

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

In the Matter of)	
)	
EL MUNDO BROADCASTING CORPORATION)	
)	File No. EB-00-IH-0160
)	TH
Licensee of Stations)	NAL/Acct. No. 200132080002
WKAQ-AM, San Juan, Puerto Rico)	
WUKQ-AM, Ponce, Puerto Rico)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 23, 2000

Released: October 24, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that El Mundo Broadcasting Corp. ("El Mundo") has apparently violated Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, by recording and broadcasting a telephone conversation without first informing the party to the conversation of its intention to do so. We conclude that El Mundo is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On June 19, 2000, the Commission received a complaint from Mr. Bernardo Vazquez-Santos. Mr. Vazquez-Santos alleged that, on May 8, 2000, Mr. Luis Francisco Ojeda, an on-air personality for El Mundo's WKAQ-AM, called the Office of the Legal Counsel for the Governor of Puerto Rico, where Mr. Vazquez-Santos serves as Legal Counsel to the Governor. According to the transcript submitted with the complaint¹, the following exchange took place:

Secretary:

Legal Counsel.

Luis Francisco Ojeda (LFO):

Yes, good afternoon, (sic) with attorney Bernardo Vazquez-Santos.

¹ Transcript of "Ojeda Sin Limite" Radio Broadcast" (Attached as Exhibit to Complaint). The transcript is a translation from Spanish to English done by Mr. Vazquez-Santos. In addition, Mr. Vazquez-Santos enclosed tape recordings in Spanish of the two separate broadcasts.

Secretary: Who's calling him?

LFO: From WKAQ, from the newsroom.

Secretary: Don't go (hold on).

LFO: Uh jum. (sic)

Mr. Bernardo Vazquez-Santos (BVS): Hello.

LFO: Attorney Vazquez-Santos?

BVS: To serve you.

LFO: Good afternoon. This is Ojeda from WKAQ.

BVS: Ah, how are you?²

The transcript indicates that Mr. Ojeda then engaged Mr. Vazquez-Santos in a discussion about allegations that Mr. Vazquez-Santos had used a facsimile machine in the Office of Legal Counsel to send invitations to various government agency heads for a cocktail party fundraiser in honor of the wife of a Puerto Rican gubernatorial candidate. Mr. Vazquez-Santos also alleges that, on May 8, 2000, El Mundo broadcast portions of this conversation on two separate occasions on multiple broadcast stations.

3. On July 18, 2000, the Investigations and Hearings Division, Enforcement Bureau, sent El Mundo a letter of inquiry regarding the complaint. In its August 3, 2000 response, El Mundo states that it broadcast a conversation with Mr. Vazquez-Santos on May 8, 2000 two separate times without informing him of its intention to record and broadcast the conversation.³ See Letter Dated August 3, 2000 from Huberto E. Biaggi, Executive Vice President & General Manager, El Mundo Broadcasting Corporation (El Mundo Response), p. 1.

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 the conversation is being or likely will be broadcast. The

² See Transcript, p. 1.

³ El Mundo broadcast the recorded conversation over the following stations: WKAQ-AM, San Juan, WKJB-AM, Mayaguez, WUKQ-AM, Ponce, and WABA, Aguadilla. El Mundo is the licensee for WKAQ-AM, San Juan and WUKQ-AM, Ponce.

Commission clearly intended this rule to protect the called party to the conversation⁴ and warned licensees that Section 73.1206 requires the licensee to inform the other party that the conversation will be recorded for broadcast purposes before a telephone conversation is recorded for later broadcast.⁵

5. El Mundo admits that, on May 8, 2000, it broadcast the conversation referenced in the complaint on four stations at 4:34 p.m. and 5:15 p.m. El Mundo also admits that Mr. Ojeda did not inform Mr. Vazquez-Santos prior to the recording of the conversation that he intended to broadcast the conversation. However, El Mundo claims that, while Mr. Vazquez-Santos was not told that the conversation would be recorded or broadcast, he should have presumed that El Mundo would record and broadcast the conversation. According to El Mundo, Mr. Ojeda is a recognized on-air personality in Puerto Rico known for reporting on the activities of the Puerto Rican government. Because, according to El Mundo, Mr. Vazquez-Santos was “familiar with” Mr. Ojeda, El Mundo assumed Mr. Vazquez-Santos would know that the conversation would likely be recorded and broadcast. Despite its admission that it did not inform Mr. Vazquez-Santos of its intention to record and broadcast this conversation, El Mundo apparently argues that because Mr. Vazquez-Santos should have presumed his conversation with Mr. Ojeda was going to be recorded and broadcast, El Mundo did not violate Section 73.1206 of the Commission’s rules.

6. We reject El Mundo’s argument. El Mundo concedes in its response that Section 73.1206 of the Commission’s rules requires licensees to notify a party to a conversation of the licensee’s intention to broadcast the conversation before it commences recording. However, it also asks the Commission to recognize an exception, absent in the Commission’s rules, that a licensee may fail to inform a party to a conversation of the licensee’s intention to record and broadcast the conversation where the on-air personality is well known and the other party is a government official.

7. We decline to find that such an exception exists in the Commission’s rules. In Section 73.1206, a licensee may fail to inform a party of the licensee’s intention to broadcast a conversation only where the party is “aware or may be presumed to be aware from the circumstances of the conversation” that the conversation likely will be broadcast. The licensee may make such a presumption only when the party to the call is “associated with the station,” such as an employee or part-time reporter, or when the party originates the call and it is obvious that the call is “in connection with a program in which the station customarily broadcasts telephone conversations.” We find that neither of these exceptions is present in this case. First, the parties do not dispute that Mr. Vazquez-Santos is employed by the Governor of Puerto Rico and therefore not affiliated with or employed by the licensee.⁶ Additionally, the transcript

⁴ See *Amendment of Section 73.1206: Broadcast of Telephone Conversations (Report and Order)*, 3 FCC Rcd 5461, 5463 (1988).

⁵ *Station-Initiated Telephone Calls Which Fail to Comply with Section 73.1206 of the Rules*, 24 RR 2d 1814 (1972).

⁶ See Complaint ¶ 1 and El Mundo Response ¶ 3b.

indicates that Mr. Ojeda originated the phone call to the Office of Legal Counsel and asked to speak with Mr. Vazquez-Santos. El Mundo, in its response, does not dispute the transcript or this apparent fact.

8. Since we find that the exception El Mundo seeks is not viable and neither of the other exceptions to Section 73.1206 applies, we cannot find that El Mundo was excused from informing Mr. Vazquez-Santos of its intention to record and broadcast the conversation. The record demonstrates that El Mundo never told Mr. Vazquez-Santos that it intended to record and broadcast the conversation on May 8, 2000 and that it recorded and broadcast this conversation over four stations and on two different occasions. We thus conclude that El Mundo apparently violated Section 73.1206 of the Commission's rules.

9. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state 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 (1991). In addition, a violation is "repeated" if it occurs more than once. *Id.* at 4388.

10. Based on the evidence before us, we find that El Mundo broadcast a recorded telephone conversation on two occasions over four stations on May 8, 2000, in apparent willful and repeated 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* FCC 99-407 (released December 28, 1999). We have reviewed El Mundo's response to our letter of inquiry in which it admits that it recorded and later broadcast the conversation two times over multiple stations. Since the two different broadcasts originated from one recorded conversation, we decline to adjust the forfeiture amount based on the multiple broadcasts.⁷ However, since the conversation was broadcast over two separate stations for which El Mundo was the licensee, we apply an upward adjustment of \$2,000 to the base forfeiture amount. In total, based on all of the evidence before us, we find that El Mundo is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that El Mundo Broadcasting Corp. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount

⁷ See *Noble Broadcast Licensees, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 8530 (EB 2000) and *Nassau Broadcasting Partners, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 1367 (EB 1999).

of six thousand dollars (\$6,000) for willfully violating Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, El Mundo SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

14. 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 DC 20554 and MUST INCLUDE the file number listed above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Huberto E. Biaggi, Executive Vice President and General Manager, El Mundo Broadcasting Corporation, P.O. Box 364668, San Juan, Puerto Rico, 00936-4668.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau