

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

In the Matter of)	Control No. EB-00-IH-00140a
)	
WLDI, Inc.)	NAL/Acct. No. 2001320800018
)	
Licensee of Station WCOM(FM),)	
Bayamon, Puerto Rico)	Facility ID # 54471

FORFEITURE ORDER

Adopted: May 9, 2001

Released: May 11, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we impose a forfeiture of \$16,800 on WLDI, Inc. (“WLDI”), licensee of Station WCOM(FM), Bayamon, Puerto Rico, for willful and repeated violations of 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules, 47 C.F.R. § 73.3999. This action is taken pursuant to 47 U.S.C. § 503(b)(1)(D) and 47 C.F.R. § 1.80(f)(4).

II. BACKGROUND

2. On October 1, 1999, Chancellor Media Corporation, owner of WLDI, filed with the Commission an application to transfer control of WLDI to the Spanish Broadcasting System of Puerto Rico (“SBS”). WCOM(FM) broadcast the allegedly indecent material that is the subject of this order on October 18, 19 and 20, 1999. Just over one week later, on October 29, 1999, the Commission staff granted Chancellor’s application. At all relevant times, WLDI was the licensee of WCOM(FM).

3. On February 8, 2001, in *WLDI, Inc.*, EB-00-IH-0140a, *Notice of Apparent Liability*, DA 01-338 (rel. Feb. 8, 2001) (“NAL”), the Enforcement Bureau determined that certain material broadcast over WCOM(FM) was apparently indecent. We found that the language contained graphic, patently offensive references to sexual activities or sexual organs. We also found that the station broadcast the material between 6 a.m. and 10 a.m. at a time when there was a reasonable risk that children might be in the audience. NAL at ¶ 8; *see also* 47 C.F.R. § 73.3999. The Commission’s forfeiture guidelines provide a base forfeiture for indecency of \$7,000.¹ After considering all of the circumstances, we proposed a forfeiture in the NAL of \$21,000 for the apparently willful and repeated broadcast of indecent material on three occasions. NAL at ¶ 10.

¹ *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*”).

III. DISCUSSION

4. Section 503(b)(1) of the Communications Act (the “Act”), 47 U.S.C. § 503(b)(1), 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.”

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). Thus, to be actionably indecent, the material in question must not only meet the standard referenced above but also air after 6 a.m. and before 10 p.m. See 47 C.F.R. § 73.3999.

6. WLDI’s response to the NAL, submitted on March 12, 2001, asserts that the Commission should rescind or, in the alternative, reduce the proposed forfeiture. Although WLDI admitted that WCOM(FM) broadcast the apparently indecent material, it contends that the Commission should rescind the proposed forfeiture on the grounds that ownership of WLDI changed following the indecent broadcast. We reject this contention. Alternatively, WLDI argues that the \$21,000 proposed forfeiture should be reduced on the grounds that WLDI has no history of prior offenses. As explained more fully below, we grant WLDI’s request for a reduction.

7. We first reject WLDI’s assertion that we should rescind the forfeiture. Repeating an argument it made in response to the inquiry letter, WLDI claims that SBS, the current owner of WLDI, should not be held accountable for WLDI’s indecent broadcasts, given that the broadcasts occurred prior to the time that SBS assumed control of WLDI. As the Commission recently held “[t]he fact that the ownership of the company changed hands does not affect the company’s liability.” *EZ Sacramento, Inc.*, FCC 01-53 (Feb. 20, 2001), at ¶ 3. See also *Winslow Communications, Inc.*, 45 FCC 2d 662 (1974).

Nothing in WLDI's response convinces us that this Commission precedent is inapplicable to this case.

8. We also find unpersuasive WLDI's claim that the Commission should rescind the proposed forfeiture because the Commission is holding responsible an entity, Chancellor, no longer in existence.² In support, WLDI cites two recent orders in which the Enforcement Bureau declined to assess a forfeiture against the licensee of a station that broadcast apparently indecent material where the NALs had issued.³ In both cases, we declined to issue the forfeitures in part because the licenses of the stations that were the subject of the NALs had been assigned to new entities. In this case, however, the holder of the station license has not changed. Rather only ownership of the licensee corporation has changed.⁴ WLDI argues that we would be punishing a non-existent entity by proceeding with a forfeiture against it. We do not accept this argument. Contrary to WLDI's assertion, we are holding responsible WLDI, which has been at all relevant times the licensee of WCOM(FM). Thus, we are not finding liable a non-existent entity; rather we are finding liable an existing licensee. We therefore decline to rescind the forfeiture.

9. Finally, we grant WLDI's request to reduce the forfeiture based on its overall history of compliance. We find that the licensee WLDI has an overall history of compliance with the Commission's rules. We therefore grant WLDI's request for reduction of the forfeiture amount and reduce WLDI's forfeiture to \$16,800.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b) and 47 C.F.R. §§ 0.111, 0.311 and 1.80, WLDI, Inc. SHALL FORFEIT to the United States the sum of sixteen thousand eight hundred dollars (\$16,800) for willfully and repeatedly violating 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

11. Payment of the forfeiture shall 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, within thirty days of the release of this Forfeiture Order. *See* 47 C.F.R. § 1.80(h). The payment should note the NAL/Acct. No.

² After the Commission staff approved the transfer of control of WLDI, Chancellor Media became a subsidiary of AM/FM, Inc., which then merged with Clear Channel Communications.

³ *See In the Matter of Flambo Broadcasting, Inc.*, 15 FCC Rcd 23,429 (EB 2000) ("*Flambo*") and *In the Matter of Americom Las Vegas Ltd. Partnership*, 15 FCC Rcd 13,550 (EB 2000) ("*Americom*").

⁴ We premised the declinations in these cases primarily on the amount of time that had lapsed following the NAL, noting that the approximately six years between the issuance of the NAL and our decision not to proceed with the forfeiture order represented a "significant amount of time."

referenced above. If the forfeiture is not paid within that time, the case may be referred to the Department of Justice for collection pursuant to 47 C.F.R. § 504(a).

12. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Allan G. Moskowitz, Kaye Scholer, LLP, 901 Fifteenth Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau