

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
<b>UNIVISION RADIO LICENSE CORPORATION</b>	)	File No. EB-03-IH-0037
	)	NAL Account No. 200532080008
	)	FRN No. 0004946141
	)	
Licensee of Stations	)	
KVVF(FM), Santa Clara, California <sup>1</sup>	)	Facility ID No. 19532
KZOL(FM), North Fork, California	)	Facility ID No. 31716
KHOT-FM, Paradise Valley, Arizona	)	Facility ID No. 59422
KHOV-FM, Wickenburg, Arizona	)	Facility ID No. 29021
KLNT(FM), Houston, Texas	)	Facility ID No. 65310
	)	
	)	
<b>TICHENOR LICENSE CORPORATION</b>	)	NAL Account No. 20053208000
	)	FRN No. 0004945911
	)	
Licensee of Stations	)	
KGBT-FM, McAllen, Texas	)	Facility ID No. 6662
KROM(FM), San Antonio, Texas	)	Facility ID No. 67071
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 11, 2005**

**Released: January 12, 2005**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the “Act”), and section 1.80 of the Commission’s rules,<sup>2</sup> we find that Univision Radio License Corporation (“Univision Radio License”) and Tichenor License Corporation (“Tichenor License”), licensees of the above-captioned stations, apparently violated section 73.1206 of the Commission’s rules, 47 C.F.R. § 73.1206, by broadcasting a telephone conversation without first informing the party to the conversation of its intention to do so.<sup>3</sup> Based on our review of the facts and circumstances, we find Univision Radio License and Tichenor License apparently liable for an aggregate monetary forfeiture in the amount of \$28,000.00.

<sup>1</sup> On September 13, 2004 the Commission granted Univision Radio License Corporation’s request to change the call sign of Station KEMR(FM) to KVVF(FM).

<sup>2</sup> 47 U.S.C. § 503; 47 C.F.R. § 1.80.

<sup>3</sup> 47 C.F.R. § 73.1206.

## II. BACKGROUND

2. The complainant alleges that on October 18, 2002, several stations broadcast a telephone conversation between Raul Brindis, host of the “Raul Brindis and Pepito Show,” and the complainant, without notifying the complainant of their intention to do so.<sup>4</sup> The telephone conversation was apparently an on-air joke performed on the complainant. The complainant worked as an Account Executive at Hispanic Broadcasting Corporation (“HBC”), the parent corporation of the above-captioned licensees at the time of the incident. According to a transcript attached to the complaint, in an attempt to play a joke, Mr. Brindis called the complainant’s cell phone and pretended to be another man who had met the complainant at a local club. After flirtatious conversation, Mr. Brindis revealed the joke to the complainant on the air.

3. The Enforcement Bureau issued letters of inquiry (“LOI”) along with a recording of the broadcast supplied by the complainant.<sup>5</sup> Counsel for Univision Communications, Inc. (“Univision”), the new ultimate corporate parent of the licensees, filed a consolidated response, acknowledging that the licensees of the above-captioned stations aired the conversation at issue.<sup>6</sup> Univision argues, however, that the complainant was an employee of HBC and, therefore, the licensees were under no obligation to notify him that the conversation would be broadcast.<sup>7</sup> Univision further contends that it should not be held responsible for the acts of the licensees since it was not the ultimate parent at the time of the broadcast.<sup>8</sup> Finally, Univision states that the incident was a single, isolated event; that such programming does not meet its programming standards; and that, as a result of this incident, it has put into place a compliance plan at its licensee subsidiaries.<sup>9</sup>

## III. DISCUSSION

4. Section 73.1206 of the Commission’s rules provides that, before 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 its 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. Univision admits that the above-captioned stations broadcast the telephone conversation between Raul Brindis and the complainant on October 18, 2002, and that it did not inform the complainant of its intent to do so until broadcasting had already begun.

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<sup>4</sup> See Letter from R. Michael Lieberman, Esq., to the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 30, 2003.

<sup>5</sup> See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to HBC Media, Inc., dated November 25, 2003.

<sup>6</sup> See Letter from Lawrence N. Cohn, Esq., to Maureen F. Del Duca, Chief, Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, dated January 14, 2004 (“LOI Response”).

<sup>7</sup> LOI Response at 6.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3.

5. We find unpersuasive Univision's argument that the complainant's position as an Account Executive at HBC relieved the stations of their responsibility to inform the complainant of their intent to broadcast the conversation. Univision argues that "[u]nder section 73.1206 of the Commission's rules, prior consent to broadcast a conversation is presumed where 'the party to the call is associated with the station (such as an employee or part-time reporter)...'"<sup>10</sup> Thus, under Univision's reasoning, by agreeing to work at HBC the complainant - as well as each and every employee at the company from the CEO to the cleaning crew - implicitly consented to having conversations aired without prior notice. We do not think the presumption language in section 73.1206 is that broad. The language of the rule focuses on persons "associated with the station (such as employees or part-time reporters)"<sup>11</sup>, not on all employees of the licensee and its affiliates and the parent company. Moreover, in adopting the presumption, the Commission focused on "conversations between employees at the station and station reporters."<sup>12</sup> Thus, contrary to Univision's suggestion, the Commission did not intend to apply the presumption against required prior notice to every employee of a broadcast licensee or its affiliates, but only to those who participate in "open mike" shows, phone in news stories, or perform similar duties.<sup>13</sup> The Commission referred to these scenarios as situations in which "the parties do not presume the conversation to be private and 'consent by implication' to the broadcast then or later."<sup>14</sup> We further conclude that the complainant could not reasonably have been aware that this telephone conversation would be broadcast. The show's host lied about his identity, called the complainant's private cell phone, and discussed topics of a highly personal nature that one would not expect to be broadcast. Therefore, we believe that it is clear that the presumption in section 73.1206 was not intended to apply in this circumstance.

6. We reject Univision's argument that an intervening transfer of control precludes a finding of apparent liability.<sup>15</sup> As the Commission has stated previously "[t]he transfer of control of stock of the licensee corporation subsequent to violations does not excuse the licensee for the violation."<sup>16</sup> Moreover, as the Commission has noted when presented with similar issues in the past, section 503(b) of the Act authorizes the Commission to impose forfeitures upon any person who willfully violates the Act or our rules.<sup>17</sup> That section also requires us to take into account, with respect to the violator, its degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. 47 U.S.C. §503(b)(2)(D). Based on the facts

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<sup>10</sup> LOI Response at 6.

<sup>11</sup> 47 C.F.R. § 73.1206.

<sup>12</sup> *Amendment to Part 73 of the Commission's Rules and Regulations with Respect to the Broadcast of Telephone Conversation*, Report and Order, 23 FCC 2d 1 (1970).

<sup>13</sup> *Id.* at ¶¶ 4, 5.

<sup>14</sup> *Id.* at ¶ 4.

<sup>15</sup> In letters dated March 8, 2004, HBC License Corporation and HBC Houston License Corporation notified the Commission of a name change. Pursuant to an amendment to the Articles of Incorporation, HBC License Corporation and HBC Houston License Corporation changed their legal names to Univision Radio License Corporation. We have listed in the caption the official name of the licensee of the five stations, but our analysis is otherwise unaffected.

<sup>16</sup> *EZ Sacramento, Inc.*, Forfeiture Order, 14 FCC Rcd 13539, 13540 (Mass Media Bur. 1999), *recon. denied* 15 FCC Rcd 18 257 (Enf. Bur. 2000), *app. for rev. denied*, 16 FCC Rcd 4958 (2001) (quoting *Winslow Communications, Inc.*, 45 FCC 2d 662, 663 (1974)).

<sup>17</sup> *EZ Sacramento*, 16 FCC Rcd at 4959. *See also* 47 U.S.C. 503(b)(1).

before us, it appears that the licensee may have willfully violated section 73.1206 and that forfeiture is warranted. The fact that the ownership of the licensee's parent company changed hands does not affect the licensee's liability. Finally, although Univision's compliance plan is a helpful first step in preventing any future violations of section 73.1206, it does not absolve the licensees' of their liability for the violations here.<sup>18</sup>

7. Having determined that Univision Radio License and Tichenor License apparently willfully and/or repeatedly violated section 73.1206 of the Commission's rules, we turn to an analysis of whether, and to what extent, we should propose sanctions in this instance. The Commission's forfeiture guidelines establish a base forfeiture amount of \$4,000.00 for the unauthorized broadcast of a telephone conversation,<sup>19</sup> and provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act,<sup>20</sup> and section 1.80(a)(4) of the Commission's rules,<sup>21</sup> 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>22</sup> Based upon the facts and circumstances presented here, including the fact that the single violation of section 73.1206 was aired simultaneously at seven stations, we find the base forfeiture amount of \$4000.00 per station for a collective forfeiture amount of \$28,000.00 to be appropriate.

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, Univision Radio License Corporation and Tichenor License Corporation, are hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE of \$28,000.00, or \$4,000.00 per station for apparently willfully violating section 73.1206 of the Commission's rules on October 18, 2002 at the above captioned seven FM broadcast stations.

9. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the rules, Univision Radio License Corporation and Tichenor License Corporation SHALL PAY the full amount of the proposed forfeiture within thirty (30) days of the release of this Notice, or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>18</sup> See, e.g., *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 ¶ 26 (2002) (finding that remedial action to correct the section 17.50 violation are not a mitigating factor and noting that all licensees and Commission regulates are expected to promptly take corrective action when violations are brought to their attention); *Coleman Enterprises, Inc.*, Forfeiture Order, 15 FCC Rcd 24385, 24388 ¶ 8 (2000), *recon. denied*, 16 FCC Rcd 10016 (2001) (finding that a compliance plan is not a basis to mitigate the amount of the forfeiture for numerous slamming violations where the NAL had required that the licensee submit a compliance plan because of the extent of its misrepresentations to customers); *Cumulus Licensing Corp.*, Notice of Apparent Liability, 19 FCC Rcd 2753, 2755-56, ¶ 6 (Enf. Bur. 2004) (finding that subsequent reminders to on-air staff of their obligations under section 73.1206 did not alter fact that a violation had occurred or justify mitigation and imposing base forfeiture for a single violation of that rule).

<sup>19</sup> 47 C.F.R. §1.80(b)(4). See also *Commission's Forfeiture Policy Statement and Amendment of section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>20</sup> 47 U.S.C. §503(b)(2)(D).

<sup>21</sup> 47 C.F.R. §1.80(a)(4).

<sup>22</sup> 47 C.F.R. §1.80(b)(4) note. See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

10. 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

11. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

12. 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>23</sup>

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail - Return Receipt Requested to Lawrence N. Cohn, Esq., 1920 N Street, N.W. Washington, DC 20036-1622, and R. Michael Lieberman, Esq., 1398 Post Street, San Francisco, CA. 94109.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>23</sup> 47 C.F.R. § 1.1914.