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RECENT FCC FINE AGAINST A TV STATION FOR BROADCASTING A VOICE MAIL PROMPT SHOCKS MANY

The FCC's Enforcement Bureau recently issued a Notice of Apparent Liability for Forfeiture against KNOE-TV, Monroe, Louisiana, for a total of \$10,000, for broadcasting a recording of the outgoing message on an answering machine by finding it to be a "telephone conversation." The Commission's rules generally forbid the broadcast of a live or recorded telephone conversation unless the participants are told in advance that the call may be broadcast. Finding that an outgoing greeting message on an answering machine is a "conversation" is an apparent expansion of the rule.

The FCC's rules provide that before any television or radio broadcast station may broadcast a live or recorded telephone conversation, a licensee must inform any party to the call in advance of the licensee's intent to broadcast the conversation. The limited exceptions to this rule apply to situations in which the participants should be presumed to have prior knowledge of the possibility of broadcast—station employees and persons who initiate the call to the station (*i.e.* callers to talk radio programs). In the KNOE-TV case, a station news reporter called a local public official and recorded his outgoing voice mail message without giving prior notice to the public official, and then broadcast the recorded voice mail message. The station then broadcast another exchange, where the reporter called the official again, identified himself but failed to tell

the official that the exchange was being recorded, and the official hung up. The public official filed complaints with the FCC regarding the broadcast of the two “conversations.”

The station argued that the reporter did not need to notify the public official at the time of the first call that he was recording it for broadcast because a voice mail message is not a “conversation” that triggers the notice requirement. The Enforcement Bureau disagreed, stating in its decision that an outgoing voice mail message is a “conversation” that requires appropriate notice, and that the station violated the rule when it broadcast the two “conversations” without informing the public official of its intent to do so. The Bureau also dismissed defenses based upon First Amendment considerations and that there should be no expectancy of privacy in a voice message greeting that is available to any user of the public switched telephone network, worldwide.

A strict reading of this decision would be that absolutely no kind of recorded voice may be broadcast without actual prior notice, or strictly construed presumptive prior notice. The regulatory environment continues to be punitive. Broadcasters should act accordingly.

If you have any questions concerning the FCC’s rules regulating the broadcast of telephone conversations, please contact Rebecca Adams at rebecca.adams@hkllaw.com.

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