

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

In the Matter of) File No. EB -01-IH-0400
)
Clear Channel Broadcasting Licenses, Inc.) NAL/Acct. No. 200232080009

Licensee of Station WGBF (FM)) FRN 0001-5879-71
Henderson, Kentucky) Facility ID No. 659

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 28, 2002

Released: March 29, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Clear Channel Broadcasting Licenses, Inc., ("Clear Channel") has apparently violated Section 73.1206 of the Commission's rules¹ by broadcasting a live telephone conversation without first informing the party to the conversation of its intention to do so. Based on our review of the facts and circumstances in this case, we conclude that Clear Channel is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On June 11, 2001, Craig Jackson Shell, an announcer on WSTO (FM), Owensboro, Kentucky, submitted a complaint alleging that Station WGBF (FM), Henderson, Kentucky, violated Section 73.1206 of the Commission's rules. Mr. Shell alleged that WGBF-FM's station announcer Turner Watson ("Watson") called him during his WSTO (FM) airshift, and recorded and later broadcast edited portions of their conversation for the purpose of ridiculing him. Mr. Shell included a tape of the broadcast with his complaint. According to the complaint, Mr. Watson never informed Mr. Shell of WGBF-FM's intent to record or broadcast their conversation.

3. In response to a Commission letter of inquiry,² Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of WGBF (FM), admitted that during the afternoon of May 22, 2001, Mr. Watson placed a telephone call to the request line telephone number for WSTO and identified himself. Mr. Shell answered the call and engaged in a conversation with Mr. Watson.

4. Clear Channel admits that Mr. Watson recorded the telephone conversation and broadcast it on the air, yet did not inform Mr. Shell of his intention to broadcast the conversation prior to its airing.

¹ 47 C.F.R. § 73.1206.

² Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc., dated June 28, 2001.

5. According to the licensee, Clear Channel has a strict policy that a telephone conversation may not be recorded for later broadcast or broadcast live without first obtaining the caller's consent. Clear Channel contends that this policy is not only included in the WGBF on-air policy manual, but also communicated to the WGBF staff periodically by the station's general manager.

III. DISCUSSION

6. 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.³ The Commission has stated, "...we believe that there is a legitimate expectation of privacy that telephone calls will not be broadcast without the consent of the parties involved." *In the Matter of Amendment of Section 1206: Broadcast of Telephone Conversations*, 3 FCC Rcd 5461, 5463 (1988).

7. In this case, we find that Clear Channel apparently violated Section 73.1206 of the Commission's rules by broadcasting Mr. Shell's conversation without giving him prior notice of its intent to broadcast such conversation.

8. Section 503(b) of the Communications Act of 1934, as amended,⁴ and Section 1.80(a) of the Commission's rules,⁵ each provide that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

9. Based on the evidence before us, we find that Clear Channel broadcast a conversation on May 22, 2001, in apparent willful violation of Section 73.1206 of the Commission's rules. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). We note that, at the time of this violation, we had recently sanctioned a Clear Channel subsidiary for a similar violation.⁶ We find an upward adjustment is appropriate in this instance. Based upon these facts and considering all of the circumstances present here, we find \$6,000 to be the appropriate forfeiture amount.

³ 47 C.F.R. § 73.1206.

⁴ 47 U.S.C. § 503 (b).

⁵ 47 C.F.R. § 1.80 (a).

⁶ *Citicasters Co.*, 15 FCC Rcd 13805 (EB 2000) (forfeiture paid) (Citicasters Co., a Clear Channel subsidiary, found apparently liable for the broadcast of a conversation between the complainant in that case and another person, which was taken from that complainant's answering machine.). *See also AMFM Radio Licenses, LLC*, DA No. 02-622 (EB released March 19, 2002)(AMFM Radio Licenses, LLC, a Clear Channel subsidiary, found apparently liable for a violation of Section 73.1206 of the Commission's rules).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934,⁷ as amended, and Section 1.80 of the Commission's rules,⁸ Clear Channel is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for violating Section 73.1206 of the Commission's rules, which prohibits broadcasters from airing telephone conversations without first informing the parties to such conversations of their intention to do so.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,⁹ within thirty days of this NOTICE OF APPARENT LIABILITY, Clear Channel SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. 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.

15. 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. 20554.¹⁰

⁷ 47 U.S.C. § 503.

⁸ 47 C.F.R. § 1.80.

⁹ Id.

¹⁰ *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to counsel for Clear Channel, attn: Eve J. Klindera, Esquire, Wiley Rein & Fielding LLP, 1776 K Street N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau