

[Rule Against Broadcast of Telephone Conversation Without Prior Permission is Constitutional, Says FCC](#)

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The FCC today [upheld a \\$4000 fine issued to a broadcaster for broadcasting a telephone conversation](#) without first getting the permission of the people on the other end of the line, denying reconsideration that the broadcaster had sought - arguing that the fine violated its First Amendment rights. The telephone conversation that led to the fine was between a station employee and two airport officials, about a controversy concerning the local airport. As summarized in our [original article about that decision](#), the alleged violation arose from a call by the station employee to the airport officials to talk about the local controversy. The employee allegedly identified himself as a station employee, and started to ask questions - without specifically stating that the call was being broadcast. Even though the airport officials kept talking once they knew that the call was being recorded, the FCC still fined the station \$4000, finding that the violation occurred once the officials said "hello" on the phone without having been told beforehand that the call was being broadcast. The [decision](#) denying reconsideration is most notable for its long discussion of the First Amendment, which the station argued should override the FCC's rules against broadcasting a telephone conversation without prior permission.

The broadcaster argued that, as in any case restricting speech rights, the FCC needed to show a **compelling interest** to restrict a broadcaster's free speech rights. Here, the broadcaster argued, no such compelling interest justifying the FCC's blanket rule against broadcasting a conversation without getting prior approval had been shown. The broadcaster made the point that this was not some case of a wake up call to a visiting celebrity, or a spoof call to a prominent person where the caller was not identified, but was instead a case of a reporter calling a news source for comment on a news controversy. The subjects knew that they were talking to the station, and thus should have assumed that the substance of their statements might end up being broadcast. The mere fact that their actual statements were being broadcast live should not, contended the broadcaster, be a sanctionable offense.

The FCC rejected the broadcaster's arguments, finding that there was no specific speech being restricted here. There was no decision being made based on the content of any speech, which would demand the higher showing of justification. Instead, the FCC found that the blanket rule was akin to laws governing the taping of telephone conversations without permission - they don't restrict speech itself, just the retransmission of conversations in which one party has some expectation of some degree of privacy. The FCC also found that no undue burden was put on the broadcaster in its newsgathering efforts, as the reporter could have merely said that the conversation was being broadcast up front, and no issue would have arisen. Thus, the FCC

found that their rule against the broadcast of any telephone conversation without prior permission is justified, and that the application of the rule in this case was not excusable.

Expect this case, or one like it, to one end up in the Courts. The question of whether the FCC's rule, which **even bans *the taping of a conversation for broadcast before prior permission is received*** (meaning that a tape made of a conversation technically cannot be broadcast from the beginning, even if the subject of the call consents to the use of the tape for broadcast mid-way through the call), is reasonably justified, much less justified under the First Amendment's heightened scrutiny that is applied to restrictions on speech, is one that has been raised before, and will no doubt be raised again. But until it is finally resolved in Court, this case, like the many others that we have written about before (see, for example cases [here](#) [consent that comes after "hello" is too late], [here](#) [broadcast of voicemail message without permission is prohibited] and [here](#) [unauthorized action by a former employee no excuse]) makes clear that the FCC takes this rule very seriously, and will impose penalties on those who violate its terms.

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