

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

In the Matter of	)	File No. EB-05-IH-2006
	)	NAL Account No. 200732080020
<b>RCK 1 Group, LLC</b>	)	Facility ID No. 72172
	)	FRN No. 0011339769
Licensee of Station WKKX(AM)	)	
Wheeling, West Virginia	)	

**FORFEITURE ORDER**

**Adopted: February 17, 2009**

**Released: February 17, 2009**

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we assess a \$3,200 forfeiture against RCK 1 Group, LLC (the “Licensee”), licensee of Station WKKX(AM), Wheeling, West Virginia (the “Station”), for willfully violating Section 73.1206 of the Commission’s rules,<sup>1</sup> by broadcasting a live telephone conversation without giving prior notice to the individual being called of the Licensee’s intention to do so.

**II. BACKGROUND**

2. As discussed in detail in the Notice of Apparent Liability for Forfeiture (“NAL”) issued in this case, the Commission received a complaint that the Licensee violated Section 73.1206 by calling the Complainant’s home and broadcasting the call without giving the prior notice required by that rule.<sup>2</sup> In response to a Commission inquiry regarding the allegations, the Licensee admitted that Mr. Blomquist, a morning show host, initiated the alleged phone call as part of a talk show segment titled “Wake Your Lazy Carcass Up,” whereby the Station randomly selects individuals from a telephone directory and calls them with the opportunity to answer trivia questions to win prizes.<sup>3</sup> Mr. Blomquist stated that he first spoke to the Complainant’s wife and told her that she was “live on the radio” and asked “could I speak with [Complainant]?”<sup>4</sup> Mr. Blomquist further asserts that when the Complainant picked up the phone, Mr. Blomquist said “Good morning. You’re live on the radio with the BloomDaddy Experience,” after which the Complainant promptly hung up the phone.<sup>5</sup> The Licensee further states that Mr. Blomquist advised both the Complainant and his wife that they were live on the radio and, at most, each said “hello” and the Complainant’s wife also said “hold on.”<sup>6</sup>

<sup>1</sup> See 47 C.F.R. § 73.1206.

<sup>2</sup> See *RCK 1 Group, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4507 (Enf. Bur., Investigations and Hearings Div., 2007) (“NAL”); see also Complaint filed by David Delk (“Complainant”) to the Consumer and Governmental Affairs Bureau, Federal Communications Commission (“FCC”), received September 8, 2005.

<sup>3</sup> See Response to Complaint dated February 17, 2006 (the “LOI Response”), at 2.

<sup>4</sup> *Id.* at Blomquist Affidavit (“Blomquist Aff.”) ¶ 12.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* at 4 & Blomquist Aff. ¶ 14.

3. As a result of the Licensee's admissions, the *NAL* proposed a \$4,000 forfeiture. In response to the *NAL*, the Licensee filed a "Petition for Reduction or Cancellation of Proposed Forfeiture Adopted and Released March 6, 2007" ("Petition").<sup>7</sup> In its Petition, the Licensee seeks reduction or cancellation of the proposed forfeiture in light of its record of compliance, the nature of the violation, and the corrective steps taken to insure its future compliance with the Commission's rules.<sup>8</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act,<sup>9</sup> Section 1.80 of the Commission's Rules,<sup>10</sup> and the Commission's forfeiture guidelines set forth in its *Forfeiture Policy Statement*.<sup>11</sup> In assessing forfeitures, Section 503(b) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require.<sup>12</sup> As discussed further below, we have examined RCK 1 Group, LLC's response to the *NAL* pursuant to the aforementioned statutory factors, our rules, and the *Forfeiture Policy Statement*, and find no basis for cancellation of the forfeiture. We find, however, that a reduction of the forfeiture amount from \$4,000 to \$3,200 based on RCK 1 Group, LLC's prior history of compliance with the Commission's rules, and in view of the particular circumstances of this case, is appropriate.

5. Section 73.1206 of the Commission's rules requires that, *before* broadcasting or recording a telephone conversation for later broadcast, a licensee must 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 it is being or likely will be broadcast.<sup>13</sup> The Commission will presume such awareness only where "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."<sup>14</sup>

6. As set forth in the *NAL*, the *NAL* was issued in part because the Licensee admitted that its customary practice on the morning show was to select a telephone number at random, call that number, and notify the person answering the telephone that he or she was "live on the radio with the BloomDaddy Experience" *after* the broadcast had begun.<sup>15</sup> The Licensee does not dispute that this conduct constituted a rule violation because the notice required by Section 73.1206 must be given prior to the call being placed on the air, but nevertheless seeks reduction or cancellation of the forfeiture.<sup>16</sup>

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<sup>7</sup> See Petition for Reduction or Cancellation of Proposed Forfeiture Adopted and Released March 6, 2007, filed March 21, 2007 ("Petition").

<sup>8</sup> See *id.* at 1-3.

<sup>9</sup> See 47 U.S.C. § 503(b).

<sup>10</sup> See 47 C.F.R. § 1.80.

<sup>11</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>12</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> See 47 C.F.R. § 73.1206.

<sup>14</sup> *Id.*

<sup>15</sup> See *NAL*, 22 FCC Rcd at 4509 ¶ 7; see also *LOI Response* at Blomquist Aff. ¶¶ 5-8.

<sup>16</sup> See *Petition* at 2.

7. With respect to the forfeiture amount, the Licensee seeks a reduction based on its record of compliance with the Commission's rules.<sup>17</sup> Because of the Licensee's record of compliance, we will make an appropriate reduction. The Licensee also seeks a reduction because of the nature of the violation in question, namely that the circumstances were not offensive.<sup>18</sup> We considered the nature and circumstances of the violation in proposing a \$4,000 forfeiture in the *NAL*, and the Licensee has offered no new or previously undisclosed information relating to the nature and circumstances of the violation warranting a reduction. Despite the Licensee's assertion that the Complainant's wife said "hold on," in apparent acquiescence to participation in the call being broadcast,<sup>19</sup> the rule does not require consent; it requires *prior* notice.<sup>20</sup>

8. Finally, the Licensee has submitted affidavits relating to corrective measures it has undertaken to ensure future compliance with the Rule.<sup>21</sup> While these measures are commendable, the Commission has repeatedly found that corrective measures taken after the Commission commences an investigation do not nullify or reduce liability for forfeitures.<sup>22</sup>

9. The Commission's forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.<sup>23</sup> Having considered the record in this case, the statutory factors, and the matters raised by the Licensee in response to the *NAL*, we find that the Licensee is apparently liable for a forfeiture in the amount of \$3,200.

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Section 1.80 of the Commission's rules, and authority delegated by Sections 0.111 and 0.311 of the Commission's Rules, that RCK 1 Group, LLC **IS LIABLE FOR A MONETARY FROFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willful violation of Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206, as described in the paragraphs above.<sup>24</sup>

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an

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<sup>17</sup> See *id.* at 1.

<sup>18</sup> See *id.* at 2.

<sup>19</sup> See *id.*

<sup>20</sup> See 47 C.F.R. § 73.1206.

<sup>21</sup> See *Petition* at Exhibits 1 and 2.

<sup>22</sup> See *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875 ¶¶ 26-28 (2002); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); *TCI Cablevision of Maryland, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6013, 6014 ¶ 8 (1992); *Miami Radio, Inc.*, Memorandum Opinion and Order, 45 FCC 2d 612 ¶ 4 (1974); *Executive Broadcasting Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699 ¶ 6 (1966); see also *Johannus Orgebouw B.V. The Netherlands*, Forfeiture Order, 19 FCC Rcd 7196, 7198-99 ¶ 9 (Enf. Bur. 2004).

<sup>23</sup> See *Forfeiture Policy Statement, supra*; 47 C.F.R. § 1.80.

<sup>24</sup> See 47 U.S.C. § 503(b); 47 C.F.R. §§ 1.80, 0.111, 0.311, 73.1206.

FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). RCK1Group will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Rebecca.Hirselj@fcc.gov and William.Knowles-Kellett@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.<sup>25</sup>

12. **IT IS FURTHER ORDERED**, that a copy of this **FORFEITURE ORDER** shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to the Licensee at its address of record and Robert P. Fitzsimmons, Esq., Fitzsimmons Law Offices, 1609 Warwood Ave., Wheeling, West Virginia 26003-7110.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro  
Chief, Investigations and Hearings Division  
Enforcement Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.