest") (emphasis added). Posting contest rules on a station's website does not satisfy Section 73.1216's requirement that a licensee broadcast the material terms of a contest it conducts. *See, e.g.*, *AK Media Group*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 7541, 7543 ¶ 7 (Enf. Bur. 2000) (forfeiture paid) ("*AK Media NAL*"); *Service Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8494, 8498 (Enf. Bur., Investigations & Hearings Div. 2009) (forfeiture paid) ("*Service NAL*").

[33] *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).

[34] *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's contest rules because the contest was not then conducted "substantially as announced or advertised").

[35] *WMJX Inc.*, 85 FCC 2d at 269-270, n.82 (citing *Eastern Broadcasting Corp.,* Decision, 14 FCC 2d 228, 229 (1968)).

[36] *See, e.g.*, *Clear Channel Broadcasting Licenses, Inc*., Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6808, 6809 (Enf. Bur., Investigations & Hearings Div. 2006) (forfeiture paid); *Citicasters Co*., Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16612, 16613-14 (Enf. Bur. 2000) (forfeiture paid) ("*Citicasters NAL*"); *Clear Channel Broadcasting Licenses, Inc.,* Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 2734, 2735 (Enf. Bur. 2000) (forfeiture paid) ("*Clear Channel NAL*").

[37] *See* 47 C.F.R. § 73.1216, Note 1(a); *First LOI Response* at 2, 3.

[38] *See* 47 C.F.R. § 73.1216.

[39] *See id*., Note 2.

year during the course of the Contest (from the summer of 2008 until September 4, 2009), the Station stopped announcing prizes, unless a listener called in and tried to guess the identity of the voice in the last clip.[40] In addition, the Station apparently failed to announce on-air certain material terms throughout the course of the Contest – namely, the extent, nature, and value of the prizes.[41] In this regard, the Station failed to specify on-air the list of accumulated prizes during each program and that some alternate prizes the Station deemed of equal value would be substituted for previously announced prizes.[42]

10. The Licensee notes its disclosure of general contest rules on the Station's website, which include a provision allowing the subject stations to substitute a prize of equal or greater value for all contests and giveaways and to end or stop any contest at any time.[43] We reject any suggestion that such non-broadcast disclosure may act as a substitute for broadcast announcements.[44] Although non-broadcast disclosures can supplement broadcast announcements, it is well-established that they cannot act as a substitute for the broadcast of material terms of a contest.[45] Accordingly, the fact that certain terms of the Contest were posted on the Station's website does not excuse the Licensee from liability.

11. The Licensee also asserts that the nature of certain prizes implied that they would no longer be available, thereby relieving the Station of the requirement to provide clarifying information.[46] We disagree. The nature, extent, and value of the prizes, substituted or otherwise, could not be self-evident to listeners absent a full announcement, and they were not evident to the Complainant. Furthermore, licensees have the affirmative obligation to prevent misleading announcements respecting the contests that they conduct. They cannot rely on implications to accomplish that result.[47] We therefore find that Good Karma violated Section 73.1216 of the Commission's rules by failing to fully and accurately disclose the material terms of the Contest.

12. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the rules, the base forfeiture for violations of the contest rules is $4,000.[48] In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree

[40] *See Second LOI Response* at 4-5.

[41] *See* 47 C.F.R. § 73.1216, Note 1(b); *Clear Channel NAL,* 15 FCC Rcd at 2735 (finding that failure to disclose the nature and value of the prize is a clear violation of Section 73.1216); *Second LOI Response* at 2-3.

[42] *See Second LOI Response* at 2-3.

[43] *See id.* at 3, 5.

[44] *See id.*

[45] *See AK Media NAL*, 15 FCC Rcd at 7543 (finding contest rule violation for station's failure to broadcast a contest's material term and holding that posting rules at the station and on its website do not satisfy rule); *Clear Channel NAL*, 15 FCC Rcd at 2735 (finding contest rule violation for failure to broadcast a contest's material term and holding that posting rules at the station's website does not suffice to satisfy rule); *Service NAL*, 24 FCC Rcd at 8499 (finding that off-air contest instructions do not excuse a licensee from liability). *See also* 47 C.F.R. § 73.1216, Note 2 (stating "[t]he material terms should be disclosed periodically *by announcements broadcast on the station* conducting the contest") (emphasis added).

[46] *See Second LOI Response* at 3. For example, the Licensee cites tickets to a sporting event, which would be worthless after the date of the event. *See id.*

[47] *See* authorities cited in *supra* note 33.

[48] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

of culpability, any history or prior offenses, ability to pay, and other such matters as justice may require.[49] Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Good Karma willfully and repeatedly violated Section 73.1216 of the Commission's rules and is apparently liable for a forfeiture in the amount of $4,000.[50]

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Act,[51] and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,[52] that Good Karma Broadcasting, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of $4,000 for apparently willfully and repeatedly violating Section 73.1216 of the Commission's rules.[53]

14. **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*, Good Karma Broadcasting, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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.[54] Good Karma Broadcasting, LLC will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov.

16. 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, a copy of the response must be transmitted via e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov.

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[49] *See* 47 U.S.C. § 503(b)(2)(E).

[50] *See Citicasters NAL,* 15 FCC Rcd at 16613-14 (assessing $4,000 forfeiture for failure to announce a contest's material term); *Capstar TX Limited Partnership,* Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636, 10641 (Enf. Bur., Investigations & Hearings Div. 2005) (assessing $4,000 forfeiture for failure to announce a contest's material term and for neglecting to conduct the contest as announced) (forfeiture paid).

[51] *See* 47 U.S.C. § 503(b).

[52] *See* 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[53] *See* 47 C.F.R. § 73.1216.

[54] *See* 47 C.F.R. § 1.1914.

17. 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.

18. Accordingly, **IT IS FURTHER ORDERED**, that the Complaint in this proceeding **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the instant complaint proceeding **IS HEREBY TERMINATED**.[55]

19. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class Mail and Certified Mail - Return Receipt Requested, to Good Karma Broadcasting, LLC, 100 Stoddart Street, P.O. Box 902, Beaver Dam, Wisconsin 53916 and to its counsel, Nancy A. Ory, Esquire, Lerman Senter PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006, and by First Class mail to the Complainant.

FEDERAL COMMUNICATIONS COMMISSION

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

[55] For the purposes of the forfeiture proceeding initiated by this *NAL*, Good Karma Broadcasting, LLC shall be the only party to this proceeding.