

F.C.C. 72-431

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

STATION-INITIATED TELEPHONE CALLS WHICH
 FAIL TO COMPLY WITH SECTION 73.1206 OF
 THE RULES

MAY 18, 1972.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), BARTLEY,
 ROBERT E. LEE, JOHNSON, H. REX LEE, REID AND WILEY, ISSUED THE
 FOLLOWING PUBLIC NOTICE:

STATION-INITIATED TELEPHONE CALLS WHICH ADVERSELY AFFECT THE
 PUBLIC INTEREST AND FAIL TO COMPLY WITH SECTION 73.1206 OF
 THE RULES

The Commission has received a number of complaints concerning the broadcasting of harassing and embarrassing telephone conversations without giving notice to the party called as required by Section 73.1206 of the Commission's Rules.

These calls are made by the licensee to provide entertainment programming for broadcast, and involve asking the party called questions of an harassing, embarrassing, or perplexing nature designed to elicit reactions usually expected from "practical jokes." As with "practical jokes" the results are sometimes shocking and harmful to a degree not expected, and such results can be avoided by strict adherence to Section 73.1206 of the Rules.

Illustrative instances of this practice may be found in the following cases. A station representative called a beauty salon owner, stating that the caller's wife had her hair dyed at the beauty salon about a week prior to the call and that her hair was falling out. The announcer then asked the beauty salon owner what he was going to do about it. The party called hung up in disgust. Later he learned that a radio station had called him and was concerned that the broadcast would have adverse consequences to his business. He said that damage to the woman's hair is now believed to be a fact by many persons. At no time while on the air was he informed that his conversation was being simultaneously broadcast. The licensee said that it was its practice to so notify the party called sometime before the end of the broadcast, but that the practice was not followed in this instance.

In another case a disc jockey, identifying himself as representing a fictitious company, called a housewife telling her that he understood that she had purchased a new piece of plumbing equipment and that he wanted to talk to her about it. She said she was not interested, he persisted, and she hung up. The next day the man called again, he persisted making embarrassing suggestions in poor taste including the suggestion that he come to the house to photograph the new equip-

ment. The housewife angrily hung up. A third call was made the next day during which the man told the housewife that the whole thing was a joke, that he was a disc jockey, and that the prior conversation had been recorded.

The lady complained that she was upset because her husband was away on business, she was home with three small children, and she had found out via the Better Business Bureau that the company, which the DJ claimed to represent, was nonexistent. The licensee's practice was not to give any notice of recording during the telephone conversation, but to give notice of recording and intention to broadcast at some time later before the actual broadcast was made. Such notice was not given to the lady in this instance.

Another variation is found in the practice of a broadcast station making a recording of a telephone conversation for broadcast purpose with the intention of seeking, at the end of the recording, the permission of the party called to later broadcast the recording. In the particular case, the party called hung up before his permission to broadcast was obtained, and the recording was later broadcast without permission.

By Public Notice dated February 4, 1966, No. 78332, FCC 66-98, the Commission took cognizance of broadcasts of contests and promotions adversely affecting the public interest, resulting, among other things, in alarm to the public about imaginary dangers, infringement of public or private rights or the right of privacy, and annoyance or embarrassment to innocent parties. That Public Notice is applicable to situations described above.

We remind all licensees that Section 73.1206 of our Rules requires that before a telephone conversation is recorded for later broadcast or is begun for simultaneous broadcast, the licensee must inform the other party that the conversation will be recorded for broadcast purposes or will be broadcast live, as the case may be. The recording of such conversation with the intention of informing the other party later—whether during the conversation or after it is completed but before it is broadcast—does not comply with the Rule if the conversation is recorded for possible broadcast. Likewise, the initiation of a live broadcast of a conversation with the intention of seeking the other party's permission for its broadcast sometime during the conversation, does not constitute compliance.

Licensees also are reminded that compliance with Section 73.1206 of the Rules does not excuse them from compliance with local or interstate tariff requirements that a tone-warning device be used in conjunction with any recording of two-way conversations. The interstate and intrastate tariffs also contain provisions prohibiting the use of telephone service “. . . in a manner reasonably to be expected to frighten, abuse, torment, or harass another.” The American Telephone and Telegraph Company and major independent telephone companies are requested to review the foregoing tariff regulations with licensees within the areas of their operating companies.

Finally, it should be noted that Section 223 of the Communications Act and similar provisions in the laws of each state make certain types of harassing or annoying telephone calls a criminal offense. For example, Section 223(1)(B) of the Act provides criminal penalties for making an interstate call without disclosing the identity of the caller and with intent "to annoy, abuse, threaten or harass any person at the called number."

Action by the Commission May 17, 1972, by letters. Commissioners Burch (Chairman), Bartley, Robert E. Lee, Johnson, H. Rex Lee, Reid and Wiley.