

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

In the Matter of)	
)	File Nos. EB-06-IH-1404 and
)	EB-07-IH-4701
AMFM Radio Licenses, L.L.C.)	NAL/Acct. No. 201132080008
)	FRN No. 0001656586
Licensee of Station WHTZ(FM),)	Facility ID No. 59953
Newark, New Jersey)	

ORDER

Adopted: June 2, 2011

Released: June 3, 2011

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and AMFM Radio Licenses, L.L.C. (“AMFM Radio”). The Consent Decree terminates an investigation by the Bureau against AMFM Radio for possible violations of section 73.1206 of the Commission Rules,¹ by recording for broadcast a telephone conversation without the authorization of one of the parties to the call.

2. The Bureau and AMFM Radio have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether AMFM Radio possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ See 47 C.F.R. § 73.1206.

² 47 U.S.C. § 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that all third-party complaints against AMFM Radio Licenses, L.L.C., before the Enforcement Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class certified mail, return receipt requested, to the Licensee at 2625 S. Memorial Drive, Suite A, Tulsa, Oklahoma 74129-2623, and to its counsel, John E. Fiorini III, Esq., Wiley Rein L.L.P., 1776 K Street NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and AMFM Radio Licenses, L.L.C. (“AMFM Radio”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether AMFM Radio violated section 73.1206 of the Commission Rules,⁴ by recording for broadcast a telephone conversation without the authorization of one of the parties to the call.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “AMFM Radio” means AMFM Radio Licenses, L.L.C., licensee of Station WHTZ(FM), Newark, New Jersey, and its predecessors-in-interest and successors-in-interest.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Complaint” means any third-party complaint which may have been received by, or is in the possession of, the Commission or the Bureau, as of the Effective Date, alleging violation of section 73.1206 of the Commission’s Rules with respect to any material aired on the Station, including, without limitation, any complaint or matter referenced in the Bureau’s September 13, 2007, and December 12, 2007 Letters of Inquiry or AMFM Radio’s Responses thereto.
 - (f) “Compliance Plan” means the program described in this Consent Decree at Paragraph 9.

⁴ See 47 C.F.R. § 73.1206.

- (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (h) “Investigations” means the investigations commenced by the Bureau’s September 13, 2007 and December 12, 2007 Letters of Inquiry,⁵ in the above-captioned cases regarding whether AMFM Radio violated section 73.1206 of the Commission’s Rules by recording for broadcast over Station WHTZ(FM), Newark, New Jersey, a telephone conversation without the authorization of one of the parties to the call.
- (i) “Investigations and Hearings Division” means the Investigations and Hearings Division of the Enforcement Bureau, Federal Communications Commission, acting on behalf of the Enforcement Bureau.
- (j) “Order” or “Adopting Order” mean an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (k) “Parties” means AMFM Radio and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station” or “WHTZ” means Station WHTZ(FM), Newark, New Jersey, of which AMFM Radio is the licensee.

II. BACKGROUND

3. Pursuant to section 73.1206 of the Commission’s Rules, a licensee shall, before recording a telephone conversation for broadcast or broadcasting such a conversation, inform any party to the call of the licensee’s intention to broadcast the conversation, except where such party may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast.⁶

⁵ See Letter from Jennifer Lewis Hershman, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 13, 2007; Letter from Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated December 12, 2007.

⁶ 47 C.F.R. § 73.1206.

4. On March 27, 2006, and February 21, 2007, the Commission received similar complaints regarding broadcasts of a recorded telephone conversation without notification to one of the parties to the conversation. Thereafter, on September 13, 2007, and on December 12, 2007, the Bureau issued letters of inquiry concerning these broadcasts.⁷ In its Responses,⁸ the Licensee admits that it recorded a telephone conversation for broadcast over the Station without disclosing that the conversation was being recorded for broadcast prior to making the recording, as required by section 73.1206 of the Commission's Rules.⁹

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** AMFM Radio agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigations. In consideration for the termination of said Investigations, AMFM Radio agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use: (i) the facts developed in its Investigations through the Effective Date of the Consent Decree; (ii) any Complaint; or (iii) the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against AMFM Radio or any other entity under common control concerning possible violations of section 73.1206. The Bureau also agrees that it will not use: (i) the facts developed in its Investigations through the Effective Date of this Consent Decree; (ii) any Complaint; or (iii) the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against AMFM Radio or any other entity under common control with respect to any such entity's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

⁷ See *supra* note 2.

⁸ See Letter to Gary Oshinsky, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 2, dated September 27, 2007; Letter to Judy Lancaster, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 2-3, dated January 10, 2008.

⁹ These responses also state that prior to broadcasting the conversation, AMFM Radio obtained the consent of the party at issue. See *supra* note 5.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, AMFM Radio agrees to implement within 90 days of the Effective Date, a Compliance Plan related to future compliance with section 73.1206 of the Commission's Rules for a period of three (3) years. The Plan will include, at a minimum, the following components:

a. **Compliance Procedures.** WHTZ will establish an FCC compliance training program for any employee whose duties implicate section 73.1206 concerning the Station's policies and procedures for recording and broadcasting telephone conversations over the Station. Training sessions will be conducted at least annually for such employees to ensure compliance with those policies and procedures and, for new employees who are engaged in such activities, within the first sixty (60) days of employment. WHTZ shall develop and update as necessary appropriate FCC Compliance Procedures concerning section 73.1206. Relevant Station personnel shall be trained on such FCC Compliance Procedures and shall be required to follow them.

b. **Compliance Officer.** AMFM Radio shall designate an FCC Compliance Officer who will administer the Compliance Plan, supervise the Station's compliance with section 73.1206 and the Consent Decree, and serve as the Station's point of contact for all Commission-related compliance matters respecting such section. The Compliance Officer will be assigned responsibility to review the FCC Compliance Plan annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

10. **Compliance Reports.** The Station will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and upon expiration of this Consent Decree, three (3) years after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Station, stating that the Compliance Officer has personal knowledge that the Station: (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 73.1206 of the Rules,¹⁰ together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹¹ If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Station, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and section 73.1206 of the Rules; and (ii) the steps that the Station has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Anjali Singh at Anjali.Singh@fcc.gov and to Gary Oshinsky at Gary.Oshinsky@fcc.gov.

11. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three (3) years from the Effective Date.

¹⁰ See 47 C.F.R. § 73.1206.

¹¹ See 47 C.F.R. § 1.16.

12. **Voluntary Contribution.** AMFM Radio agrees that it will make a voluntary contribution to the United States Treasury in the amount of twenty thousand dollars (\$20,000). The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. 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. Payments 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). AMFM Radio will also send an electronic notification on the date each said payment is made to Terry.Cavanaugh@fcc.gov, Anjali.Singh@fcc.gov, and Gary.Oshinsky@fcc.gov.

13. **Waivers.** AMFM Radio waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. AMFM Radio shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AMFM Radio nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AMFM Radio shall waive any statutory right to a trial *de novo*. AMFM Radio hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which AMFM Radio does not expressly consent) that provision will be superseded by such Commission rule or Order.

16. **Successors and Assigns.** AMFM Radio agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Christopher M. Cain.
Associate General Counsel-Radio,
AMFM Radio Licenses, L.L.C.

Date