F.C.C. 75-1406

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

USE OF RECORDING DEVICES IN CONNECTION WITH TELEPHONE SERVICE

MEMORANDUM OPINION AND ORDER

(Adopted: December 18, 1975; Released: December 29, 1975)

BY THE COMMISSION:

1. We have before us a letter dated March 18, 1975, and subsequent correspondence, from National Public Radio (NPR) requesting a ruling on the applicability to it of the "broadcast licensee' exception to the "beep tone" requirement.[1] NPR is the interconnected system, or network, of noncommercial public radio stations in the United States. It was created, is composed of, and is managed by licensees of noncommercial radio stations but is not a licensee itself. NPR provides broadcast programming material to its licensee owners. NPR states that if permitted to record without a "beep tone," it would voluntarily follow the notice requirements of Section 73.1206 of the Commission's Rules.[2]

2. Under the currently effective tariff provisions,[3] NPR is precluded from recording an interstate telephone call for broadcast purposes without the "beep tone" because it does not possess a broadcast license from this Commission. Also precluded under the tariff for the same reason are such independent broadcast networks as Mutual Broadcasting Company.

3. We imposed the "beep tone" requirement because telephone conversations should be free from unknown or unauthorized invasions of privacy. *Use of Recording Devices*, 11 F.C.C. 1033 (1948). Subsequently, we relaxed this requirement for licensed broadcast stations. (Note 1 above). We believed that the oral warning required in Section 73.1206 would adequately preserve the underlying policy of the "beep tone" and at the same time improve the broadcast transmission quality of the conversation. The exception was limited to broadcast licensees because compliance with Section 73.1206 could only be compelled of a licensee. This has led to an anomalous situation. When a licensee provides its own program material, it can take advantage of the exception; but when it seeks the program material from an outside source, (e.g., as an affiliate of an independent broadcast network or through a cooperative effort with other licensees), it cannot avail itself of the exception unless that outside source is also a licensee.

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[1] *Recording Devices*, 38 FCC 2d 579 (1972).

[2] Section 73.1206 provides that a broadcast licensee prior to recording a telephone conversation for broadcast shall inform any party to the call that the conversation is being recorded for broadcast purposes.

[3] AT&T Tariff F.C.C. No. 263, Section 2.6.4(D)(1)(a)(i)(1) and Tariff F.C.C. No. 259, Section 2.7.4(D)(1)(a)(i)(1).

4. It was not our intent to create this anomaly. When material to be recorded by entities such as NPR and Mutual is for broadcast purposes only, we see no reason why the broadcast exception should not be broadened to include these entities. Inasmuch as the conversations to be recorded are to be broadcast, each licensee which would use such material is obligated under Section 73.1206 to make sure that the oral warning has been given and each entity which does the recording would have to provide the warning if it wishes to have a marketable product. Thus, the underlying policy of the "beep tone" would be preserved.[4]

5. Accordingly, IT IS ORDERED, That the automatic tone warning requirements of our orders of November 26, 1947, May 20, 1948 (12 F.C.C. 1005 and 1008) and December 20, 1972 (38 F.C.C. 2d 579) ARE HEREBY AMENDED to permit the recording without the "beep tone" of two-way telephone conversations made solely for the over the air use of a licensed broadcast station by a broadcast network or by a cooperative programming effort composed exclusively of Commission broadcast licensees.

6. IT IS FURTHER ORDERED, That the American Telephone and Telegraph Company SHALL AMEND its tariff regulations consistent with this Memorandum Opinion and Order after coordination with the Chief, Common Carrier Bureau, as to appropriate tariff language.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

[4] If we discover that this broader exception is being abused, we will take appropriate remedial action, including the possibility of rescinding the exception, to preserve the underlying policy of the "beep tone" regulation.