

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

In the Matter of	)	
	)	File Number: EB-06-IH-2171
<b>Spanish Broadcasting System Holding Company, Inc.</b>	)	Facility ID No.: 74552
	)	NAL/Acct. No.: 201132080022
	)	FRN #: 0019998392
Licensee of Station WZNT(FM), San Juan, Puerto Rico	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 16, 2011**

**Released: February 16, 2011**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we assess a monetary forfeiture in the amount of \$25,000 against Spanish Broadcasting System Holding Company, Inc. (“SBSHCI” or “Licensee”), licensee of Station WZNT(FM), San Juan, Puerto Rico (“WZNT” or “the Station”), for its apparent willful and repeated violation of Section 73.1206 of the Commission’s Rules.<sup>1</sup> As discussed below, we find that SBSHCI apparently violated the telephone broadcast rule by broadcasting telephone conversations without giving prior notice to the individuals being called that the conversations would be aired.

**II. BACKGROUND**

2. The Enforcement Bureau (“Bureau”) received a complaint (“Complaint”) alleging that on April 13, 2006, Station WZNT employees made two “prank” calls during a comedy segment called “You Fell For It,” which is hosted by a radio personality called Moonshadow.<sup>2</sup> According to the Complaint, in the first call, the caller pretended to be an intruder hiding under the bed, and the call recipient, upon learning that the call was meant to be a joke, became upset.<sup>3</sup> In the second call, Moonshadow pretended to be a loan shark, attempting to collect on a debt.<sup>4</sup>

3. The Bureau issued a letter of inquiry (“LOI”) to the Licensee on October 28, 2010 regarding the issues raised in the Complaint.<sup>5</sup> In response, SBSHCI stated that it does not retain

<sup>1</sup> See 47 C.F.R. § 73.1206 (the “telephone broadcast rule”).

<sup>2</sup> See Complaint to the Federal Communications Commission, dated April 14, 2006 (“Complaint”).

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to WZNT, Inc., dated October 28, 2010. The license for Station WZNT was assigned from WZNT, Inc. to Spanish Broadcasting System Holding Company, Inc., on October 13, 2009 (FCC File No. BALH-20090923ABJ). Both companies’ ultimate common corporate parent is Spanish Broadcasting System, Inc.

recordings or transcripts of its programming and that it “cannot confirm or deny” that the segments aired on the Station.<sup>6</sup> The Licensee did acknowledge, however, that in 2006 it regularly aired a program called “El Vacilón de la Mañana,” which contained the segment, “You Fell for It,” where listeners called in and requested telephone calls be made to family members or friends.<sup>7</sup> The Licensee noted that the show was hosted by Luis Jimenez and Raymond Broussard — the latter known as “Moonshadow,”<sup>8</sup> and that the programming was simulcast on its co-owned Stations WZMT(FM) and WZET(FM).<sup>9</sup>

### III. DISCUSSION

4. 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.<sup>10</sup> 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.<sup>11</sup> 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,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>14</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> As described in greater detail below, we conclude under this procedure that the Licensee is apparently liable for a forfeiture in the amount of \$25,000 for its apparent willful and repeated violation of Section 73.1206.

5. Section 73.1206 of the Commission’s Rules requires that, *before* broadcasting or recording a telephone conversation for later broadcast, a licensee must inform any party to the call of its intention to

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<sup>6</sup> See Letter from Dennis P. Corbett and Nancy A. Ory, counsel for Spanish Broadcasting System Holding Company, Inc. to Guy N. Benson, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, dated December 2, 2010, at 2-3 (“LOI Response”).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 2.

<sup>9</sup> See *id.* at 4. The Licensee also notes that the program originated at Station WSKQ-FM, New York, New York, a station owned by its parent company, Spanish Broadcasting System, Inc. See *id.* at 8.

<sup>10</sup> See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 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).

<sup>15</sup> *Southern California Broadcasting*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362 ¶ 9.

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

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.<sup>18</sup> The Commission will presume such awareness only where “the other party to the call is associated with the station (such as an 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>

6. Section 73.1206 reflects the Commission’s longstanding policy that prior notification is essential to protect individuals’ legitimate expectation of privacy and to preserve their dignity by avoiding nonconsensual broadcasts of their conversations.<sup>20</sup> In 1988, when assessing whether the rule should be modified, the Commission specifically favored an individual’s privacy interest over the interests that broadcasters might have in enhancing program appeal by using telephone conversations to increase spontaneity and entertainment value.<sup>21</sup> The Commission found that the potential increase in programming appeal was not “sufficiently critical as to justify intruding on individual privacy”<sup>22</sup> and declined to alter the prior notice provisions of the rule.<sup>23</sup>

7. In this case, we find that SBSHCI violated Section 73.1206 by airing the two conversations described in the Complaint, without providing the required notice to the call recipients.<sup>24</sup> Although the Licensee claims that it cannot definitively determine whether the conversations were broadcast, it does not dispute the allegations contained in the Complaint.<sup>25</sup> In addition, SBSHCI confirms several facts identified in the Complaint, including that the program was regularly broadcast over the Station, that the host of the show is known as Moonshadow, and that the premise of the “You Fell for It” segment was that listeners requested telephone calls be made to family members or friends.<sup>26</sup> We also note that the telephone conversations and program segment at issue here are similar to those identified in previous violations by other stations owned by the Licensee’s parent company.<sup>27</sup> Further, it appears that the intent of the “You Fell for It” segment was to trick or deceive the called party as to the true identity of the caller, so it was designed to conceal the caller’s identity and the fact that the conversation was being, or would be, broadcast.<sup>28</sup> These facts, along with the Complainant’s reasonably detailed description of what took place, support the allegations contained in the Complaint, which in the absence of

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<sup>18</sup> See 47 C.F.R. § 73.1206.

<sup>19</sup> *Id.*

<sup>20</sup> See *Amendment of Section 1206: Broadcast of Telephone Conversations*, Report and Order, 3 FCC Rcd 5461, 5463-64 ¶¶ 19-21 (1988) (“1988 Report and Order”); *Station-Initiated Telephone Calls Which Fail to Comply With Section 73.1206 of the Rules*, Public Notice, 35 FCC 2d 940, 941 (1972); *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).

<sup>21</sup> See *1988 Report and Order*, 3 FCC Rcd at 5464 ¶ 21.

<sup>22</sup> *Id.*

<sup>23</sup> See *id.* at 5463 ¶ 18.

<sup>24</sup> See *Complaint*, *supra* note 2; LOI Response at 2-3.

<sup>25</sup> See LOI Response at 5.

<sup>26</sup> *Id.* at 2-3.

<sup>27</sup> See *WXDJ Licensing, Inc. and WSKQ Licensing, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 14933, 14938 ¶ 8 & n.33 (Enf. Bur., Investigations & Hearings Div. 2008) (prank call, made at request of call recipient’s sister, aired on station as part of a “You Fell for It” segment) (“*WXDJ/WSKQ NAL*”) (WSKQ forfeiture paid; forfeiture order issued for WXDJ, *WXDJ Licensing, Inc.*, Forfeiture Order, 25 FCC Rcd. 3911 (Enf. Bur., Investigations & Hearings Div. 2010), *recons. pending*).

<sup>28</sup> See *Complaint*, *supra* note 2.

countervailing evidence, we consider to be credible.<sup>29</sup> As the Commission has previously held, a licensee may not avoid liability by disavowing knowledge of what was broadcast over its station.<sup>30</sup> Finally, the rule's exception does not appear to apply because there is no record evidence that the called parties had knowledge of the Station's intent to record the call for broadcast.<sup>31</sup> For the foregoing reasons, we find that a preponderance of the evidence establishes that Station WZNT broadcast the subject conversations, without providing the required notice, in apparent violation of Section 73.1206.<sup>32</sup>

8. The Commission's forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.<sup>33</sup> In addition, the Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act<sup>34</sup> 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>35</sup> We note that Spanish Broadcasting System, Inc., the parent company of the Licensee, has a history of violating the Commission's rules, including the telephone broadcast rule at issue here.<sup>36</sup> We also note that the Licensee broadcast the conversations on at least two additional stations, as Station WZNT's programming is simulcast over Stations WZMT(FM) and WZET(FM).<sup>37</sup> Finally, we must also consider the Licensee's ability to pay so that forfeitures against "large or highly profitable entities are not considered merely an affordable cost of doing business."<sup>38</sup>

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<sup>29</sup> See, e.g., *ProActive Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9079, 9082 ¶ 7 (Enf. Bur., Investigations & Hearings Div. 2008) (finding complainant's description of programming content, in a case concerning the telephone broadcast rule, to be credible when Licensee failed to offer any evidence to the contrary).

<sup>30</sup> See *Community Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 28, 35 ¶18 (1975), *recon. denied*, 56 FCC 2d 851 (1975). *Accord ProActive Communications*, supra note 28.

<sup>31</sup> See 47 C.F.R. § 73.1206. Under the limited exception to the rule, notice is not required only when the parties to the call are aware, or are presumed to be aware from the circumstances of the conversation, that the call 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 an 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>32</sup> See *SBC Communications, Inc.*, 17 FCC Rcd at 7591 ¶ 4.

<sup>33</sup> 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, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. §1.80.

<sup>34</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>35</sup> 47 C.F.R. § 1.80(a)(4).

<sup>36</sup> See *WSKQ Licensing, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 1287, 1292 ¶ 11 (Enf. Bur., Investigations & Hearings Div. 2010) (proposing \$16,000 forfeiture against the Licensee for violation of telephone broadcast rule), *response received*; *WXDJ/WSKQ NAL*, 23 FCC Rcd at 14938 ¶ 9 (proposing separate \$16,000 forfeitures against two Licensee-owned stations for violation of the telephone broadcast rule); *WXDJ Licensing, Inc.*, Forfeiture Order, 19 FCC Rcd 22445, 22447-48 ¶ 8 (Enf. Bur. 2004) (proposing \$3,500 forfeiture against the Licensee for violating telephone broadcast rule) (forfeiture paid); *WCMQ Licensing, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 8111, 8113 ¶ 6 (Enf. Bur. 2000) (proposing \$4,000 forfeiture against the Licensee for violating telephone broadcast rule) (forfeiture paid).

<sup>37</sup> See LOI Response at 4.

<sup>38</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 ¶ 24. Spanish Broadcasting System Holding Company, Inc.'s parent company, Spanish Broadcasting System, Inc., earns substantial income, reporting \$139,389,000 in net revenue for 2009. See Spanish Broadcasting System, Inc., 2009 Annual Report on Form 10-K, Securities and Exchange Commission, at 61.

Accordingly, having considered the record in this case and the statutory factors identified above, we find that Spanish Broadcasting System Holding Company, Inc. is apparently liable for a forfeiture in the amount of \$25,000. We again caution the Licensee that additional violations of these rules may result in the imposition of higher forfeitures and even harsher enforcement action, including license revocation proceedings.<sup>39</sup>

#### IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>40</sup> and Sections 0.111, 0.311, 0.314, and 1.80 of the Commission's rules,<sup>41</sup> that Spanish Broadcasting System Holding Company, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$25,000 for apparently willfully and repeatedly violating Section 73.1206 of the Commission's rules.<sup>42</sup>

10. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release date of this *NAL*, Spanish Broadcasting System Holding Company, 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*/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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Spanish Broadcasting System Holding Company, Inc. will also send electronic notification on the date said payment is made to [Hillary.DeNigro@fcc.gov](mailto:Hillary.DeNigro@fcc.gov), [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov), [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and [Guy.Benson@fcc.gov](mailto:Guy.Benson@fcc.gov).

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement shall be mailed to Hillary S. DeNigro, 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*/Account Number referenced above. To the extent practicable, any response should also be sent by e-mail to [Hillary.DeNigro@fcc.gov](mailto:Hillary.DeNigro@fcc.gov), [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov), [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and [Guy.Benson@fcc.gov](mailto:Guy.Benson@fcc.gov).

<sup>39</sup> See *WSKQ Licensing, Inc.*, 25 FCC Rcd at 1292 ¶ 10.

<sup>40</sup> See 47 U.S.C. § 503(b).

<sup>41</sup> See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

<sup>42</sup> See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

13. 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.

14. **IT IS FURTHER ORDERED**, that the Complaint filed **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the Complaint proceeding **IS HEREBY TERMINATED**.<sup>43</sup>

15. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to Spanish Broadcasting System Holding Company, Inc. at its address of record and to its counsel, Dennis P. Corbett and Nancy A. Ory, Lerman Senter PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>43</sup> For purposes of this forfeiture proceeding initiated by this *NAL*, Spanish Broadcasting System Holding Company, Inc. shall be the only party to this proceeding.