

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

In the Matter of)
NEWPORT TELEVISION, LLC) File No.: EB-IHD-14-000171562
Former Licensee of Station KTVX(DT),) Acct. No.: 201532080002
Salt Lake City, Utah1) FRN: 0017717000

ORDER

Adopted: November 28, 2014

Released: November 28, 2014

By the Chief, Enforcement Bureau:

1. The Commission is committed to protecting consumer privacy from unlawful invasion or disclosure of personal information. As part of this commitment, the Commission prohibits television and radio broadcasters from invading consumers' rightful expectation of privacy when they answer the telephone. Specifically, the Commission's rules prohibit broadcast licensees from broadcasting telephone conversations with consumers without first informing the consumer that the conversation is being broadcast or recorded for later broadcast. This notification gives the consumer the opportunity to refuse to engage in the conversation or to moderate the candor and content of the recorded conversation. In this case, the Commission successfully resolves its investigation of a television broadcaster in Salt Lake City, Utah, for calling a person and recording the telephone conversation without warning the person that the conversation would be recorded and broadcast. Consumers have a right to be free from having a broadcaster surreptitiously record their conversation and then broadcast it to their community. The Commission holds broadcasters to a high standard, and this Order adopts a Consent Decree that upholds this standard.

2. To investigate allegations of violations, including broadcasts of telephone conversations in which the required notice was not given, the Commission must be able to obtain complete and accurate information from the broadcast licensee or other investigative target. It is therefore essential for the Commission to hold targets accountable to respond to our inquiries fully, accurately, and within the timeframe given for response. When entities subject to Commission jurisdiction fail to respond as required, such failure is a separate violation apart from the conduct under investigation.

3. By this Order, we adopt and incorporate by reference the attached Consent Decree entered into between the Enforcement Bureau (Bureau) and Newport Television, LLC (Newport). The Consent Decree resolves the Bureau's investigation of allegations that Newport called a consumer, in the context of a news interview, recorded and then broadcast its telephone conversation with the consumer but did not inform the consumer that the call was being recorded and would be broadcast. This conduct

1 We note that Station KTVX(DT) has been assigned to another party by Newport Television, LLC (Newport). Related to that assignment, Newport entered into an agreement which required it to place funds in escrow to cover potential liability for pending investigations. In accordance with the assignment agreement, this Consent Decree neither affects nor involves the assignee of the station, which has no liability or potential liability associated with the admitted violations. Instead, this Consent Decree pertains only to Newport.

2 This case was formerly assigned file number EB-12-IH-1612. In September 2014, the Investigations and Hearings Division of the Enforcement Bureau assigned the case a new file number, as reflected in the caption. Any future correspondence with the Commission concerning this matter should reflect the new case number.

violates the consumer's privacy and our rules. In addition, Newport hampered our investigation of the initial complaint by failing to fully respond to communications from Bureau staff. Newport admits that such conduct violated Section 73.1206 of the Commission rules³ and Commission precedent,⁴ and will pay a civil penalty of \$35,000 to resolve this matter.

4. 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.

5. 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 Newport possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵ and Sections 0.111 and 0.311 of the Commission's rules,⁶ the Consent Decree attached to this Order **IS ADOPTED**.

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

8. **IT IS FURTHER ORDERED** that any third-party complaint against Newport related to the above-captioned investigation that is pending before the Bureau as of the date of this Order **IS DISMISSED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Newport's counsel, Mace J. Rosenstein, Esq., Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, D.C. 20004-2401.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

³ 47 C.F.R. § 73.1206.

⁴ See, e.g., *Net One Int'l*, Notice of Apparent Liability and Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. 2011), *aff'd*, Forfeiture Order, 29 FCC Rcd 264 (Enf. Bur. 2014) (imposing \$25,000 penalty for failure to respond to a Bureau inquiry).

⁵ See 47 U.S.C. § 154(i).

⁶ See 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Newport Television, LLC (Newport), by their authorized representatives, hereby enter into this Consent Decree for purpose of terminating the Bureau’s investigation into violations by Newport of Section 73.1206 of the Commission’s rules,3 by recording for broadcast a telephone conversation without notification to the party to the call. Section 73.1206 reflects the Commission’s longstanding policy that prior notification is essential to protect consumers’ legitimate expectation of privacy against the nonconsensual broadcast of their conversations.4 The Consent Decree also addresses Newport’s failure to respond to a Commission investigative inquiry, in violation of Commission precedent.5

I. DEFINITIONS

- 2. For 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) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.” Additionally, the word “or” shall be construed to include the word “and,” and the word “and” shall be construed to include the word “or.” The word “each” shall be construed to include the word “every,” and the word “every” shall be construed to include the word “each.”
(d) “Bureau” means the Enforcement Bureau of the FCC.

1 We note that Station KTVX(DT) has been assigned to another party by Newport Television, LLC (Newport). Related to that assignment, Newport entered into an agreement which required it to place funds in escrow to cover potential liability for pending investigations. In accordance with the assignment agreement, this Consent Decree neither affects nor involves the assignee of the station, which has no liability or potential liability associated with the admitted violations. Instead, this Consent Decree pertains only to Newport.

2 This case was formerly assigned file number EB-12-IH-1612. In September 2014, the Investigations and Hearings Division of the Enforcement Bureau assigned the case a new file number, as reflected in the caption. Any future correspondence with the Commission concerning this matter should reflect the new case number.

3 See 47 C.F.R. § 73.1206.

4 See id.

5 See, e.g., Net One Int’l, Notice of Apparent Liability and Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. 2011), aff’d, Forfeiture Order, 29 FCC Rcd 264 (Enf. Bur. 2014) (imposing \$25,000 penalty for failure to respond to a Bureau inquiry).

- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Newport is subject by virtue of its business activities, including but not limited to Section 73.1206 of the Rules and precedent requiring responses to Commission communications.⁶
- (g) “Complaint” means the third-party complaint which was received by the Commission or the Bureau as of the Effective Date, alleging violation of Section 73.1206 of the Rules with respect to material aired on the Station.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the Bureau’s investigation of Newport’s compliance with Section 73.1206 of the Rules relating to the recording for broadcast of a telephone conversation without notification to the other party to the call.
- (j) “Newport” means Newport Television, LLC, former licensee of Station KTVX(DT), Salt Lake City, Utah, and its predecessors-in-interest and successors-in-interest with respect to the Investigation.
- (k) “Parties” means Newport and the Bureau, each of which is a “Party.”
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station” means Station KTVX(DT), Salt Lake City, Utah (Facility ID No. 68889), of which Newport is the former licensee.

II. BACKGROUND

3. Pursuant to Section 73.1206 of the Rules, “[b]efore recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee’s intention to 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.”⁷ Section 73.1206 reflects the Commission’s longstanding policy that prior notification is essential to protect individuals’ legitimate expectation of privacy by restricting the “nonconsensual broadcasts of their conversations.”⁸

4. On August 21, 2012, the Commission received a complaint alleging that Newport twice broadcast a recorded telephone conversation without prior notification to the other party to the conversation.⁹ The broadcasts occurred on August 20, 2012, on Station KTVX(DT) in Salt Lake City, Utah. The Commission’s Telephone Broadcast rule prohibits this conduct because it violates consumers’ privacy and their right to be free from surreptitious recording and broadcast of their conversations. The Commission holds broadcasters to a high standard as licensees of the public airwaves. By failing to inform the complainant that the conversation would be recorded and broadcast, Newport violated this rule

⁶ See *supra* notes 3, 5.

⁷ 47 C.F.R. § 73.1206. This rule is commonly known as “the Telephone Broadcast Rule.”

⁸ See *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 10107, 11958, para. 6 (Enf. Bur. 2012); see also *Amendment of Section 1206: Broadcast of Telephone Conversations*, Report and Order, 3 FCC Rcd 5461, 5463–64, paras. 19–21 (1988).

⁹ See Complaint No. 12-C00419617-1 (Aug. 21, 2012) (on file in EB-IHD-14-00017156).

and thereby failed to uphold this standard.

5. On April 3, 2014, the Bureau sent a Letter of Inquiry (LOI) regarding the complaint to Newport.¹⁰ Despite receiving proof of delivery, Newport has failed to respond to the LOI, and accordingly, remains in violation of a Commission order.¹¹

6. As a result of discussions between the Parties, the Bureau and Newport negotiated this Consent Decree to terminate the Bureau's Investigation of Newport's compliance with Section 73.1206 of the Rules and Commission precedent requiring responses to Commission inquiries.

III. TERMS OF AGREEMENT

7. **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.

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

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

10. **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 the Investigation. In consideration for the termination of the Investigation, Newport agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or 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 Newport concerning the broadcast of recorded telephone conversations without prior notification to the other parties to the conversations or failure to respond to Commission communications that were the subject of the Investigation.

11. **Admission of Liability.** Newport admits for the purpose of this Consent Decree and for Commission civil enforcement purposes that one or more of Station employees broadcast a recorded telephone conversation without prior notification to the other party to the conversation in violation of Section 73.1206 of the Rules and that individual's privacy rights.¹² Furthermore, Newport admits that it failed to timely respond to the Bureau's LOI in violation of Commission precedent.¹³

12. **Civil Penalty.** Newport will pay a civil penalty to the United States Treasury in the amount of thirty five thousand dollars (\$35,000) within thirty (30) calendar days after the Effective Date. Newport shall send electronic notification of payment on the date the payment is made to Gary.Oshinsky@fcc.gov, Kenneth.Scheibel@fcc.gov, and Jeffrey.Gee@fcc.gov. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced in the caption of the Adopting Order. Regardless of the form of payment, a

¹⁰ See Letter from Anjali K. Singh, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Newport Television License LLC, at 1 (Mar. 31, 2014) (on file in EB-IHD-14-00017156) (LOI).

¹¹ See *supra* note 5.

¹² See *supra* note 3.

¹³ See *supra* note 5.

completed FCC Form 159 (Remittance Advice) must be submitted.¹⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions Newport must follow based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. **Waiver.** As of the Effective Date, Newport 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 Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Newport 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 Consent Decree or Adopting Order, neither Newport nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Newport shall waive any statutory right to a trial *de novo*. Newport hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁵ relating to the matters addressed in this Consent Decree.

14. **Severability and Invalidity.** The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the Consent Decree, but rather the entire 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 this 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 Newport does not expressly consent), such provision will be superseded by such Commission rule or order.

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

¹⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁵ 5 U.S.C. § 504; 47 C.F.R. § 1.1501 *et seq.*

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

18. **Modifications.** This Consent Decree cannot be modified or amended 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 Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

Date

NEWPORT TELEVISION, LLC

John Grossi
V.P. and Treasurer

Date