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To: All Broadcast Clients

March 6, 2008

**\$4,000 NOTICE OF APPARENT LIABILITY ISSUED FOR BROADCAST OF  
VOICEMAIL GREETING MESSAGE WITHOUT PRIOR PERMISSION**

The FCC's Investigations and Hearings Division recently issued a Notice of Apparent Liability for Forfeiture in the amount of \$4,000 against the licensee of an AM station in Milwaukee for allegedly broadcasting a cellphone voicemail greeting message without first informing the other party of its intention to do so.

The Commission received a complaint that the AM station called the complainant's mobile phone, and that it played his voicemail greeting over the air without his permission. The licensee argued that it did not provide the programming on the day of the alleged violation, but that it had a contract with an independent contractor who provided the programming.

The Commission's Rules require that, before broadcasting or recording a telephone conversation for later broadcast, a licensee must inform any party to the call of the licensee's intention to broadcast or record 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. The Enforcement Bureau has, in the past, found that recorded answering machine messages are conversations within the meaning of this rule, and that airing such messages without permission is a violation. The Investigations and Hearings Division therefore determined that, in this instance, the licensee violated the Rule.

Further, the Commission has long held that licensees are ultimately responsible for the programming aired on their stations, and for violations of the FCC's Rules committed by employees or independent contractors. As a result, the licensee was responsible for the programming aired by the independent contractor.

If you have any questions about the rules governing the broadcast of telephone conversations, please contact any attorney in our office.

*Leventhal Senter & Lerman PLLC*

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.