

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

In the Matter of)	
)	
CITICASTERS CO.)	File No. 98110101
)	NAL/Acct. No. X32080021
Licensee of Station WXTB(FM))	Facility #11274
Clearwater, Florida)	JJS
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 21, 2000

Released: July 26, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Citicasters Co. (“Citicasters”) has apparently violated Section 73.1206 of the Commission’s rules, 47 C.F.R. § 73.1206, by broadcasting a telephone conversation recorded on an answering machine without first informing the parties to the conversation of its intention to do so. We conclude that Citicasters is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On October 28, 1998, the Mass Media Bureau received a complaint from Ms. Paula J. Sage. Ms. Sage alleged that two disc jockeys employed by WFLZ-FM, Tampa, Florida, had played messages from her home answering machine over the air without her prior knowledge. She alleged that the station’s disc jockeys broke her answering machine code before playing the messages and bragged about doing so on the air.

3. In responses to letters of inquiry,¹ Citicasters and Clear Channel, the current ultimate parent of Citicasters,² stated that on October 1, 1998, two disc jockeys employed by WXTB(FM), not WFLZ-FM, called Ms. Sage concerning a news article about her that was published in *USA Today*. One of the employees dialed the numbers that “happened to be” the access code for Ms. Sage’s answering machine and accessed Ms. Sage’s messages. The disc jockeys accessed a message consisting of an interview

¹ Clear Channel originally requested confidential treatment of the responses. By *Order*, DA 00-1530 (released July 10, 2000), the Chief, Investigations and Hearings Division denied Clear Channel’s request for confidentiality. Clear Channel did not appeal that ruling. Accordingly, we will discuss Clear Channel’s response in this notice.

² Clear Channel did not acquire control of Citicasters until May 4, 1999. See File No. BTCH-19981016HO, granted April 29, 1999.

between Ms. Sage and an Oklahoma newspaper reporter. The station aired the conversation once on the WXTB(FM) morning show.

III. DISCUSSION

4. Section 73.1206 of the Commission's rules states:

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 the licensee's 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. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

5. It appears that Citicasters violated Section 73.1206 of the Commission's rules by broadcasting the conversation that was recorded on Ms. Sage's answering machine. The Commission has warned licensees:

We remind all licensees that Section 73.1206 of our rules requires that before a telephone conversation is recorded for later broadcast or is begun for simultaneous broadcast, the licensee must inform the other party that the conversation will be recorded for broadcast purposes or will be broadcast live, as the case may be. The recording of such conversation with the intention of informing the other party later -- whether during the conversation or after it is completed but before it is broadcast -- does not comply with the Rule if the conversation is recorded for possible broadcast. Likewise, the initiation of a live broadcast of conversation with the intention of seeking the other party's permission for its broadcast sometime during the conversation, does not constitute compliance.

Station-Initiated Telephone Calls Which Fail to Comply with Section 73.1206 of the Rules, 24 RR 2d 1814 (1972). This rule is intended to protect the called party. *See Amendment of Section 73.1206: Broadcast of Telephone Conversations (Report and Order)*, 3 FCC Rcd 5461, 5463 (1988). Citicasters apparently accessed Ms. Sage's answering machine without her knowledge or permission. It then broadcast a telephone conversation between Ms. Sage and a reporter as it was being played on Ms. Sage's answering machine without giving prior notification to Ms. Sage. While Citicasters' conduct is different from the typical Section 73.1206 case, where a station calls a person directly and broadcasts the resulting conversation without giving prior notice, Citicasters' actions appear to be directly contrary to the language of the rule, which requires prior notice before a conversation is broadcast. We also find that Citicasters' conduct is inconsistent with the rule's purpose of protecting parties to telephone conversations.

6. 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).

7. Based on the evidence before us, we find that Citicasters broadcast a conversation on October 1, 1998, in apparent willful violation of Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206. 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). Because Citicasters' action here appears to be more egregious than the typical case in that Citicasters' disc jockeys apparently broke Ms. Sage's answering machine code in order to access the recorded conversation, we are adjusting the proposed forfeiture up to \$6,000.

IV. ORDERING CLAUSES

8. 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 Citicasters Co. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) for willfully violating Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Citicasters 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.

10. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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.

11. 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.

12. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Citicasters' counsel, John M. Burgett, Esq., Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau