

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

In the Matter of) File No. EB-00-IH-0293
)
Capstar TX Limited Partnership) NAL/Acct. No. 200132080014
) Facility ID #41980
Licensee of Station WZEE(FM),) JWS
Madison, Wisconsin)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 16, 2001

Released: January 18, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Capstar TX Limited Partnership ("Capstar"), licensee of Station WZEE(FM), Madison, Wisconsin, has apparently violated 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, 47 C.F.R. § 73.3999, by willfully broadcasting indecent language. Based on our review of the facts and circumstances in this case, we conclude that Capstar is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. The Commission received a complaint concerning a September 8, 2000, broadcast on WZEE(FM), called "The Real Slim Shady," which aired at approximately 3:30 p.m. on August 24, 2000. The complaint included an excerpt of that part of the broadcast the complainant found most offensive. After reviewing the excerpt, we issued a letter of inquiry to the licensee.

3. In its response, Capstar¹ states that it inadvertently broadcast an unedited version of "The Real Slim Shady." Capstar explains that the station received a compact disc ("CD") that contained several versions of the song. On all other occasions, according to Capstar, the station played an edited version. However, on the occasion complained of, a part-time disc jockey cued up the edited version but due to static electricity, the CD player skipped to the unedited version and it was aired. Capstar allows that the airing of the unedited version may have been in bad taste but argues that it "involves the isolated use of offensive words, but does not contain language that clearly and inescapably describes sexual or excretory activities and organs in patently offensive terms."² In Capstar's view, the "The Real Slim Shady" does not come within the definition of broadcast indecency.

¹ Clear Channel Communications, Inc., the ultimate parent of Capstar, actually submitted the response. To avoid confusion, however, we will refer to the respondent as Capstar.

² Letter from Rick Wolf, Corporate Counsel, Clear Channel Communications, Inc., to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, dated October 10, 2000, at p. 3.

III. DISCUSSION

4. Section 503(b)(1) of the Communications Act (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 ---

...

(D) 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.

18 U.S.C. § 1464 provides criminal penalties for anyone who “utters any obscene, indecent or profane language by means of radio communication.” As explained below, we believe that “The Real Slim Shady” contains indecent material and that the licensee’s broadcast thereof was willful, not inadvertent.

5. The Commission has defined indecent speech as language 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) (subsequent history omitted) (*citing* Pacifica Foundation, 56 FCC 2d 94, 98 (1975), *aff’d sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)). The Commission’s authority to restrict the broadcast of indecent material extends to 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). Current law holds that such times begin at 6 a.m. and conclude at 10 p.m. Action for Children’s Television v. FCC, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 116 S.Ct. 701 (1996).

6. After carefully considering the record before us, it appears that Capstar violated our indecency rule with respect to the broadcast of the unedited version of “The Real Slim Shady.” Capstar acknowledges that it broadcast the song at approximately 3:30 p.m. The four minute forty-four second rap song contains unmistakable offensive sexual references. Considering the entire song, the sexual references in conjunction with the sexual expletives appear designed to pander and shock. Thus, we disagree with Capstar that we are precluded from finding the material indecent because the Commission has not taken action against “far more graphic references to sex” than “The Real Slim Shady.” As we have previously explained, “the context in which material is offered is essential to making a determination as to whether material is indecent.” Capstar TX Limited Partnership (KTXQ(FM), Fort Worth, Texas), DA 00-2287 (Enf. Bureau, released October 6, 2000). In this regard, unlike the news story concerning organized crime boss, John Gotti, there is nothing about the context of “The Real Slim Shady” which removes the material from the realm of indecency.³ In sum, such a song is inappropriate for broadcast during times when children may be in the audience. The Commission previously has found similar material to be indecent,⁴ and we see no basis for finding otherwise in this case.

7. We also disagree with Capstar that the broadcast of the unedited version of “The Real Slim Shady” was inadvertent. Capstar accepted the CD with the multiple versions of “The Real

³ See Peter Branton, 6 FCC Rcd 610 (1991) (subsequent history omitted).

⁴ See, e.g., WQAM License Limited Partnership, 15 FCC Rcd 2518, *recon. denied*, 15 FCC Rcd 15349 (2000) (“The Girl from Ipanema” parody).

Slim Shady” and did not take sufficient care to ensure that the unedited version would not be played. We thus believe that the airing of the unedited version of the song, however unintentional, was still willful.

8. Section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, both state that any person who willfully or repeatedly fails to comply with the Act or the Commission’s 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 that it was taking the action in question, irrespective of any intent to violate the Commission’s rules.⁵ As explained above, Capstar knew that it was broadcasting “The Real Slim Shady.” In assessing a forfeiture, we take into account the statutory factors set forth in section 503(b)(2)(D) of the Act. Those factors include 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.⁶

9. The Commission’s Forfeiture Guidelines set a base forfeiture amount of \$7,000 for transmission of indecent/obscene materials.⁷ After considering all the facts and circumstances, we believe the base forfeiture amount is the appropriate sanction and that neither an upward nor downward adjustment should be made. In this regard, we reject Capstar’s contention that its record at WZEE(FM) alone demonstrates that it has a history of overall compliance warranting a downward adjustment. On the contrary, we believe that Capstar’s record must be viewed in conjunction with the broadcast record of its corporate parent, Clear Channel Communications, Inc., which has been found to have violated the Commission’s rules on numerous occasions. *See Citicasters Co.*, DA 00-1640 (released July 26, 2000) (\$6,000 NAL for violation of Section 73.1206 of the Commission’s rules, forfeiture paid), *Citicasters Co.*, DA 00-1435 (released June 28, 2000), (\$7,000 forfeiture order for violation of 18 U.S.C. § 1464, forfeiture paid), *Citicasters Co.*, 15 FCC Rcd 11906 (2000) (\$23,000 forfeiture order for violation of 18 U.S.C. § 1464, forfeiture paid), *Citicasters Co.*, DA 00-1016 (released May 9, 2000) (\$4,000 NAL for violation of Section 73.1216 of the Commission’s rules, forfeiture paid), *Clear Channel Broadcasting Licenses, Inc.*, 15 FCC Rcd 2734 (EB 2000) (\$4,000 NAL for violation of Section 73.1216 of the Commission’s rules, forfeiture paid).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,⁸ and sections 0.111, 0.311 and 1.80 of the Commission’s rules,⁹ Capstar TX Limited Partnership is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willfully violating the 18 U.S.C. § 1464 and section 73.3999 of the Commission’s rules.

⁵ See Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁶ 47 U.S.C. § 503(b)(2)(D). See also The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“Forfeiture Guidelines”).

⁷ Forfeiture Guidelines, *supra* note 3, 12 FCC Rcd at 17113.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,¹⁰ within thirty days of this NOTICE OF APPARENT LIABILITY, Capstar TX Limited Partnership SHALL PAY 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 the Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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. 20554.¹¹

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Capstar TX Limited Partnership, c/o Clear Channel Communications, Inc., 200 East Basse Road, San Antonio, Texas 78209-8328, attention: Rick Wolf, Corporate Counsel.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 C.F.R. § 1.80.

¹¹ See 47 C.F.R. § 1.1914.

ATTACHMENT

Radio Station: WZEE(FM), Madison, Wisconsin
Date/Time Broadcast: August 24, 2000, approximately 3:30 p.m.
Material Broadcast: "The Real Slim Shady" (Rap lyrics)

Various voices, including the rap artist, Eminem

May I have your attention, please.
May I have your attention, please.
Will the real Slim Shady please stand up.
I repeat, will the real Slim Shady please stand up.

We're going to have a problem here.

Y'all act like you've never seen a white person before.
Jaws all on the floor
Like Pam and Tommy just burst in the door
And started whooping her ass worse than before
They were first divorced
Throwin' her over furniture

Aaaah!

It's the return of the ...

Oh wait, no wait, you're kidding
He didn't just say what I think he did, did he?
And Dr. Dre said ...

Nothing, you idiots!
Dr. Dre's dead, he's locked in my basement

Ha, ha

Feminst women love Eminem
Sicka, sicka, sicka Slim Shady, I'm sick of him
Look at him
Walking around grabbin' his you know what, flippin' the you know who

Yeah, but he's so cute, though

Yeah, probably got a couple of screws up in my head loose
But no worse than what's goin' on in your parents' bedrooms
Sometimes I want to get on TV and just let loose
But can't, but it's cool for Tom Green to hump a dead moose

My bum is on your lips
My bum is on your lips
And if I'm lucky you might just give it a little kiss

And that's the message we deliver to little kids
And expect them not to know what a woman's clitoris is
Of course, they're gonna know when in their courses by the time they hit fourth grade
They got the Discovery Channel, don't they?

We ain't nothin' but mammals
Well, some of us cannibals who cut other people open like cantaloupes (eating sound)
But if we can hump dead animals and antelopes, then there's no reason
That a man and another man can't elope.

But if you feel like I feel like I got the antidote
Women, wear your pantyhose
Sing the chorus and it goes

I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Will Smith don't gotta cuss in his raps to sell records
Well, I do, so fuck him and fuck you, too
You think I give a damn about a Grammy (flatulence sound)
Half you critics can't even stomach me, let alone stand me

But Slim, what if you win, wouldn't it be weird?

Why? So you guys can just lie to get me here?
So you can sit me here next to Britney Spears?
Shit, Christina Aguilera better switch me chairs
So I can sit next to Carson Daly and Fred Durst
And hear 'em argue over who she gave head to first
Little bitch put me up last on MTV

Yeah, he's cute, but I think he's married to Kim
Hee, hee

I sit down low to audio and MP3
And showed the whole world how you gave Eminem VD

Ahhh!

I'm sick of you little girl and boy groups
All you do is annoy me, so I have been sent here to destroy you
And there's a million of us just like me

Who cuss like me
Who just don't give a fuck like me
Who dress like me, walk, talk and act like me
And just might be the next best thing, but not quite me

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

I'm like a head trip to listen to
Cause I'm only givin' you things you joke about with your friends inside your living room
The only difference is I got the balls to say it in front of y'all
And I don't gotta be false or sugar-coatin it at all
I just get on the mike and spit it
And whether you like to admit it
I just shit it better than ninety percent of you rappers out there
And you wonder how can kids eat up these albums like Valiums

It's funny cause at the rate I'm goin'
When I'm 30 I'll be the only person in the nursing home flirting
Pinching nurses asses when I'm jackin' off an' jerkin'
And I'm jerkin' but this whole bag of Viagra isn't workin'

And every single person is a Slim Shady lurkin'
He could be workin' at Burger King, spitting on your onion rings
Or in the parking lot, circling
Screaming I don't give a fuck!
With his windows down and his system up

So will the real Shady please stand up
And put one of those fingers on each hand up
And be proud to be out of your mind and out of control
And one more time loud as you can
How does it go?

I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating

So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Cause I'm Slim Shady, yes, I'm the real Shady
All you other Slim Shadys are just imitating
So won't the real Slim Shady please stand up
Please stand up
Please stand up.

Ha, ha
Guess there's a Slim Shady in all of us

Fuck it, let's all stand up.