

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

In the Matter of	)	
	)	File No. EB-06-IH-1116
<b>ENTERCOM WICHITA LICENSE, LLC</b>	)	FRN: 0005374145
	)	NAL/Acct. No. 200732080005
Licensee of Station KDGS(FM),	)	Facility ID No. 70266
Andover, Kansas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 2, 2007**

**Released: March 2, 2007**

By the Chief, Investigations and Hearings Division:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Entercom Wichita License, LLC (“Entercom”), licensee of Station KDGS(FM), Andover, Kansas (the “Station”), apparently liable for a monetary forfeiture in the amount of \$4,000 for its apparent violation of Section 73.1216 of the Commission’s rules.<sup>1</sup> That rule requires a broadcast licensee to “fully and accurately disclose the material terms of a contest . . . and conduct the contest substantially as announced or advertised.”<sup>2</sup> As discussed below, we find that Entercom failed to announce the material terms of a contest and neglected to conduct the contest in accordance with its material terms, in apparent violation of the Commission’s rule.

**II. BACKGROUND**

2. The FCC received a complaint from Ms. Darlene Harris, dated January 10, 2006 (the “Complaint”), alleging that Entercom failed to conduct a contest entitled “Guess What is in the Santa Sack” (the “Contest”), in accordance with the Contest’s material terms.<sup>3</sup> The Complaint alleged that, on December 8, 2005, the Station failed to award the complainant a \$1,000 prize for her correct guess in the Contest.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 73.1216.

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

<sup>3</sup> See E-mail from Ms. Darlene Harris to the Federal Communications Commission via fccinfo@fcc.gov, dated January 10, 2006 (“Complaint”).

<sup>4</sup> See Complaint; LOI Response at 3.

3. In response to the Complaint, the Bureau sent a letter of inquiry to Entercom, dated June 9, 2006 (the "LOI").<sup>5</sup> Entercom responded by letter dated July 24, 2006 (the "LOI Response").<sup>6</sup> The complainant did not file a reply.<sup>7</sup>

4. In its LOI Response, Entercom states that, when the complainant initially contacted Entercom about its failure to award her a prize, it conducted an internal investigation of the Contest and believed that it had conducted the contest properly.<sup>8</sup> However, in its LOI Response, Entercom also concedes that it initiated a second internal investigation after receiving the Bureau-issued LOI. It was during this second internal investigation when Entercom discovered that it had: (1) failed to award the complainant the cash prize she should have won; and (2) failed to broadcast over the air the material terms of the Contest.<sup>9</sup> Entercom explains that employee error caused the violations to occur. Entercom further asserts that it addressed the employee errors internally by reprimanding the program director responsible for conducting the Contest, and by sending the complainant an apology letter, which included a check for \$1,000, the prescribed cash prize to which the complainant was entitled.<sup>10</sup>

### III. DISCUSSION

5. Section 503(b)(1) of the Communications Act of 1934, as amended,<sup>11</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>12</sup> The term "willful" as used in Section 503(b)(1) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>13</sup> The term "repeated" means that the action was committed or omitted more

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<sup>5</sup> See Letter from Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Entercom Wichita License, LLC, dated June 9, 2006 ("LOI").

<sup>6</sup> See Letter from Brian M. Madden and Jean W. Benz, Attorneys, Leventhal, Senter & Lerman PLLC, to Mary Turner, Program Analyst, Investigations and Hearings Division, Enforcement Bureau, dated July 24, 2006 ("LOI Response").

<sup>7</sup> See LOI at 6 (providing the complainant the opportunity to reply within 10 days of the receipt of the LOI Response).

<sup>8</sup> See Complaint; LOI Response at Declaration of Jackie Wise, at 1-2, ¶¶ 2-3 ("Wise Declaration").

<sup>9</sup> See LOI Response at 3; Wise Declaration, at 1-2, ¶¶ 2-3; Declaration of McKinely Paynes, at 1, ¶ 2; Declaration of Jessica Moreno, at 1, ¶ 2.

<sup>10</sup> See LOI Response at 1-2; Wise Declaration, at 2, ¶¶ 3, 5.

<sup>11</sup> See 47 U.S.C. § 503(b)(1).

<sup>12</sup> See *id.*

<sup>13</sup> Section 312(f)(1) of the Communications Act, or 1934, as amended, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or (continued...)

than once, or lasts more than one day.<sup>14</sup> Based on the evidence before us, we conclude under this standard that Entercom is apparently liable for a forfeiture for its apparent willful violation of Section 73.1216 of the Commission's rules.

6. Section 73.1216 of the Commission's rules provides ““A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.”<sup>15</sup>

7. Licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading or deceptive contests announcements,<sup>16</sup> and to conduct their contests substantially as announced.<sup>17</sup> The Commission has noted in this regard that “[t]he standards are high, for while contests are particularly susceptible to abuse, abuses can be prevented by diligent licensee attention to the planning and conduct of contests.”<sup>18</sup> By its own admission, Entercom failed to award the cash prize as required under the contest rules and failed to broadcast the material terms of the contest. Accordingly, we find that Entercom apparently violated Section 73.1216 of the Commission’s rules. Entercom attributes these violations to employee error. Inadvertence or employee oversight does not excuse Entercom from liability for its failure to follow Commission rules. Licensees are responsible for the actions of their employees.<sup>19</sup>

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regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

<sup>14</sup> See *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability, 16 FCC Rcd 1359, 1362 (2001).

<sup>15</sup> 47 C.F.R. § 73.1216.

<sup>16</sup> See *WMJX, Inc.*, Decision, 85 FCC 2d 251, 269 (1981) (holding that proof of actual deception is not necessary to find violations of contest rules, and that the licensee, as a public trustee, has an affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements); *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072 (1976).

<sup>17</sup> See *Headliner Radio, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2962 (Mass Media Bur. 1993) (finding that the airing of a misleading advertisement concerning a licensee’s contest violated the Commission contest rules because the contest was not then conducted “substantially as announced or advertised”); *Lincoln Dellar*, Memorandum Opinion and Order, 8 FCC Rcd 2582, 2585 (Mass Media Bur. 1993) (finding that the cancellation of a pre-announced contest violated the pertinent Commission rules because the contest was not then conducted “substantially as announced”).

<sup>18</sup> *Honeyradio, Inc.*, Memorandum Opinion and Order, 69 FCC 2d 833 (1978), quoting *Licensee-Conducted Contests*, Proposed Rulemaking, 40 Fed. Reg. 26692 (1975) (holding licensee responsible for mistakes made during its conduct of a contest, and affirming forfeiture and denying petition for reconsideration of a letter of admonishment for violation of the Commission’s rules).

<sup>19</sup> See *Nationwide Communications, Inc.*, Letter, 9 FCC Rcd 175 (Mass Media Bur. 1994) (finding forfeiture for violating contest rules imposed, notwithstanding licensee’s contention that its failure to conduct a contest substantially as announced was due to “inadvertence”); *Nationwide Communications Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 2054 (Mass Media Bur. 1994) (reducing forfeiture due to licensee’s good faith efforts in (continued...))

8. The statutory maximum forfeiture for Entercom's apparent willful violation of Section 73.1216 is \$32,500.<sup>20</sup> Pursuant to Section 1.80 of the Commission's rules,<sup>21</sup> the base forfeiture amount for a violation of the contest rule is \$4,000.<sup>22</sup> Section 1.80(b)(4) of the Commission's rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>23</sup> Having considered these factors, we find that a \$4,000 proposed forfeiture is appropriate in this case.

## V. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>24</sup> and Sections 0.111, 0.311, and 1.80 of the Commission's rules,<sup>25</sup> that Entercom Wichita License, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$4,000 for willfully and repeatedly violating Section 73.1216 of the Commission's rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, Entercom Wichita License, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 in the caption. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Pittsburgh, and account number FCC/ACV 9116229.

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awarding the prize as announced and not receiving any benefit from its error); *George McKay, III*, Letter, 6 FCC Rcd 7385 (Mass Media Bur. 1991) (finding forfeiture for violating contest rules imposed, notwithstanding licensee's contention that its failure to conduct a contest substantially as announced was due to acts of third parties).

<sup>20</sup> See *Amendment of Section 1.80 of the Commission's Rules*, Order, 19 FCC Rcd 10945 (2004) (the current statutory maximum is \$32,500 for violations of this type).

<sup>21</sup> See 47 C.F.R. § 1.80.

<sup>22</sup> See *id.* See also *NM Licensing, LLC*, Notice of Apparent Liability, 21 FCC Rcd. 7916 (Enf. Bur. 2006) (proposing \$4,000 forfeiture for apparent violation of the Commission's contest rules due to the licensee's failure to conduct the contest substantially as advertised).

<sup>23</sup> 47 C.F.R. § 1.80(b)(4).

<sup>24</sup> 47 U.S.C. § 503(b).

<sup>25</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

12. The response, if any, must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 3-B433, Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

13. 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.

14. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to the Deputy Chief Financial Officer, Room 1-A637, 445 12th Street, S.W., Washington, D.C. 20554.<sup>26</sup>

15. IT IS FURTHER ORDERED that the complaint filed by Darlene Harris IS GRANTED to the extent indicated herein and IS OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.<sup>27</sup>

16. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Entercom Wichita License, LLC, 401 City Avenue, Suite 809, Bala Cynwyd, Pennsylvania, 19004, and to its counsel, Brian M. Madden and Jean W. Benz, Leventhal Senter & Lerman PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006-1809

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro  
Chief, Investigations and Hearings Division  
Enforcement Bureau

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<sup>26</sup> See 47 C.F.R. § 1.1914.

<sup>27</sup> For purposes of the forfeiture proceeding initiated by this *NAL*, Entercom Wichita License, LLC, shall be the only party to this proceeding.