Broadcasting Telephone Calls

By Gregg P. Skall

For years disc jockeys and other air staff have broadcast telephone conversations. Often done illegally, it is done nonetheless because comedy bits on unsuspecting people can have high entertainment value. Depending upon the desired effect, telephone conversations are often used as a part of games, jokes and other devices to get listener attention and controversy. The practice is widespread. I am often told that the air staff thought it was okay because their competition has been doing it.

The FCC Rule is clear, however, that telephone conversations may not be broadcast live or pre-recorded, unless the other party has been informed that the call will be broadcast. The Commission's recent aggressive enforcement of its rules and forfeiture policy has hit this area hard. There have been a number of fines levied for broadcast of conversations without the other party's consent. The standard forfeiture for this violation is $5,000.

In fact, a broadcaster must inform the caller or the party being called **before** their voice is put on the air. You may not record the conversation first and obtain the consent afterward.

In certain circumstances, however, the Commission will presume that the other party is aware from the circumstances that the conversation is, or will likely be, broadcast. For example, when the caller phones into a call-in show, expecting to speak on the air. Further guidance can be obtained from looking at some of the cases. In KKEY, Portland, OR, the Commission held that it was a violation of the Rule to dial a telephone number, ask the name of the answering party, and then state, "Hello, this is Jack Herd, KKEY, we are live and on the air." The Commission held that a notice of intention to broadcast the conversation is required **before** the call is broadcast.

Another frequent trick is to call a competing station to somehow embarrass them. In KLVI, Beaumont, TX, an air personality called the general manager of a competing station to ask about rumors of staff changes at their station. The call was aired live without obtaining permission. The Commission refused to accept the argument that a general manager knows that any call from a competing station might wind up on the air.

Contests can create unsuspecting problems. In WKTQ, Pittsburgh, PA, the licensee ran a contest in which listeners were to answer the phone, "I listen to the new sound of 13Q." It placed calls to the public which were aired live in an attempt to find someone who would answer the phone the required way. The Commission held that this activity constituted a "conversation," and held that a notice of intention to broadcast is required **before** the telephone call is actually broadcast **or** recorded. The called party must be given a *real* opportunity to refuse to have his or her conversation broadcast or recorded while not yet on the air or tape. For example, in WEGX(FM), Philadelphia, PA, the Commission held that even though the called party gave permission after the subject conversation was recorded but prior to its actual broadcast, there was still a violation of the rule.

Another seemingly innocent area is broadcast news. Clearly, this is an area that requires attention in television station operations. News reporters attempt to obtain telephone actualities for later broadcast, sometimes without telling the source that the conversation is being taped. Although this may dampen the spontaneity of the conversation, the Rule requires that notification of the recording for broadcast be obtained before the call is recorded. In 1990, WRGB(TV), Schenectady, NY, was held liable for a news reporter who

placed telephone calls to a news source and recorded the conversation for broadcast without first informing the news source of the intention to do so.

Some earnest attempts to comply with the rule have also fallen short. In KYKY-FM, St. Louis, MO, the FCC held that a disc jockey greeting, "This is Guy Phillips over W98 FM Radio" did not constitute an acceptable notification. The Commission emphasized the notice must be given to the called party before initiating the recording **and** give the called party the opportunity to decline.

Recognizing that broadcast of telephone conversations has attracted Commission attention recently, some stations have begun airing an announcement that any call, in which the station is a party, may be broadcast over the air. The FCC's Complaints and Investigation Branch has informally advised that such announcements do **NOT** substitute for the actual notice that is required by its Rules. For your reference, Section 73.1206 of the Commission's Rules is reprinted below.

Section 73.1206

> 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 for 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 in connection with the program in which the station customarily broadcasts telephone conversations.