

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

MM Docket No. 85-37

In the Matter of:

Amendment of Section 1206:	RM-2564
Broadcast of Telephone	RM-2571
Conversations	RM-4680

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 11, 1988; Released: September 13, 1988

By the Commission:

INTRODUCTION

1. Before the Commission for consideration are the initial and reply comments¹ filed in response to the *Notice of Proposed Rule Making*² (*Notice*) in the above-captioned proceeding. After carefully reviewing these pleadings and the proposals advanced in the *Notice*, we have decided not to revise the existing provisions of Section 73.1206 of our rules governing the broadcast use of telephone conversations.³

BACKGROUND

2. Section 73.1206 of the Commission's rules now requires broadcast licensees to notify parties to a telephone conversation of the licensee's intention to broadcast the conversation prior to either broadcasting the conversation live or recording the conversation for subsequent broadcast. An exception to this obligation is provided where the party to the conversation is aware or may be presumed to be aware that the exchange is likely to be aired by the licensee.⁴

3. In 1947, the Commission adopted a *Report* regulating the recording of telephone conversations generally.⁵ In that decision, the Commission acknowledged that recording devices, which were often prohibited by telephone company tariffs, have a "useful and legitimate place in the conduct of governmental and private business."⁶ The Commission also recognized, however, the "importance and desirability of privacy in telephone conversations,"⁷ and ruled that the use of a recording device in connection with two-way, interstate or foreign message toll telephone service would be permitted only if adequate notice were given to all parties that the telephone conversation was to be recorded. Adequate notice was deemed to be provided by the operation of a device that automatically produced a distinct, audible tone-warning (beep tone) signal at regular intervals during the conversation when the recording device was in use.⁸ This beep tone requirement applied, with certain limited exceptions,⁹ to all telephone recordings subject to the Commission's jurisdiction.¹⁰

4. Separate rules governing the broadcast, as distinct from the recording, of telephone conversations were not adopted at that time. Because the live interconnection of the telephone system and broadcast stations had not yet evolved, the broadcast use of telephone conversations required that the call first be recorded. This ensured that the parties to any call that might be broadcast would be afforded notice of the potential loss of privacy through the application of the beep tone requirement at the time of the recording. These circumstances changed, however, with the adoption of the Commission's decision in the *Carterfone* matter.¹¹ This decision authorized the use of equipment that provided a direct interconnection between radio transmission facilities and telephone systems, thereby permitting for the first time the live broadcast transmission of telephone calls. Because the beep tone notice requirement applied only to the recording of telephone conversations, substantial uncertainty arose in the wake of the *Carterfone* decision concerning the notice obligations applicable to the simultaneous or live broadcast of telephone calls. To resolve this uncertainty, the Commission commenced a rule making proceeding that ultimately resulted in the adoption in 1970 of the current provisions of Section 73.1206 of the rules.¹² Two years later, in response to complaints by broadcasters that the beep tone was disruptive and, in light of the adoption of Section 73.1206, unnecessary, the Commission waived the beep tone notice requirement for broadcast licensees. The Commission reasoned:

[A]ssuming that a broadcast licensee complies with the aforementioned rules [Section 73.1206], the parties to the telephone conversation are aware that it is the intent of the licensee to broadcast the telephone conversation over the air where it will be overheard and/or freely recorded by the listening public. Therefore, it appears that there is no need to transmit a "beep tone" in these circumstances as the parties have already agreed to the loss of privacy that would otherwise be protected by the "beep tone."¹³

5. More recently, the Commission received three petitions for rule making seeking to amend Section 73.1206. These petitions were submitted by (1) Edith Martindale, Don Martindale and Herbert Terry (Martindale): RM-2564; (2) Doubleday Broadcasting Company, Inc. (Doubleday): RM-2571; and (3) the National Association of Broadcasters (NAB): RM-4680. The petitioners raised various issues concerning the point in time at which a broadcaster should be required to notify other parties that a telephone conversation is being recorded for broadcast or is being broadcast simultaneously with its occurrence. Martindale favored the existing prior notice requirements and requested the incorporation of additional safeguards in Section 73.1206.¹⁴ Doubleday and NAB, on the other hand, argued that the current requirements for prior notification limit spontaneity and the free flow of information and opinion. In response to these petitions, the Commission issued the *Notice* in this proceeding.

6. *The Notice*. The *Notice* determined that certain policy and rule changes in Section 73.1206 might be justified, but expressed a concern that such changes must properly balance the dual objectives of "meeting the legitimate needs of the listening public to obtain information from broadcast news and information programs and ensuring the

public's right to privacy with respect to the recording of conversations that may be used on the air.¹⁵ Reflecting the competing nature of the interests at issue, the *Notice* asserted that there are "significant privacy and other First Amendment concerns involved in the broadcasting of recorded material" and that "there may be a general expectation of privacy with regard to telephone conversations," yet it also expressed a concern "about inhibiting the free flow of information."¹⁶

7. The *Notice* offered two basic alternatives to the existing rule's provisions. First, we proposed to amend Section 73.1206 to permit a licensee to record a telephone conversation without first informing the parties to the conversation that the station intends to broadcast the call subsequently, provided the licensee, at some time prior to the actual broadcast, obtains consent for the broadcast. Because this alternative would permit a broadcast licensee to record a telephone conversation without affording the parties to the call any prior notice of the recording, the Commission inquired whether the beep tone/all party consent requirements ordinarily applicable to telephone recording should be reimposed for any broadcaster who utilized the post-recording consent option.¹⁷ We noted, in this regard, that the beep tone notice requirement had been originally waived for broadcasters only because Section 73.1206 dictated *pre-recording* notice to parties whose telephone conversations were recorded for later broadcast. In connection with this alternative, the *Notice* also requested comment on a proposal made by NBC in comments supporting Doubleday's initial rule making petition that broadcasters should be permitted to retain tapes of telephone conversations recorded for broadcast even where consent to the actual broadcast is denied.¹⁸

8. Second, the *Notice* invited comments on the possibility of eliminating Section 73.1206. We observed that substantial privacy protections are provided by other federal laws and by state statutes and inquired whether these provisions might "adequately protect telephone conversations from being recorded and used for broadcast purposes without prior consent."¹⁹ On the federal level, we noted the provisions of Section 2511 of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Crime Act),²⁰ which protect parties' privacy rights in telephone conversations by requiring prior *one-party* consent before recording is permitted. On the state level, we observed that many jurisdictions directly regulate recordings of both wire and oral communications, in some cases more restrictively than applicable federal provisions, and that some states have codified the right to privacy and provided statutory remedies for the violation of this right.²¹ Finally, we pointed out that potential invasions of an individual's privacy may also be inhibited by the availability to the individual of a civil remedy in tort should his or her conversations be broadcast without proper consent.

COMMENTS

9. Eighteen comments and one reply comment were received in response to the *Notice*. Of the eighteen initial comments, eleven favored either relaxation or elimination of the rule, while seven supported either retaining the rule as drafted or strengthening its provisions.

10. The consensus of broadcast parties responding to the *Notice* is that the current rule imposes unnecessary restrictions on broadcasts of telephone conversations and should be relaxed or eliminated. Broadcasters argue that the exist-

ing prior notification requirements inhibit spontaneity and immediacy in telephone conversations, undermining the effectiveness of the news and entertainment programming utilizing these conversations. CBS submits that the prior notice obligation also poses problems for reporters who may not know in advance that a particular conversation will ultimately be broadcast. Under the current rule, this uncertainty may actually prevent use of the recorded call since advance notice to the caller of the taping may not have been given and cannot be obtained legitimately after the fact. NBC adds, in this regard, that the current notification requirements prejudice broadcasters as compared to print journalists, who are free to record a telephone conversation without ever disclosing that they might later publish a verbatim transcript of the conversation.

11. Several broadcast parties supporting modification of Section 73.1206, including WRGB, Inc. (WRGB) and ABC, suggest that the current rule's requirement that broadcasters provide pre-recording notice is overbroad and unnecessary. ABC asserts, for example, that

there is no invasion of personal privacy which warrants protection by this agency in a situation where a 'non-live' conversation is legally recorded . . . and then subsequently broadcast -- if, at some point prior to broadcast, the consent of the callee is obtained. The Commission's concern should be restricted to whether or not a telephone conversation is actually *broadcast* without the callee's permission.²²

These parties generally believe that a pre-broadcast consent rule would fully protect the relevant privacy interests of individuals, yet would better enable broadcasters to preserve the spontaneity and unrehearsed nature of taped conversations used on the air.

12. NBC contends that the overbreadth of the existing provision also renders the rule an impermissible intrusion on the First Amendment rights of broadcasters to air speech that is "neither proscribed by statute (*e.g.*, obscenity) nor likely to incite the public to violent activity," and that, as a result, "it is incumbent upon the Commission to liberalize Section 73.1206 immediately."²³ Commenters favoring relaxation of Section 73.1206 suggest that a pre-broadcast consent rule would provide an appropriate liberalization and properly balance the competing privacy and First Amendment considerations involved.

13. The National Association of Broadcasters (NAB) agrees that adoption of a pre-broadcast consent rule is appropriate where telephone conversations are taped for later broadcast. NAB also urges the Commission, however, to permit live or recorded broadcasts of telephone conversations without the express consent of the parties to the call if the broadcaster informs the participants of the simultaneous or intended future broadcast of the conversation at the beginning of the call and prior to any substantive exchange.²⁴ NAB suggests that these additional changes to the notification rule will afford broadcasters increased flexibility and remove unnecessary impediments to broadcast use of telephone conversations, yet will continue to protect legitimate privacy concerns. In this latter regard, NAB asserts that its proposal is directly analogous to the level and means of privacy protection afforded by the beep tone requirement. ABC strongly concurs in

NAB's proposal as it relates to the broadcast of live telephone conversations, observing that the proposals in the *Notice* appear to have ignored this matter.

14. Several broadcast parties contend that the infirmities of the existing rule cannot be redressed by merely relaxing its requirements.²⁵ CBS asserts, for example, that the modification proposed in the *Notice*, under which subsequent consent could be used to authorize broadcast of a recorded conversation, may not resolve the difficulties faced by reporters in using taped conversations. CBS notes, in this regard, that the requisite consent may not be forthcoming -- either because the original source cannot be reached again or because the recording demonstrates that the source has altered his version of the facts -- and that broadcast use of the conversation will therefore be precluded. CBS also observes that any consent rule, whether pre-recording or pre-broadcast in nature, will raise difficult evidentiary problems. These parties generally argue that the Commission should simply eliminate Section 73.1206 in its entirety and leave the protection of privacy interests in connection with broadcast uses of telephone conversations to other federal and state laws. The Radio-Television News Directors Association (RTNDA) and NBC, for example, contend that the Omnibus Crime Act, state statutory provisions, and prevailing tort law adequately protect the legitimate privacy expectations of the public and that they are more appropriate means of doing so than administrative agency regulations. RTNDA observes, in this connection, that the application of these other privacy protections in specific cases is subject to full judicial review to ensure that privacy interests have not been violated. Doubleday adds that continued Commission involvement in vindicating rights to privacy in the face of these effective, protective alternatives constitutes an "inefficient use of administrative resources."

15. Parties supporting elimination of Section 73.1206 also submit that the Commission's authority to regulate privacy matters is questionable. NBC, for example, suggests that the establishment and protection of rights to privacy lies beyond the jurisdictional grant to the Commission in the Communications Act of 1934. NBC also asserts that the Omnibus Crime Act reflects a specific Congressional determination as to the proper scope of privacy in connection with recording telephone conversations and that Commission regulatory actions inconsistent with the one-party consent standard adopted in the Omnibus Crime Act are prohibited.

16. Various non-broadcast parties, including the American Legal Foundation (ALF) and several private individuals, oppose elimination or modification of Section 73.1206. These commenters argue that the existing provisions of the rule reflect the minimum restrictions on broadcast use of telephone conversations that are consistent with adequate protection of individuals' rights to privacy. ALF, for instance, claims that elimination of the current "consent" requirement "would allow broadcasters to trample at will on the legitimate privacy expectations of unsuspecting parties."²⁶ ALF contends that the existing provisions of Section 73.1206 properly distinguish between parties with legitimate expectations of privacy and those who have consciously surrendered these expectations. In this connection, ALF points out that the rule exempts from the notice requirement parties who are aware or should be aware of the licensee's intention to broadcast the conversation and argues that this is as much of an exception to the rule as should be provided if privacy

rights are to be preserved. ALF also asserts that the rule is not burdensome and that it protects the privacy interests of individuals in a manner that is the least intrusive to broadcasters.

17. ALF strongly argues that the Omnibus Crime Act does not adequately protect the privacy of telephone conversations against recording or broadcast by broadcast licensees without prior consent. ALF notes that Section 2511 of the Omnibus Crime Act -- the only relevant provision -- provides that it is not unlawful to intercept a wire communication if the intercepting party is also a party to the conversation (*i.e.*, one-party consent), unless the interception is for the purpose of committing a criminal or tortious act. In ALF's view, the requirement that the recorded party demonstrate a criminal or tortious purpose before a recording without notice would be deemed unlawful, renders the Omnibus Crime Act unavailing as a workable protection for telephone privacy in a broadcast context.²⁷

DISCUSSION

18. After careful evaluation of the arguments presented by the commenting parties and consideration of the Commission's recent determinations in its *Report and Order* in Docket No. 20840,²⁸ we have decided not to alter the prior notice provisions of Section 73.1206. While we appreciate broadcasters' interest in enhancing the spontaneity and unrehearsed nature of telephone conversations that they utilize on the air, we are convinced that our rules can and should play a role in protecting the legitimate expectations of privacy in connection with the broadcast use of telephone conversations. Our decision in this matter is prompted by several considerations.

19. Fundamentally, we are not persuaded that the potential benefits to broadcasters from deleting or substantially relaxing Section 73.1206 would be sufficient to offset our concern for protecting the privacy of individuals. As suggested in the *Notice*, we believe that there is a legitimate expectation of privacy that telephone calls will not be broadcast without the consent of the parties involved. Under these circumstances, we believe that it is reasonable and desirable to retain for individuals the right to answer the telephone without having their voice or statements transmitted to the public by a broadcast station in the absence of prior notice. For similar reasons, and in order to ensure effective compliance with respect to the broadcast of telephone conversations, we also believe that individuals should continue to have the right to prior notice in cases where a telephone conversation is being recorded for later broadcast.

20. We are aware, of course, that our beep tone tariff requirements permit concurrent notice and recording if the notice is given at the beginning of the taped conversation. We are not persuaded to extend a similar provision to recordings of telephone conversations for broadcast use or to live broadcast situations. Broadcast use of an individual's telephone conversations carries the potential for a more serious and intense loss of privacy than the singular recording of a conversation by the other party to the call. We are convinced that this risk, and the need for an effective enforcement mechanism, warrant continuation of our longstanding requirement that notice of intent to broadcast a conversation actually precede the recording or transmission of the telephone call.

21. Our conclusion is also driven by our belief that the burdens imposed by a prior notice requirement are not excessive and that the benefits to broadcasters from either substantial relaxation or elimination of the rule are modest. A primary benefit to be obtained by relaxing the rule as proposed, or eliminating it altogether, would appear to be to enhance the entertainment value and audience appeal of a station's programming through increased spontaneity in telephone conversations. While undoubtedly desirable, we cannot conclude that such enhancement of programming appeal is sufficiently critical as to justify intruding on individual privacy. Moreover, while potentially increasing the spontaneity of some "broadcast" telephone conversations, the absence of a notice requirement or the adoption of a relaxed notice provision could also lead to a general reduction in individuals' privacy expectations that, in turn, could well decrease the information flow to broadcast station reporters in many other conversations. We are sensitive to the First Amendment concerns raised by broadcasters in this connection. We continue to believe, however, that the prior notice requirements of Section 73.1206 pursue a legitimate, substantial governmental interest in protecting privacy with respect to the broadcast use of telephone conversations and are sufficiently narrowly drawn to achieve this purpose to pass constitutional muster. We note, in this regard, that broadcasters are not precluded by the notice requirement from recording or broadcasting telephone conversations nor are they prevented from telephonically gathering information or testimony important to their broadcast functions.

22. With respect to the burden imposed on broadcasters by the existing notice provisions, it seems clear that these are not excessive. In this respect, we note that under the current rule a station may begin to broadcast or to record a call at any point after informing the other party of the intended use of the conversation. While, as several broadcast parties suggest, this process may involve two phone calls by the broadcaster -- one to provide prior notice and a second to actually record the conversation -- there is no such requirement. As we stated in the *Notice*, "under the current rule licensees could make only one telephone call to obtain consent to broadcast a recorded or live telephone call and to record the telephone conversation."²⁹

23. Finally, we believe that the public interest standard under which we regulate broadcast use of the electromagnetic spectrum is sufficiently broad and flexible to provide us with the justification to retain our rules regulating the broadcast use of telephone conversations in a manner that effectively protects the privacy of individuals participating in such conversations. We also do not believe that the Omnibus Crime Act, or any congressional intent underlying that statute, in any way limits our authority to impose restrictions on the broadcast use of telephone conversations in a fashion that in our view best serves the public interest. We find nothing in the Omnibus Crime Act or its legislative history suggesting that Congress intended to address the broadcast use of telephone conversations or privacy concerns related to such broadcast use.

CONCLUSION

24. While we recognize that the prior notice obligations of Section 73.1206 of our rules impose certain restrictions on broadcasters in using telephone conversations, we believe these limitations are both reasonable and necessary

to protect the legitimate interests of the public in privacy in communications. Accordingly, we have elected to retain Section 73.1206 of the rules, as presently interpreted and applied, without modification.³⁰

PROCEDURAL MATTERS

25. In accordance with Section 605(b) of the Regulatory Flexibility Act, the Commission certifies that the action taken herein will not have a significant economic impact on a substantial number of small entities. By retaining the telephone broadcast rules in their current form, the Commission is not changing the regulatory burden on licensees. Moreover, the Commission certified in the *Notice* in this proceeding that the alternatives to the existing rule proposed therein, even if adopted, would have had "no measurable impact on the regulatory burden on licensees."³¹ Thus, our decision not to adopt these alternatives does not impose significant opportunity costs on broadcast licensees in terms of regulatory flexibility analysis.

26. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

27. Authority for action taken herein is provided in Sections 2, 4(i), and 303 of the Communications Act of 1934, as amended.

28. Accordingly, IT IS ORDERED That, the "Request for Declaratory Ruling" filed by Tuscon Wireless, Inc., and Southwestern Wireless, Inc., on October 23, 1987, IS DENIED.

29. IT IS FURTHER ORDERED That, this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Parties Filing Comments

1. American Broadcasting Companies, Inc.
2. American Legal Foundation
3. CBS, Inc.
4. Doubleday Broadcasting Company, Inc.
5. Donald W. Flick
6. George and Beverly Glover
7. Idaho Public Utilities Commission
8. Ann B. Kluckhohn
9. National Association of Broadcasters
10. National Broadcasting Company, Inc.
11. National Radio Broadcasters Association
12. Radio-Television News Directors Association
13. Don Ranas
14. Ferrell D. Sears

15. Bernard Senger
16. Snider Corporation
17. Alex F. Talbott
18. WRGB, Inc.

Parties Filing Reply Comments

1. Radio-Television News Directors Association

FOOTNOTES

¹ A list of participating parties is attached hereto as an Appendix.

² 50 Fed. Reg. 7931 (February 26, 1985).

³ See 47 CFR Section 73.1206.

⁴ 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. 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 obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

⁵ *Report of the Commission in Docket No. 6787 (Use of Recording Devices in Connection with Telephone Service)*, 11 FCC 1033 (1947).

⁶ *Id.* at 1050.

⁷ *Id.*

⁸ The Commission recognized that the effectiveness of a superimposed, periodic tone as notice of the recording of a call depended on the awareness of the public of the meaning of the tone. Accordingly, in adopting the beep tone, the Commission also adopted substantial publicity requirements intended to make telephone users aware of the purpose and implications of the signal. See *Report of the Commission in Docket No. 6787, supra* n.6 at 1052-53; *Order in Docket No. 6787*, 12 FCC 1005 (1947).

⁹ Over time, five exceptions to the beep tone policy have developed. The Commission recently reformulated and consolidated these exceptions into three general categories that allow for the recording of emergency, patently unlawful and law enforcement-related telephone calls without a beep tone or consent. See *Memorandum Opinion and Order in Docket No. 20840*, 86 FCC 2d 313 (1981), *clarified on reconsideration*, 95 FCC 2d 848 (1983).

¹⁰ To the extent intrastate and local exchange telephone recordings are regulated, they are governed by tariffs filed with the various state commissions.

¹¹ *Use of the Carterfone Device in Message Toll Telephone Service*, Docket No. 16942, 13 FCC 2d 420 (1968).

¹² See *Report and Order in Docket No. 18601*, 23 FCC 2d 1 (1970).

¹³ *Memorandum Opinion and Order (Use of Recording Devices in Connection with Telephone Service)*, 38 FCC 2d 579, 580 (1972).

¹⁴ Martindale also sought to broaden the scope of Section 73.1206 to apply its prior notice requirements to any recording intended for broadcast, including face-to-face interviews. In the *Notice*, the Commission determined that action on this proposal was not warranted. *Notice* at para. 14.

¹⁵ *Notice* at para. 11.

¹⁶ *Id.* at para. 13.

¹⁷ Currently, there are three means by which a party may legitimize the recording of a telephone conversation. These mechanisms are detailed in Section 64.501 of the Commission's rules, which prohibits the "the use [of] any recording device," except as follows:

(a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or,

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or,

(c) Where such use shall be accompanied by an automatic tone warning device

These provisions of the rules apply by their terms only to the conduct of telephone companies in recording conversations between members of the public and their agents, but identical conditions are made applicable to the conduct of individual users of telephone service through prescriptions governing telephone companies' tariffs.

¹⁸ NBC noted that even though the actual recording could not be aired, it can serve as proof of the accuracy of any report based upon the recorded conversation.

¹⁹ *Notice* at para. 15.

²⁰ 18 U.S.C. Section 2510, *et seq.*

²¹ See, e.g., Va. Code Section 19.2-69 (1950), cited in the *Notice*.

²² ABC Comments at p. 3.

²³ NBC Comments at p. 9.

²⁴ This suggestion is essentially identical to the proposals made by NAB and Doubleday in their petitions for Rule Making in this proceeding. See *Notice* at para. 9.

²⁵ Not all broadcast parties endorsed elimination of Section 73.1206 as appropriate. NAB, for example, while favoring substantial relaxation of the rule, expressly opposed simply deleting the rule altogether.

²⁶ ALF Comments at p. 2.

²⁷ ALF also objects strenuously to any suggestion that broadcasters be permitted to keep tapes of conversations for which consent to broadcast -- assuming the adoption of a pre-broadcast consent rule -- has been denied. ALF believes that permitting the retention of such tapes will only guarantee their later, unauthorized divulgence in some forum, perhaps, for example, in a judicial setting in connection with civil defamation proceedings.

²⁸ 2 FCC Rcd 502 (1986).

²⁹ *Notice* at para. 18.

³⁰ On October 23, 1987, Tuscon Wireless, Inc., and Southwestern Wireless, Inc., licensees of stations KKPW and KFXX-FM, respectively, (Licensees) filed a "Request for Declaratory Ruling" raising issues directly related to the matters under consideration in this proceeding. Specifically, the Licensees request the Commission to rule that Section 73.1206 of the rules, as now drawn, permits a broadcaster to air live or to record for later broadcast a telephone call from its inception if, immediately after the called party answers, the broadcaster identifies itself, advises the party

that the call is being broadcast or recorded for broadcast, and requests permission to continue broadcasting or recording. Petitioners also ask the Commission to declare that Section 73.1206 permits a broadcaster to presume consent if a party answers a station-initiated call using a phrase promoted by the station in connection with a contest or promotion.

Licensees acknowledge that both of these requests are at odds with prevailing Commission interpretations of Section 73.1206. Moreover, the requests raise concerns similar to those discussed in this *Report and Order*. Under these circumstances, we do not believe that Licensees' "Request for Declaratory Ruling" warrants further consideration and it is hereby denied.

³¹ Notice at para. 18.