

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

In the Matter of)	
)	
Cumulus Licensing LLC)	File Number: EB-06-IH-2519
Licensee of Station WTWR-FM (Luna Pier, MI))	NAL/Acct. No.: 200932080002
)	FRN #: 0002834810
)	
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 18, 2009

Released: February 18, 2009

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

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"),¹ we find that Cumulus Licensing LLC ("Cumulus" or the "Licensee"), Licensee of Station WTWR-FM, Luna Pier, Michigan (the "Station"), apparently willfully violated Section 73.1206 of the Commission's Rules² by recording for broadcast a live telephone conversation without giving prior notice to the recipient of the call of the Licensee's intention to do so. Based on a review of the facts and circumstances, we find the Licensee apparently liable for a forfeiture in the amount of \$6,000.

II. BACKGROUND

2. We received a complaint (the "Complaint") from the owner of Tony's Restaurant and Pub (the "Complainant"), alleging that, on June 13, 2006, personnel from the Station called the restaurant in light of media coverage relating to football player Ben Roethlisberger's injury in a motorcycle accident.³ The Complaint alleges that Station personnel spoke with the restaurant's employee about the restaurant's "Big Ben" burger, asked whether the restaurant would continue to offer the burger in light of the recent accident, and joked about ways to serve the burger.⁴ The Complainant alleges that Station personnel did not identify the call as originating from a morning radio show, and that the Station broadcast the conversation over the air on June 13 and 14, 2006, without consent from the employee or the restaurant.⁵

¹ See 47 U.S.C. § 503(b).

² See 47 C.F.R. § 73.1206.

³ See Complaint from Owner of Tony's Restaurant & Pub, to the Federal Communications Commission, received July 5, 2006.

⁴ See *id.* at 1. The Complaint alleges that the on-air personality inquired about whether the restaurant planned to serve the burger as "a smoothie," "bloody," or "without a top bun" since the football player wasn't wearing a helmet.

⁵ *Id.*

3. The Enforcement Bureau issued a letter of inquiry (“LOI”) to Cumulus on August 23, 2006.⁶ In its LOI Response (“Response”), Cumulus admits that its producer and on-air personality, Mr. John DiModica, initiated the call, but denies that it recorded the conversation for broadcast and broadcast the call without obtaining consent.⁷ Cumulus asserts that Station personnel obtained consent from the restaurant’s employee after initiating the call but before the content of the conversation was broadcast.⁸ Cumulus submitted a sworn declaration from Mr. DiModica and an archival recording of the conversation to support this assertion. According to Cumulus, the conversation, broadcast on June 13, 2006, at approximately 8:00 a.m., proceeded as follows:

Employee: Tony’s Restaurant, may I help you?
Mr. DiModica: Good morning how are you today?
Employee: Good.
Mr. DiModica: You’re on the air at Tower 98.3 Is that ok?
Employee: Yep.
Mr. DiModica: Got a question for you. Don’t you guys feature the Big Ben Burger?
Employee: Yes we do.
Mr. DiModica: Ok now, here’s a question. Do you guys continue the burger after y’know the whole incident yesterday?
Employee: Yep.
Mr. DiModica: Do you guys put the burger in a like a blender and mix it up like a smoothie now and serve it with a straw? So you can suck it down now?
Employee: Not hardly.
Mr. DiModica: Is there any teeth on that burger?
Employee: Yes there is.
Mr. DiModica: Is there?
Mr. DiModica: When the burger comes does it have a top bun on it or does he forget to put the bun on it?
Employee: I really don’t find this funny.
Mr. DiModica: Or does the burger come out really bloody?
Employee: (hang up)⁹

Cumulus asserts that this practice does not violate Section 73.1206 by “recording a telephone conversation for broadcast” or broadcasting a telephone conversation “simultaneously with its occurrence,”¹⁰ because the Station uses a digital delay system, which “dumps” the content of the conversation if the call recipient objects to broadcast of the conversation, and broadcasts the call on a 10-

⁶ See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Cumulus Licensing LLC, dated August 23, 2006 (“LOI”).

⁷ See Letter from Cumulus Licensing, LLC, to Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 22, 2006 (“Response”).

⁸ See *id.* at 2. As shown in the transcript of the call, cited *infra*, the producer and on-air personality of its show began his call, already being captured by the digital delay device, by telling the restaurant employee: “You’re on the air at Tower 98.3. Is that ok?” According to Cumulus, the restaurant employee then consented, and then the rest of the conversation took place. Since the broadcast occurred on a delayed basis, Cumulus asserts, the Station broadcast the conversation after obtaining consent.

⁹ See *id.* at Declaration of John DiModica, Producer and On-Air Personality for WTWR-FM, at 2-3. Although it was afforded the opportunity, the Complainant did not reply to Cumulus’s Response, thus this transcript, supported by the recording, will be treated as an accurate representation of the conversation for the purpose of this proceeding.

¹⁰ See *id.* (citing 47 C.F.R. § 73.1206).

second delayed basis if the Station obtains consent.¹¹ Further, Cumulus maintains that the use of the digital delay system itself does not constitute a “recording.”¹²

III. DISCUSSION

4. Section 503(b)(1) of the Communications Act of 1934, as amended,¹³ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁴ The term “willful” as used in Section 503(b)(1) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁵ The term “repeated” means that the action was committed or omitted more than once, or lasts more than one day.¹⁶ As set forth in greater detail below, we conclude under this standard that the Licensee is apparently liable for a forfeiture for its apparent willful violation of Section 73.1206 of the Commission's Rules.

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.¹⁷ 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.”¹⁸

6. Section 73.1206 reflects the Commission's longstanding policy that prior notification is essential to protect individuals' legitimate expectation of privacy, as well as to preserve their dignity by avoiding nonconsensual broadcasts of their conversations.¹⁹ The Commission specifically favored an individual's privacy interest when balancing it against a broadcaster's interest in enhancing program appeal with increased spontaneity and entertainment value using telephone conversations. The Commission found

¹¹ See *id.* at 2, 4.

¹² See *id.* at 2.

¹³ See 47 U.S.C. § 503(b)(1).

¹⁴ See *id.*

¹⁵ Section 312(f)(1) of the Communications Act, or 1934, as amended, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

¹⁶ See *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability, 16 FCC Rcd 1359, 1362 (2001).

¹⁷ See 47 C.F.R. § 73.1206.

¹⁸ *Id.*

¹⁹ See *Amendment of Section 1206: Broadcast of Telephone Conversations*, Report and Order, 3 FCC Rcd 5461, 5463-64 (1988) (“1988 Order re the Broadcast of Telephone Conversations”); *Station-Initiated Telephone Calls Which Fail to Comply With Section 73.1206 of the Rules*, Public Notice, 35 FCC 2d 940, 941 (1972); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to the Broadcast of Telephone Conversations*, Report and Order, 23 FCC 2d 1, 2 (1970); see also *WXJD Licensing, Inc.*, Forfeiture Order, 19 FCC Rcd 22445 (Enf. Bur. 2004) (issuing forfeiture for failure to obtain consent before recording telephone conversation for broadcast; forfeiture paid).

that such enhancement was not sufficiently critical as to justify intruding on individual privacy.²⁰ The Commission has held that the prior notification requirement ensures the protection of an individual's "right to answer the telephone without having [his or her] voice or statements transmitted to the public by a broadcast station" live or by recording for delayed airing.²¹ Consistent with this reasoning, the Commission has defined "conversations" broadly "to include *any* word or words spoken during the telephone call," and specifically has rejected arguments that "utterances made by parties called in answering the phone" are not subject to the rule's prior notification requirement.²² Thus, aside from the narrowly-tailored exceptions noted above, neither of which is applicable here, before any portion of a telephone conversation is recorded for later broadcast or before any portion of a telephone conversation is initiated 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. As the facts reflect, Cumulus violated Section 73.1206 because it failed to comply with this notice requirement.

7. While the recording and transcript of the call in Cumulus's employee's sworn declaration support Cumulus's assertion that it obtained permission before broadcasting the telephone conversation between its employee and the call recipient, Cumulus clearly did not obtain such consent before it began recording, or as Cumulus puts it, before it began to "capture a called party's words temporarily" ²³ Cumulus asserts, however, that use of a digital delay device, which provides for a delay in the broadcast of a telephone conversation sufficient to let Cumulus decide whether to "dump" the data before broadcast of the call if consent to broadcast is not obtained or proceed with a broadcast on a delayed basis if consent is obtained, does not constitute recording.²⁴ On this point, Cumulus contends that its assertion is supported by the Bureau's decision in *Infinity Broadcasting Corporation of Washington, D.C.*, in which the Bureau cancelled a proposed forfeiture against Infinity Broadcasting even though Infinity, in using a digital delay device, did not notify the complainant therein of Infinity's intention to broadcast the conversation before the conversation to be broadcast began.²⁵ Cumulus misconstrues the Bureau's decisions in *Infinity Broadcasting Corporation of Washington, D.C.* Although the Bureau ultimately cancelled the proposed forfeiture against Infinity, it did so in order to reconcile prior rulings specifically against Infinity, but it did not overrule the underlying decision -- which fit squarely in this case -- that Infinity's procedures failed to comply with Section 73.1206.

8. In the Notice of Apparent Liability in *Infinity Broadcasting Corporation of Washington, D.C.*, issued on March 8, 2000, the Enforcement Bureau rejected the same arguments raised here by Cumulus.²⁶ Infinity asserted that its use of a digital delay device afforded called parties the opportunity to consent or decline to have their voices broadcast by providing for a delay between the call and the broadcast of it, with station employees using the machine's "DUMP" function to erase content if the consent to

²⁰ See 1988 Order re the Broadcast of Telephone Conversations, 3 FCC Rcd 5461, 5464.

²¹ See *id.* at 5463.

²² See *Heftel Broadcasting-Contemporary, Inc.*, 52 FCC 2d 1005, 1006 (1975) (holding that "conversation" was defined for the purpose of Section 73.1206 as including any word or words spoken during the telephone call and imposing \$2,000 forfeiture for failure to provide notice and obtain consent prior to recording any conversation).

²³ See Response at 4.

²⁴ See *id.* at 2, 4.

²⁵ See *id.* at 2 (citing *Infinity Broadcasting Corporation of Washington, D.C.*, Forfeiture Order, 15 FCC Rcd 10387 (Enf. Bur. 2000), *recons. granted*, Memorandum Opinion and Order, 16 FCC Rcd 20156 (Enf. Bur. 2001)).

²⁶ See *Infinity Broadcasting Corporation of Washington, D.C.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12391 (Enf. Bur. 2000), *affirmed*, 15 FCC Rcd 10387 (Enf. Bur. 2000) ("*Infinity Broadcasting Forfeiture Order*"), *recons. granted*, Memorandum Opinion and Order, 16 FCC Rcd 20156 (Enf. Bur. 2001) ("*Infinity Broadcasting MO&O*").

broadcast is not obtained.²⁷ Infinity contended that the delay device prevented Infinity from simultaneously broadcasting any conversation simultaneously with its occurrence.²⁸ Infinity claimed that it did not “record” conversations by using the digital delay device, relying on a dictionary definition of “record” to assert that the digital delay device did not record because it did not permanently preserve the material.²⁹ The Bureau rejected all of these arguments, finding that Infinity violated Section 73.1206 -- independent of whether the use of a digital audio delay device could be used to facilitate compliance with the rule or whether such a device could be construed as not technically recording -- because it never told the complainant that it was using a digital audio delay device or that the device had the capability to prevent her voice from being transmitted over the air.³⁰ As the Enforcement Bureau found, Infinity simply told the complainant that she was on the air live without any opportunity for the complainant to decline having her voice recorded or broadcast.³¹ The Enforcement Bureau also rejected Infinity’s arguments that it had not violated the rule because the broadcast was neither “simultaneous” nor “recorded” because Infinity itself had stated that the conversation was “live.”³² The Bureau reminded Infinity of the Commission’s prior statements about the rule, which is appropriate to reiterate here:

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 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 before it is broadcast – does not comport 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.³³

9. On April 10, 2000, Infinity filed a response to the Notice of Apparent Liability and maintained that it did not violate the rule. The Bureau rejected Infinity’s arguments on reconsideration and, thereafter, issued the resulting Forfeiture Order, for \$4,000, against Infinity on May 17, 2000.³⁴ On November 13, 2001, in a Memorandum Opinion and Order, the Enforcement Bureau cancelled the \$4,000 forfeiture imposed against Infinity after consideration of Infinity’s argument that the forfeiture should be cancelled because it relied on prior decisions that, although none of the prior decisions explicitly discussed or endorsed the delay devices used by Infinity, led it to believe that its use of digital delay devices ensured compliance with the rule.³⁵ In the Memorandum Opinion and Order, the Enforcement Bureau found that in three Mass Media Bureau decisions cited by Infinity, the Mass Media Bureau had twice decided to take no action because of conflicting stories about the broadcasts, and a third time, issued a forfeiture premised on

²⁷ See *id.* at 12392.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.* at 12393.

³¹ See *id.*

³² See *id.*

³³ *Id.* (citing *Station-Initiated Telephone Calls Which Fail to Comply with Section 73.1206 of the Rules*, 24 RR 2d 1814 (1972)).

³⁴ See *Infinity Broadcasting Forfeiture Order*, *supra* note 28.

³⁵ See *Infinity Broadcasting MO&O*, 16 FCC Rcd 20156.

the broadcast of a portion of the conversation that had occurred after the on-air broadcasters told the complainant that she was on hold.³⁶ These decisions “persuad[ed the Enforcement Bureau] that Infinity could have reasonably believed that, at the least, the Commission’s staff had tacitly approved its procedures for broadcasting telephone conversations. Thus, *as applied to Infinity*, [the Bureau] believe[d] the rule was not sufficiently clear to justify a forfeiture.”³⁷ The Enforcement Bureau also noted that Infinity planned to file a request for declaratory ruling on the issue of whether a radio station’s use of a digital delay device, coupled with delivery of a specified notice to the called party during the period of the digital delay, was compliant with Section 73.1206, and that Infinity stated it would implement steps in the production process to ensure that the show would not contain the called party’s voice until the called party was provided notice of intent to broadcast.³⁸ Accordingly, the Enforcement Bureau granted Infinity’s request for further reconsideration and cancelled the forfeiture as to Infinity,³⁹ but the Bureau was careful to preserve its previous finding that Infinity’s procedures were not in accord with the rule’s requirements.⁴⁰ Therefore, contrary to Cumulus’s assertion, the Enforcement Bureau did not vacate the original substantive findings in its Notice of Apparent Liability and Forfeiture Order in *Infinity Broadcasting Corporation of Washington, D.C.*, which are still valid and not overruled, and serves as appropriate notice to Cumulus of the requirements of the rule and appropriate precedent to guide our decision in this case.⁴¹

10. Based upon the evidence before us, we find that Cumulus apparently willfully violated Section 73.1206 of the Commission’s rules. The Commission’s forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.⁴² In addition, the Commission’s rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act⁴³ and Section 1.80(a)(4) of the Commission’s rules, which include “the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁴⁴ Cumulus has previously been found to violate Section 73.1206.⁴⁵ Having considered the record in this case and the statutory factors, we find that Cumulus is apparently liable for a forfeiture in the amount of \$6,000.⁴⁶

³⁶ See *id.* at 20157 (citing *Letter from Norman Goldstein to Bernard A. Solnik, Esq.*, Case No. 02120518 (Mass Media Bur. March 25, 1996); *Letter from Norman Goldstein to Kenneth C. Stevens, Esq.*, Case Nos. 96010161 and 96040220 (Mass Media Bur. June 4, 1996); *Infinity Broadcasting Corp. of Washington, D.C.*, 14 FCC Rcd 5539 (Mass Media Bur. 1999)).

³⁷ See *id.* at 20157 (emphasis added).

³⁸ See *id.*

³⁹ See *id.* (“Thus, as applied to Infinity, we believe the rule was not sufficiently clear to justify a forfeiture.”)

⁴⁰ See *id.*

⁴¹ The Commission and its components have not used the terms “cancel” and “vacate” synonymously with respect to forfeitures. Compare *Tri-Valley Broadcasters, Inc.*, Memorandum Opinion and Order and Notice of Forfeiture, 12 FCC Rcd. 9938 (1997) (vacating a previously imposed forfeiture due to lack of consideration of a filed pleading and reissuing forfeiture after consideration of pleading) with *Blackstone Calling Card, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 13031 (Enf. Bur. 2007) (cancelling forfeiture due to additional information indicating that the company was not a telecommunications carrier at the time of the alleged violation). See also *Emmis Communications Corp.*, Order, 19 FCC Rcd. 16003, 16007 (2004) (agreeing that the Commission will “rescind, vacate, and cancel the MO&O and the Forfeiture Orders” subject to a Consent Decree between the Commission and the licensee) (emphasis added) (subsequent history omitted).

⁴² 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, 17115 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“Forfeiture Policy Statement”); 47 C.F.R. §1.80.

⁴³ See 47 U.S.C. § 503(b)(2)(D).

⁴⁴ 47 C.F.R. § 1.80(a)(4).

⁴⁵ See *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 2753 (Enf. Bur. 2004) (Footnote Continued...)

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁴⁷ and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,⁴⁸ that Cumulus Licensing LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$6,000 for violating Section 73.1206 of the Commission's rules.⁴⁹

12. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules that within thirty (30) days of the release date of this Notice, Cumulus Licensing LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 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). 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. Cumulus Licensing LLC will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anjali.Singh@fcc.gov.

14. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington D.C. 20554, and 20554 and **SHALL INCLUDE** the NAL/Acct. No. referenced above. The Licensee shall also, to the extent practicable, transmit a copy of the response via e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anita.Patankar-Stoll@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices

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(imposing \$4,000 forfeiture for Cumulus's broadcasting of call between its station personnel and that of a rival station's without obtaining consent to broadcast such call, in apparent violation of Section 73.1206 of the Commission's Rules; NAL paid).

⁴⁶ See *Clear Channel Broadcasting Licenses*, Notice of Apparent Liability, 17 FCC Rcd 5893, 5894 (Enf. Bur. 2002) (imposing \$6,000 forfeiture for violation of Section 73.1206 based on licensee's prior history of violating that rule; NAL paid). See also authorities cited, *supra*, notes 21 and 47.

⁴⁷ See 47 U.S.C. § 503(b).

⁴⁸ See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

⁴⁹ See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED**, that the Complaint filed by the owner of Tony's Restaurant and Pub **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the Complaint proceeding **IS HEREBY TERMINATED**.⁵⁰

17. **IT IS FURTHER ORDERED**, that a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent, by Certified Mail/Return Receipt Requested, to Cumulus Licensing LLC at its address of record and to its counsel, Lewis J. Paper and Gregory D. Kwan, Dickstein Shapiro LLP, 1825 Eye Street NW, Washington, DC 20006-5403.

FEDERAL COMMUNICATIONS COMMISSION

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

⁵⁰ For purposes of this forfeiture proceeding initiated by this NAL, Cumulus Licensing LLC shall be the only party to this proceeding.