

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

In the Matter of)	
)	
CLEAR CHANNEL BROADCASTING)	Control No. 99100031
LICENSES, INC.)	NAL/Acct. No. X32080003
)	
Licensee of Station KPRR(FM))	
El Paso, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 9, 2000

Released: February 10, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station KPRR(FM), El Paso, Texas, apparently liable for a forfeiture in the amount of \$4,000 for an apparent violation Section 73.1216 of the Commission's rules, which requires licensees, among other things, to fully and accurately disclose material terms of a contest. We find that Clear Channel conducted a contest, "So You Want to Win 10,000," without disclosing a material term of the contest, *i.e.*, that the prize was 10,000 Italian lira, not \$10,000.

II. BACKGROUND

2. On October 4, 1999, the Commission's Mass Media Bureau received a complaint from Ms. Trisha Dean. According to Ms. Dean, in early September 1999, Station KPRR(FM) began promoting a contest in which, by answering ten questions correctly, a contestant could win "10,000." On Monday, September 10, 1999, Ms. Dean was chosen as the contestant, and she answered the ten questions correctly. After being told that she had won, the disc jockeys told Ms. Dean that they had never said what the winner would win 10,000 of, and they told her that she had won 10,000 Italian lira. Ms. Dean states that she took their comment as a joke because both she and the disc jockeys laughed.

3. On September 30, 1999, Ms. Dean went to the station to pick up her check, and found that the check was only for \$53.00 (the approximate value of 10,000 Italian lira). Ms. Dean states that Bill Struck, the station manager, told her that she had won Italian lira.

4. On November 4, 1999, the Commission staff sent Clear Channel a letter of inquiry. In its response, which was filed on December 13, 1999, Clear Channel states that the contest "So You Want to Win 10,000" was intended as a spoof of the television show "Who Wants to Be A Millionaire?" Clear Channel claims that the teases for the contest suggested "that the 'contest' was just another silly bit on the KPRR morning show." Clear Channel admits, "The morning show intentionally did not state what the 'ten thousand' referred to." According to Clear Channel, the station never stated "on the air" that it was giving away ten thousand dollars. Rules for the contest, which stated that the prize was 10,000 Italian lira, were posted on Clear Channel's web site.

III. DISCUSSION

5. 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.

Under Note 1 to that rule, the material terms of the contest include "the extent, nature, and value of prizes" and "the basis for valuation of prizes." Note 2 to the rule states:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.

6. In this case, it appears that Clear Channel violated Section 73.1216 of the Commission's rules by not disclosing a material term of the "So You Want to Win 10,000" contest – the fact that the prize was 10,000 Italian lira. Clear Channel admits that it intentionally did not disclose the nature of the prize. The failure to disclose the nature and value of the prize is a clear violation of the rule. Moreover, despite Clear Channel's protestations that it never claimed that the prize was \$10,000, a listener had no way of determining that the prize in question was 10,000 Italian lira (or anything other than \$10,000). The Commission has held that licensees are "responsible for broadcasting accurate statements as to the nature and value of contest prizes, and will be held accountable for any announcement which tends to mislead the public."¹

7. We reject Clear Channel's argument that disclosure of the contest rules on its web site complied with our rule. The Commission's rules clearly state that "[t]he material terms should be disclosed periodically *by announcements broadcast on the station* conducting the contest." 47 C.F.R. § 73.1216 n.2 (emphasis added). The rules state that while disclosure by non-broadcast means (such as the World Wide Web) can be considered in determining whether adequate disclosure has been made, the non-broadcast disclosures must be "[i]n addition to the required broadcast announcements. . . ." *Id.* Thus, while non-broadcast disclosures can supplement broadcast announcements, they cannot act as a substitute for broadcast announcements.

8. Section 503(b) of the Communications Act² and Section 1.80(a) of the Commission's rules³ both state that any person who willfully or repeatedly fails to comply with the provisions of the

¹ *WMJX, Inc.*, 48 RR 2d 1339, 1357 (1981).

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 1.80.

Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b), 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.⁴

9. Based on the evidence before us, we find that Clear Channel conducted the "So You Want to Win 10,000" contest without disclosing a material term of the contest, in apparent willful violation of Section 73.1216 of the Commission's rules. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$4,000 for a violation of Section 73.1216 of the rules.⁵ In this case, based upon our review of all the pertinent factors as required by Section 503(b)(2)(D) of the Act, we believe a \$4,000 forfeiture is appropriate.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,⁶ Clear Channel Broadcasting Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully violating Section 73.1216 of the Commission's rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Clear Channel SHALL PAY⁷ 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.

12. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Clear Channel's 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

⁴ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17114 (1997), *recon. denied* FCC 99-407 (released December 28, 1999); 47 C.F.R. § 1.80(b).

⁶ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

⁷ Payment 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 Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Account No. listed in the caption.