

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

LETTER
November 7, 1994

Released: November 16, 1994

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

WNNX License Investment Company 1800C1-MGK
Licensee, Station WNNX-FM 9210502
140 East Market Street
York, Pennsylvania 17401

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b)(1)(D) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

By letter of November 23, 1992, we inquired into an alleged violation by Station WNNX (formerly WAPW), Atlanta, Georgia, of Section 73.1206 of the Commission's Rules. Section 73.1206 in pertinent part requires broadcast stations to inform parties to a telephone conversation of the station's intention to broadcast that conversation. Our letter informed you of a complaint that Station WNNX had, on February 24, 1992, broadcast a telephone conversation with the Police Chief of Frostproof, Florida, without informing him of its intention to do so.

Your reply of December 18, 1992, concedes the violation, urging in mitigation that it occurred in spite of your repeated instructions and expressed policies to station managers, program directors and programming personnel. You express your regret at the incident, which you characterize as an isolated one, and note that you have discontinued the general type of programming in which it occurred. These considerations, you argue, support sanctions no greater than a reprimand or admonition.

We cannot agree. The record indicates, and you do not disagree, that on or about February 24, 1992, Station WNNX broadcast a telephone conversation without informing a party to that conversation of its intention to do so. Nothing in your responsive pleading alters this fact. Thus, while you claim to have issued memoranda in 1969, 1989 and 1991 that were intended to remind employees of the need to comply with the requirements of Section 73.1206, it was not until after receipt of our letter of inquiry that employees were advised, by memorandum dated December 16, 1992, of the possibility of adverse consequences for violations of this and other rules.

Accordingly, pursuant to Section 503(b)(1)(D) of the Communications Act, WNNX License Investment Co. is hereby advised of its apparent liability for a forfeiture of two thousand dollars (\$2,000) for its apparent willful violation of Section 73.1206 of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Act, including "the nature, circumstances, extent, and gravity of the violation."

In *United States Telephone Ass'n v. FCC*, No. 92-1321 (D.C. Cir. July 12, 1994), the Court set aside our *Policy Statement on Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. denied* 7 FCC Rcd 5339 (1992), *revised*, 8 FCC Rcd 6215 (1993), in which we established guidelines for determining appropriate amounts for violations of various Commission rules, including the one at issue here. In assessing this forfeiture, we have undertaken to apply directly the statutory factors in 47 U.S.C. Section 503(b) to the particular facts of this case. In particular, we are setting the forfeiture at a low level because of the apparent singularity of the violation and the lack of egregiousness associated therewith. We have also reviewed actions taken prior to the *Policy Statement* and have found consistent assessments of \$2,000 forfeitures for similar violations of the telephone broadcast provision.¹

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ Examples include *Jacor Communications, Inc.*, MMB, April 30, 1990; *Gannett Texas Broadcasting, Inc.*, MMB, April 30, 1990, and *The Hearst Corp.*, MMB, November 6, 1990.