

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

In the Matter of)	
)	Control No. EB-00-IH-00140a
WLDI, Inc.)	
)	NAL/Acct. No. 200132080018
Licensee of Station WCOM(FM))	ID # 54471
Bayamon, Puerto Rico)	CMW
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 8, 2001

Released: February 8, 2001

By the Chief, Enforcement Bureau

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that WLDI, Inc., licensee of Station WCOM(FM), Bayamon, Puerto Rico, has apparently willfully and repeatedly violated 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, 47 C.F.R. § 73.3999, by broadcasting indecent material. Based on our review of the facts and circumstances in this case, we conclude that WLDI, Inc. is apparently liable for a forfeiture in the amount of twenty one thousand dollars (\$21,000).

II. BACKGROUND

2. The Commission received a complaint alleging that Station WCOM(FM), Bayamon, Puerto Rico, broadcast indecent material during the Spanish language program, "Morning Party" ("El vacilon de la Manana"), on October 18, 19, and 20, 1999, between 6:00 a.m. and 10:00 a.m. The complainant provided us with a cassette recording of the broadcasts which we translated. A copy of our translation of the material at issue is attached hereto. We issued a letter of inquiry to WLDI, Inc., asking the licensee whether it broadcast the material at issue and whether the transcript (as translated) accurately reflected the material as broadcast. WLDI, Inc. filed responses to our inquiry on October 17, 2000, and December 11, 2000.

3. WLDI, Inc. admits that Station WCOM(FM) broadcast the material at issue during its "Morning Party" program. Further, WLDI, Inc. states that it has reviewed the audio tape of the material provided by the Commission and that its translation of the material is "substantially identical to the transcript provided by the Commission." However, WLDI, Inc. is unable to confirm the precise dates of the broadcasts.

4. WLDI, Inc. contends that it should not be held accountable for the broadcasts in question, since there has been a transfer of control of the licensee subsequent to the broadcasts. It asserts that the new owner of the licensee, Spanish Broadcasting System (“SBS”), takes “no responsibility for the actions of the station, its management or its employees” at the time of the alleged violations. WLDI, Inc.’s October 17, 2000, response. Further, in its December 11, 2000, response, WLDI, Inc. states that SBS “reserves the right to challenge the staff’s conclusion that SBS was and/or is responsible for the operation of the station at the time in question.”

5. WLDI, Inc. was the licensee of Station WCOM(FM) at the time of the alleged violations, and remains the licensee today. It is well established that, “[t]he transfer of control of the stock of the licensee corporation subsequent to the violations does not excuse the licensee for the violations.” See, *Winslow Communications, Inc.*, 45 FCC 2d 662, 663 (1974).

6. Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503, authorizes the Commission to impose forfeitures on any person who knowingly violates the Act or our rules. Section 503(b)(1) 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.

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." The fact that control of the licensee has changed hands, does not affect our ability to impose a forfeiture or the company’s liability for its actions.

7. 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.

8. It appears that the broadcasts at issue are indecent because they contain graphic, patently offensive discussions of sexual activities or organs. The Commission previously found similar material that contains unmistakable patently offensive references to sexual activities to be indecent.¹ Because the material aired between 8 a.m. and 10 a.m., when there was a reasonable risk that children may have been in the audience, it is legally actionable. Thus, it appears that on or about October 18, 19, and 20, 1999,

¹ See e.g., *WQAM License Limited Partnership*, 15 FCC Rcd 2518 (2000), *recon. denied*, 15 FCC Rcd 15349 (2000).

WLDI, Inc., violated 18 U.S.C. § 1464 by airing indecent programming on Station WCOM(FM).

9. 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, 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.²

10. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for transmission of indecent/obscene materials.³ 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." 12 FCC Rcd at 17110. After reviewing all of the circumstances, we believe a \$21,000 forfeiture is appropriate in this case for the apparent willful broadcast of indecent material on three separate occasions. In determining the amount of the forfeiture, we considered, but ultimately found insignificant, the fact that there was a transfer of control of WLDI, Inc. subsequent to the broadcasts in question.

III. ORDERING CLAUSES

11. 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,⁴ that WLDI, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty one thousand dollars (\$21,000) for willfully and repeatedly violating 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.

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

13. 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.

14. 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 NAL/Acct. No. referenced above.

² See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. § 1.80(b).

⁴ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

15. 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.

16. 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. 20554.⁵

17. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to WLDI, Inc.’s counsel, Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, The McPherson Building, 901 Fifteenth Street, N.W., Suite 1100, Washington, D.C., 20005-2327.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Attachment

⁵ See 47 C.F.R. § 1.1914.

Radio Station: WCOM(FM)
Date/Time Broadcast: October 18, 19, and 20, 1999, during the "Morning Party,"
Between 6:00 a.m. and 10:00 a.m.
Material Broadcast: Comments
EB-00-IH-00140

Translated into English. Parentheticals are comments regarding translation.

MV: Male Voice
M2: Second male voice
M3: Third male voice
M4: Fourth male voice
FV: Female voice
F2: Second female voice

October 18, 1999

* *

M2 An autodidactic nut
FV I am autodidactic and a swallow addict "tragadictona" (made up word in Spanish)
M2 swallow addict "tragadictona"
FV I also like to be "joyera" once in a while. (The word "joyera" implies anal sex. However, its literary meaning is "female jeweler.")
MV: Are you also "joyera"?
M2: "Metete cálculo batería batería" (Stick a battery into me...meaning yes, she(he) also likes anal sex)
FV But in addition my specialty are facials. (Double entendre...meaning oral sex)
MV Facials?
FV You didn't know that?
MV No
M2 Shave, she likes to shave
FV Oh baby give me a facial. You get a facial?
M2 shave, shave, shave
FV No, my love, your wife starts like this plash plash with a cannon between two Mountains and then after that comes shu shu shu shu lots of cleansing milk.
MV Uhum....

* *

October 19, 1999

* *

MV And here, at the meteorological center we know him as Chu. Talking faster (laugh) Suck my Rod is a hurricane with winds that are too strong. In addition it is a two legged hurricane with two black balls of clouds coupled to a buttock with high winds (laugh) with high winds with buttock shape. This buttocks grab every faggot they find on the street

M2 Mm

MV Accordingly we recommend to every gay, gay gigolo and homosexual to stay Home with their hurricane shutters because Suck My Rod is category 28 hurricane, something never seen before. Something never seen before. I recommend that everybody stay home because we are expecting it to arrive. If José arrives Thursday this one arrives Friday around 5:00 for happy hour. This has been presented by John Tuti Morales directly from the national meteorological center for the city of Miami.

M2 It's 6:55 there you had the most recent truth about our weather conditions. Good morning.

* *

M4 ...and another group and I also wanted to say a joke.

MV Go ahead, get the monkeys ready, get the monkeys ready

M4 There were three ants on a girl's body, one of them says she is going up to the mountains where it's cool. Then the other two decide to go each to a different cave and talk the following morning. On the following day one of them comes out and says: Damn, up there it was cool. Then another one said: Damn where I was it was stinky. Then she asks the third one why she is all stained. She replied: Where I was there was this stick coming in and out, in and out, then I called him mother fucker and he spit me (monkey sounds).

* *

October 20, 1999

* *

FV Hello
MV What you like best to do?
FV Oral sex
MV Oral sex. And what you like best to be done to you?
FV O my god, to be sucked all over.
MV To be sucked all over, all over..all over
M2 She should buy a vacuum cleaner.
FV Raymond this is for you, take notes.
M2 She should buy a vacuum cleaner.
MV Raymond take note.
M2 Ask her if she swallows the melody when she sings.
MV Do you like to sing and do you swallow the melody?
FV I sing. I repeat I swallow the melody.
MV There it is
M2 “Que clase de chicharrón ave María”(What a nugget, Hail Mary!)

* *