8 FCC Rcd 2089

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

In the Matter of

Liability of Great Trails Broadcasting Corporation — 8310-HTS

Licensee of Station WGTZ-FM
Eaton, Ohio

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: March 12, 1993; Released: March 22, 1993

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief of the Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration: (1) a Notice of Apparent Liability (NAL), issued on September 18, 1992, for five thousand dollars ($5,000) against Great Trails Broadcasting Corporation ("*Great Trails*"), licensee of Station WGTZ-FM, Eaton, Ohio; and, (2) a response to the NAL filed October 16, 1992, requesting rescission of the forfeiture.

2. The NAL was issued to Great Trails for its apparent willful violation of Section 73.1206 of the Commission's Rules. The Commission determined that Great Trails had broadcast a telephone conversation on December 16, 1991, without first having informed the other party of the intended broadcast use of the conversation. The facts are set forth in full detail in the Notice of Apparent Liability and will not be repeated here.

3. In addition to reiterating arguments already disposed of in the Notice of Apparent Liability, Great Trails submits that the five thousand dollar ($5,000) forfeiture is excessive and that, at most, the Commission should issue an admonishment. Great Trails contends that the Commission mechanically issued the forfeiture and did not consider the following circumstances: (1) complainant filed the complaint not because of harm she suffered but to harass the station and to obtain information from the licensee; (2) the Commission reduced other forfeitures where there were good faith efforts to comply with the Commission's rules and the Commission should reduce this forfeiture for the same reasons, *see Channel 36 Licensee Corporation, Television Station WATL*, 7 FCC Rcd 6541 (1992) ("*WATL*"); (3) the rule's intent was followed because there was no intent to deceive the complainant as to the nature of the conversation in the brief exchange that took place before the employee informed the complainant that they were on the air.

4. We conclude that Great Trails' arguments do not warrant a reversal of the Bureau's decision to impose a five thousand dollar ($5,000) forfeiture. We reject Great Trails' contention that we mechanically issued it a five thousand dollar ($5,000) forfeiture. We issued a forfeiture in the amount suggested by the *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991) *on recon.*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA V. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992), which considers such factors as the nature and gravity of the offense and recommends a forfeiture of twenty percent (20%) of the maximum amount allowed. We found no circumstances warranting a deviation from that amount.

5. As to Great Trails' specific arguments, we do not think it appropriate to reverse or reduce the forfeiture because of the possible motives of the complainant. Additionally, as to the argument that, based on *WATL*, we should reduce Great Trails' forfeiture because of good faith and compliance with the rule's intent, the two cases are distinguishable. In *WATL*, the Commission reduced the forfeiture amount because the licensee acted in good faith and, although the announcement technically violated the Commission's sponsorship identification rule, it did not violate the rule's intent. The announcement did not identify its sponsored status with the words "sponsored by" or "paid for by." However, it did say that the program was "presented by." Furthermore, a second announcement indicated that the distributor paid for the announcement. Thus, the two announcements taken together informed the audience that the programming was from a non-station source and identified that source, which is consistent with the rule's intent.

6. As to compliance with the rule's intent, the complainant suffered precisely the harm the Commission's phone conversation rule is designed to prevent. That is, the rule's intent is to protect people's legitimate expectations of privacy in phone conversations and to give them an opportunity to decline to speak on the air. For this reason, the Commission has strictly interpreted Section 73.1206. The Commission has, in fact, long held that brief exchanges between the caller and the recipient, even saying "Hello" before the caller informs the recipient of the intent to broadcast the call or that they are on the air, violate Section 73.1206. *See Broadcasting-Contemporary, Inc., Radio Station WKTQ*, 52 FCC 2d 1005 (1975); *Western Broadcasting Co., Radio Station KKEY*, 38 FCC 2d 1195 (1972). *See also Report and Order Broadcast of Telephone Conversations*, 3 FCC Rcd 5461 (1988).

7. Based on the record, it is clear that Great Trails violated Section 73.1206 of the Commission's Rules by broadcasting a telephone conversation without first informing the called party that it was being broadcast.

8. Accordingly, pursuant to Section 503(b) ofthe Communications Act of 1934, as amended, IT IS ORDERED that Great Trails Broadcasting Corporation, Eaton, Ohio, FORFEIT to the United States the sum of five thousand dollars ($5,000) for its willful violation of Section 73.1206 of the Commission's Rules. The payment should be in the form of a check or similar instrument, payable to the Federal Communications Commission. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSIONN

Roy Stewart, Chief
Mass Media Bureau