

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

In the Matter of)	
)	
REGENT LICENSEE OF)	Case No. 99090142
FLAGSTAFF, INC.)	NAL/Acct. No. X32080029
)	Facility #51642
Licensee of Station KZGL(FM),)	JJS
Cottonwood, Arizona)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 6, 2000

Released: September 7, 2000

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture, we find Regent Licensee of Flagstaff, Inc. ("Regent"), licensee of Station KZGL(FM), Cottonwood, Arizona, apparently liable for a six thousand dollar (\$6,000) forfeiture for an apparent violation of 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules, 47 C.F.R. § 73.3999, by broadcasting indecent material.

II. Background

2. The Commission received complaints concerning a broadcast on KZGL(FM) on August 28, 1999. At issue was a remote broadcast from Images Video, an adult video store in Flagstaff, Arizona. According to the complainants, during this remote broadcast, the station interviewed "Mila Shegol, Queen of the Nasty," an adult film actress. During the interview, Ms. Shegol solicited listeners to come down to the station for free oral sex. The complaints also stated that she said she liked to "suck c-o-c-k" and that anyone coming to the event could "stick it in my a-s-s." According to one complaint, she described herself as a "healthy vessel for swallowing s-e-m-e-n" and described her "tongueing techniques."

3. By letter dated June 8, 2000, we requested Regent to comment on the complaint. Regent filed its response on July 31, 2000. In its response, Regent admits that it conducted a remote broadcast from the Images Video store on August 28, 1999 and that "inappropriate" material was aired during that broadcast. Regent explains that Rowdy Walker, the station's Program Director, Elizabeth Walker, a disc jockey (and Mr. Walker's wife), and a salesman named Ryan conducted the remote broadcast. The remote broadcast lasted from 5:00 p.m. to 8:00 p.m., and each hour consisted of three live remote segments of approximately two minutes in length. Regent states that during the remote broadcast, at the request of the video store, the Walkers agreed to interview Ms. Shegol on the air. Ms. Walker states that prior to placing Ms. Shegol on the air, she told Ms. Shegol "in specific terms the sort of subject matter and language that should be avoided." Ms. Walker reviewed a script from Ms. Shegol's promoter that listed talking points such as the location of the new store, a description of a charity fundraiser, and a telephone number where Ms. Shegol's new video could be ordered. At 7:33 p.m., Mr. Walker began the interview with Ms. Shegol. The station used cell phones to conduct remote broadcasts, so Mr. Walker called the station, and Brian Allen, who was

the disc jockey on duty, patched the call through on the air. Mr. Walker introduced Ms. Shegol and then handed the cell phone to her. According to Regent, at first, Ms. Shegol discussed the store and her new video. Then, Ms. Shegol "began to allude to sexual topics." Mr. Walker states that he attempted to take the cell phone from Ms. Shegol, but her "promoter" prevented him from doing so. According to Mr. Allen, while he recognized that Ms. Shegol was using "sexual innuendo," he thought Mr. Walker, his superior, had made the judgment to keep her on the air. Mr. Allen states that when "she uttered a sentence, in which she explicitly and unmistakably referred to a sex act," he shut her off the air. Mr. Walker estimates that the entire broadcast with Ms. Shegol lasted two minutes, and that "no more than 30 seconds" elapsed from the time she "got vulgar" to the time she was cut off.

4. Mr. Walker apologized on the air during the next remote broadcast. Mr. and Ms. Walker also apologized on Monday morning during their regular morning show. As a result of this incident, Jay Mlazgar, KZGL(FM)'s General Manager, instituted a policy that, except for station personnel, emergency workers, and government officials, all conversations must be pre-recorded.

III. Discussion

5. Section 503(b)(1)(D) of the Act provides in pertinent part:

Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--- violated any provision of section 1304, 1343, or 1464 of title 18, United States Code; shall be liable to the United States for a forfeiture penalty.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

6. The Commission has defined indecency as language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988). The court subsequently concluded that a 10:00 p.m. to 6:00 a.m. "safe harbor" was justified as a properly tailored means of vindicating the government's compelling interest in the welfare of children. *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 701 (1996).

7. Regent argues that it is unclear that there was a violation because the Commission "has never promulgated specific indecency rules or even guidelines." In *Citicasters Co. (WXTB(FM))*, 15 FCC Rcd 11906 (2000), the Commission rejected a similar argument, noting that "[t]he Commission's 'definition of indecency has remained unchanged for years, and in rulemaking proceedings as well as in the context of specific rulings, we have amply illustrated what broadcasters may and may not do.'" See *WQAM License Limited Partnership (WQAM(AM))*, 15 FCC Rcd 2518, 2519 (2000). Moreover, Ms. Shegol's comments clearly appear to be indecent because they contain language that describes sexual and/or excretory activities or organs in patently offensive terms. Because the material aired at around 7:30 p.m., when there was a reasonable risk that children may have been in the audience, it is legally actionable. Thus, it appears that on August 28, 1999, Station KWGL(FM), violated 18 U.S.C. § 1464 by airing indecent programming.

8. Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), both state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

9. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for transmission of indecent/obscene materials.¹ The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(B)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." *See* 12 FCC Rcd at 17110. In this case, Regent argues that the broadcast was "unintentional" and that Regent has a "superb record of FCC compliance." While Regent may not have intended to broadcast the material in question, we believe that given the fact that the station was interviewing an adult movie actress at an adult video store, it failed to take adequate precautions to ensure that inappropriate material was not aired. The station did not use a delay mechanism, and it appears that some time passed between the time Ms. Shegol started making explicit sexual references and the time Mr. Allen finally cut her off. In light of the licensee's record of compliance with the Commission's rules, however, we believe a downward adjustment is appropriate. After reviewing all of the circumstances, we believe a \$6,000 forfeiture is appropriate in this case.

IV. Ordering Clauses

10. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's rules,² that Regent Licensee of Flagstaff, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) for willfully violating 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty days of the release of this Notice, Regent SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997) recon. denied, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

² 47 C.F.R. § 0.111, 0.311 and 1.80.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Regent’s counsel, Kevin Boyle, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2505.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau