

FCC Enforcement Monitor

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FCC Rescinds \$4,000 Fine for Improper Broadcast of Telephone Conversation by Illinois FM Station

Florida FM Station Fined \$4,000 for Improper Broadcast of Telephone Conversation

Nebraska FM Station Fined \$7,000 for Broadcasting Indecent Material

FCC Rescinds \$8,000 Fine Against Missouri Noncommercial Educational FM Station for EAS Violation

FCC Rescinds \$4,000 Fine for Improper Broadcast of Telephone Conversation by Illinois FM Station

The FCC has rescinded a fine of \$4,000 levied against an Illinois FM station for improper broadcast of a telephone conversation in violation of Section 73.1206 of the Commission's rules. The station licensee had requested either rescission or reduction of the fine.

In its arguments, the licensee noted that its on-air

personality discussed the proposed telephone conversation with one of the two other parties prior to the call being placed, and that the personality mistakenly believed that the party he had spoken to about the call had informed the third party that the call was to be broadcast over the air, when in fact, no such warning had been made. Relying on his belief that the notification had been made, the on-air personality did not think it was necessary to inform the third party that she was on the air.

The licensee asserted that it had "no malicious intent" to violate the rule, and that it promptly honored the third party's request not to later rebroadcast the telephone conversation. In addition to asserting that the violation occurred due to a "good faith" mistake by its employee, the licensee also pointed out that it took additional corrective actions, and that it has an otherwise unblemished record with the Commission.

After considering all of the licensee's arguments, the Chief of the Enforcement Bureau agreed, and rescinded the fine. It should be noted, however, that the Bureau has generally drawn a very bright line regarding violations of Section 73.1206, and if the called party is not notified in advance of the call (as opposed to at the start of the call), then a willful violation is deemed to have occurred, and the fine will stand.

Florida FM Station Fined \$4,000 for Improper Broadcast of Telephone Conversation

A Florida FM station has been fined \$4,000 for violating Section 73.1206 of the FCC's rules by improperly broadcasting a telephone conversation. While the complainant also alleged that the telephone conversation, which involved the complainant's 10-year-old daughter, was indecent, the complainant did not provide a tape of the conversation or a transcript, thereby causing the Bureau to decline to address

the contention regarding indecency.

The complainant alleged that the station called her home in an attempt to reach her husband's company, but instead reached the 10-year-old girl. The station admitted that the call did take place, and further admitted that no advance notice was given before the telephone conversation was broadcast. The station did not claim that there were any circumstances that would have led the girl to believe that her conversation was being broadcast or would be broadcast in the future.

In its defense, the station said that the incident was an isolated lapse on the part of one of its employees, and that it had since adopted new procedures to prevent a recurrence of the incident. In reviewing the licensee's arguments and the facts, the Bureau determined that the licensee had willfully violated the rule, and that the base fine of \$4,000 was warranted. The Bureau noted that while the station claimed that it had adopted "new procedures" to prevent the recurrence of similar incidents, "it has neither documented nor detailed those measures, nor explained why its efforts in this regard warrant

consideration as a mitigating factor."

***Nebraska FM Station Fined
\$7,000 for Broadcasting
Indecent Material***

A Nebraska FM station has been fined \$7,000 by the Enforcement Bureau for broadcasting indecent material, which is the base amount for violating Section 73.3999 of the Commission's rules.

In this case, the station carried a syndicated program during which a "commercial" for a fictional shampoo called "Head" featuring both spoken words and singing aired. The licensee argued that the material in question was not indecent, but was "in the major [sic], innuendo or double entendre," which it claimed "at the worse[sic], could be considered in bad taste." The licensee also claimed that the material "was an isolated occurrence during a four-hour program." The licensee noted that during the broadcast of the syndicated program, it had personnel monitoring the program in order to edit out any material that it deemed improper prior to broadcast.

The Bureau was unpersuaded by the licensee's arguments,

and said that the "cited language dwells at length on sexual innuendoes and cannot be considered fleeting. Moreover, the fact that this is only one segment of a four-hour program is decisionally insignificant. We find that the material relies principally on innuendo to convey a sexual meaning which is unmistakable and therefore, is actionably indecent." The Bureau went on to note that the excerpts were "indecent in that they contain language that describes sexual and/or excretory activities or organs in patently offensive terms." Because the material aired between 6:00 a.m. and 9:45 a.m., when there was a reasonable risk that children may have been in the audience, the Bureau concluded that it was legally actionable.

***FCC Rescinds \$8,000
Fine Against Missouri
Noncommercial Educational
FM Station
for EAS Violation***

The Enforcement Bureau has rescinded an \$8,000 fine levied against a noncommercial educational FM station in Missouri for violating Section 11.35 of the Commission's rules, which covers the Emergency Alert System (EAS). In its defense,

the licensee stated that it had been unaware of its obligations regarding the EAS, and that it took prompt remedial action by ordering EAS equipment after receiving the Bureau's *Notice of Apparent Liability for Forfeiture*.

The licensee further claimed that the \$8,000 fine would impose a severe financial hardship since the annual station budget was only \$7,100.

While the Bureau ultimately agreed that the fine would impose a financial hardship on the licensee, and agreed to rescind the fine, it noted that "the actions at issue in this case constitute a violation of Section 11.35 of the Rules. We will, therefore, retain a record of this violation, and the violation will be considered in determining an equitable penalty in the event any future violations occur. Accordingly, we admonish [the licensee] to carefully follow all Commission Rules in its current and future operation of [the station]."

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