

FCC Fines Broadcast of Telephone Conversation

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The FCC today issued an order finding a broadcaster apparently liable for a \$4,000 fine for broadcasting telephone conversations without giving prior notice of its intention to do so. This order provides some important lessons for reporters who may want to incorporate actual telephone conversations into their broadcast packages.

Television and radio stations, as FCC licensees, are subject to a rule prohibiting the broadcast of telephone conversations without prior notice. Section 73.1206 provides:

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 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.

In finding the broadcaster liable for a fine under this rule, the FCC rejected the station's argument that the notice requirement embodied in the rule could be disregarded because the person recorded was a public official.

Although this rule is most commonly implicated by radio on-air personalities who broadcast telephone conversations with listeners who call in, it may affect reporters as well. If, as part of your news story, you want to include all or a portion of a telephone conversation you had with a source, you must be sure to inform your source that you may broadcast the conversation **before you begin recording**. Thus, it would violate the rule to start recording without the source's knowledge and then, once you obtain a quote you would like to use in your story, belatedly ask the source for permission to broadcast the conversation.

It is important to recognize that this rule applies only to telephone conversations. It does not affect your ability to broadcast surreptitious recordings of in-person conversations, for example as part of investigative pieces. Your ability to make or use those recordings will be governed by state and federal wiretapping statutes, as well as the common law of invasion of privacy. Thus, while it may well be that in certain states a reporter will be within his or her rights to record a telephone conversation without the consent of the other party to the conversation, the reporter may not broadcast the recording over the air.