

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the matter of |) | |
| |) | |
| Edmund Dinis |) | |
| |) | |
| Licensee of |) | File No. EB-01-IH-0078 |
| WJFD(FM) |) | NAL/Acct. No. 200332080002 |
| |) | FRN No. 0005-0201-02 |
| New Bedford, Massachusetts |) | Facility ID No. 18720 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 2002

Released: December 13, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Edmund Dinis, licensee of Station WJFD(FM), New Bedford, Massachusetts, and former licensee of Station WSPR(AM) Springfield, Massachusetts, apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, by willfully broadcasting indecent programming on Station WSPR(AM) on four occasions.¹ Based upon our review of the facts and circumstances in this case, we conclude that Mr. Dinis is apparently liable for a forfeiture in the amount of twenty-two thousand four hundred dollars (\$22,400).

II. BACKGROUND

2. We received a complaint on January 30, 2001 that alleged that Station WSPR(AM) broadcast indecent material on its morning show during the period December 5, 2000 through January 22, 2001. The complainant supplied tapes of a morning show for various days during this period. We translated the Spanish-language material on the tapes and found that portions of the programming broadcast by the station warranted Commission scrutiny (see Attachment A). The programming at issue consists of jokes involving anal sex, oral sex, excretory activities, and sexual intercourse with a child present. On August 8, 2001, we issued a letter of inquiry to the licensee enclosing a transcript of those portions of the tapes as translated by our staff. Mr. Dinis, by counsel, submitted a response on September 5, 2001.

3. In his response, Mr. Dinis questioned whether the material was broadcast on WSPR(AM). He indicated that because the employees who were responsible for programming at that time have all left his employ and he did not have tapes of the broadcasts, he has no way to reliably confirm or deny whether the programming was aired. He also questioned whether the

¹ Edmund Dinis assigned Station WSPR(AM), Springfield, Massachusetts (Facility I.D. No. 187171) to Antonio F. and Helena R. Gois, tenants by the entirety on March 6, 2002.

translation was accurate. On June 13, 2002, we sent Mr. Dinis copies of the cassette tapes submitted by the complainant that contain the segments translated and transcribed. In response, on July 30, 2002, Mr. Dinis confirmed that the translation of the Spanish-language material is substantially correct. Mr. Dinis stated that he still cannot confirm or deny whether the material aired on Station WSPR(AM). He asserts that even if the material described in our letter of inquiry aired on WSPR(AM), it is not patently offensive and, thus, it is not actionably indecent. In mitigation, Mr. Dinis argues 1) that four of the six passages are jokes told by callers to the on air show, 2) that the employees at the time of the alleged broadcasts have been dismissed, 3) that the replacement employees were instructed regarding the Commission's rules concerning broadcast of indecent programming, and 4) that he has a good record of compliance with the indecency rule throughout 20 years of operation of Station WJFD(FM).

4. In his September 5, 2001 response, Mr. Dinis asserted that he cannot tell from the Commission's letter if the programming in question aired between 6 a.m. and 10 p.m., the time period during which the Commission's prohibitions regarding indecency apply. Based on announcements of the time given on the tapes in question, the material in the attached transcript aired between 7 a.m. and 9 a.m. on the dates indicated.

III. DISCUSSION

5. It is a violation of federal law to broadcast obscene or indecent programming. Specifically, Title 18 of the United States Code, Section 1464 (18 U.S.C. § 1464), prohibits the utterance of "any obscene, indecent or profane language by means of radio communication." Congress has given the Federal Communications Commission the responsibility for administratively enforcing 18 U.S.C. § 1464. In doing so, the Commission may, among other things, impose a monetary forfeiture, pursuant to Section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 503(b)(1), for broadcast of indecent material in violation of 18 U.S.C. § 1464. Federal courts have upheld Congress's authority to regulate obscene speech and, to a limited extent, indecent speech. Specifically, the U.S. Supreme Court has determined that obscene speech is not entitled to First Amendment protection. Accordingly, Congress may prohibit the broadcast of obscene speech at any time.² In contrast, federal courts have held that indecent speech is protected by the First Amendment.³ Nonetheless, the federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent speech, as well as the Commission's interpretation and implementation of the statute.⁴ However, the First Amendment is a critical constitutional limitation that demands we proceed cautiously and with appropriate restraint.⁵ Consistent with a subsequent statute and case law,⁶ under the

² See *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989); *Miller v. California*, 413 U.S. 15 (1973), *rehearing denied*, 414 U.S. 881 (1973).

³ *Sable Communications of California, Inc. v. FCC*, *supra* note 2, 492 U.S. at 126.

⁴ *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *Action for Children's Television v. FCC*, 852 F.2d 1332, 1339 (D.C. Cir. 1988) ("*ACT I*"); *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert denied*, 112 S.Ct. 1282 (1992) ("*ACT II*"); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert denied*, 116 S.Ct. 701 (1996) ("*ACT III*").

⁵ *ACT I*, *supra* note 4, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the first amendment; the FCC may regulate such material only with due respect for

Commission's rules, no radio or television licensee shall broadcast obscene material at any time, or broadcast indecent material during the period 6 a.m. through 10 p.m. *See* 47 C.F.R. § 73.3999.

6. In enforcing its indecency rule, the Commission has defined indecent speech as language or material that in context, depicts or describes, in terms patently offensive as measured by 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)). This definition has been specifically upheld by the federal courts.⁷ 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. *ACT I, supra*. As noted above, current law holds that such times begin at 6 a.m. and conclude at 10 p.m.⁸

7. The Commission's indecency enforcement is based on complaints from the public. Once a complaint is before the Commission, we evaluate the facts of the particular case and apply the standards developed through Commission case law and upheld by the courts. *See Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999, 8015 (2001) (¶ 24) ("*Indecency Policy Statement*"). "Given the sensitive nature of these cases and the critical role of context in an indecency determination, it is important that the Commission be afforded as full a record as possible to evaluate allegations of indecent programming." *Id.* In evaluating the record to determine whether the complained of material is patently offensive, three factors are particularly relevant: (1) the explicitness or graphic nature of the material; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock. *See Indecency Policy Statement*, 16 FCC Rcd at 8003 ¶ 10.

8. The complained of material, in context, refers to sexual and excretory organs and activities and thus warrants scrutiny. We find that the material, in context, is patently offensive when considered under the three factors set out in the *Indecency Policy Statement*.

9. The first key factor concerns whether the material is explicit or graphic. We find that the programming at issue contains explicit depictions of anal sex, oral sex, excretory activities, and sexual intercourse with a child present. The jokes' sexual and excretory import is lewd, inescapable and understandable. Mr. Dinis also asserts that the jokes were fleeting. We disagree.

the high value our Constitution places on freedom and choice in what people say and hear." *See also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

⁶ Public Telecommunications Act of 1992, Pub. L. No. 356, 102nd Cong., 2nd Sess. (1992); *ACT III, supra* note 4.

⁷ In *FCC v. Pacifica Foundation*, the Court quoted the Commission's definition of indecency with apparent approval. *FCC v. Pacifica Foundation, supra* note 4, 438 U.S. at 732. In addition, the D.C. Circuit Court of Appeals upheld the definition against constitutional challenges. *ACT I, supra* note 4, 852 F.2d at 1339; *ACT II, supra* note 4, 932 F.2d at 1508; *ACT III, supra* note 4, 58 F.3d at 657.

⁸ *ACT III, supra* note 4.

The jokes were not isolated spontaneous remarks. The jokes at issue are of substantial duration, and were apparently a regular feature on the morning show on Station WSPR(AM).

10. We also find that the material was aired for its shock value. Accordingly, we find that each of the portions of the programming contained in the attached translation are so patently offensive as to be indecent. The Commission has previously found the airing of similar programming indecent. *See Citicasters Co. (WXTB(FM))*, 13 FCC Rcd 22004 (1998), *aff'd*, 15 FCC Rcd 11906 (2000); *Sound Broadcasting Corporation (KCNA(FM))*, 6 FCC Rcd. 2174 (1991), *aff'd*, 6 FCC Rcd 5961 (MMB 1991).

11. Mr. Dinis asserts in his July 30, 2002 response that the language used is not as coarse and explicit as the language used in other broadcasts that were found not to be actionably indecent.⁹ Mr. Dinis cites cases that he believes contain more offensive language. The Commission's indecency prohibitions do not turn on the use of any particular language. *See Indecency Policy Statement*, 16 FCC Rcd at 8002 ¶ 9 (explicit language in the context of a bona fide newscast may not be indecent, while sexual innuendo that persists and is sufficiently clear to make the sexual meaning inescapable might be); *compare Peter Branton*, 6 FCC Rcd 610 (1991) (subsequent history omitted). Having considered the programming at issue in the context in which it was broadcast, we find that the programming at issue is patently offensive and therefore that it is actionably indecent.

12. The licensee asserts that the fact that some of the material originated with callers should be a consideration in determining whether a sanction is warranted. The jokes reflected in the attached transcripts were neither isolated remarks nor were the jokes fleeting remarks. Instead, the jokes were broadcast as a regular feature of the morning show on WSPR(AM). We find that the station was promoting the airing of jokes of this type. Indeed, some of the jokes originated from the radio station staff. Thus, we find that Mr. Dinis should be held fully responsible for the programming aired. We do not find the fact that some of the indecent programming originated with callers to be mitigating. *See Rubber City Radio Group (WONE(FM))*, 17 FCC Rcd 14745 (EB 2002) (¶ 7).

13. Mr. Dinis also asserts the fact that the employees of Station WSPR(AM) at the time of the alleged broadcasts have been dismissed, and that their replacements were instructed regarding the Commission's rules relating to indecent broadcasts. As a Commission licensee, Mr. Dinis is responsible for assuring that the programming broadcast on his stations does not violate the Commission's rules. In this case, the indecent programming was more than an isolated incident. It is well established that licensees are ultimately responsible for the actions of their employees. *See Empire Broadcasting Corp.*, 25 FCC 2d 68 (1970). Furthermore, a forfeiture will not be excused by reason of subsequent remedial action and we do not consider the action taken in this case to be mitigating. *See Brittan Communications International Corp.*, 15 FCC Rcd 4852, 4855 (2000).

14. Finally, Mr. Dinis asserts that he has a good record of compliance over more than 20 years of being the licensee of Station WJFD(FM). While this does not excuse a violation, this factor is mitigating when we determine an appropriate forfeiture amount.

15. Thus, we find that on four different dates Edmund Dinis apparently violated the

⁹ Letter from Russell C. Powell, Esquire, Attorney for Edmund Dinis, to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau dated July 30, 2002 at 2.

prohibitions in the Act and the Commission's rules against broadcast indecency. 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.¹⁰ Based on the material before us, it appears that Mr. Dinis willfully violated 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, by airing indecent programming on WSPR(AM) on four occasions.

16. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for transmission of indecent/obscene materials.¹¹ The base amount would thus be \$28,000 for the transmission of indecent programming on four occasions. 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 After reviewing all of the circumstances including the licensee's record of compliance with the Commission's rules, we believe a \$22,400 forfeiture is appropriate in this case for the apparent broadcast of indecent material on December 7, 2000, December 8, 2000, January 8, 2001, and January 17, 2001.

IV. ORDERING CLAUSES

17. 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,¹³ that Edmund Dinis. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty-two thousand four hundred dollars (\$22,400) for willfully violating 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

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

19. 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 MUST INCLUDE the FCC Registration Number (FRN) referenced above, and also should note the NAL/Acct. No. referenced above.

¹⁰ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ *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).

¹² *Forfeiture Policy Statement*, 12 FCC Rcd at 17110.

¹³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

20. 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.

21. 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.

22. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

23. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division, Enforcement Bureau. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment B of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment B, please contact OCBO at (202) 418-0990.

24. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Russell C. Powell, Esquire, Taylor & Powell, LLC, 908 King Street, Suite 300, Alexandria, Virginia 22314.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.

ATTACHMENT A**Translation of Programming Aired on WSPR(AM)**

December 7, 2000

Caller: A man was peeing in a plant, a cop passes by and asks why do you have that whistle out. The man says I'm sorry officer this is not a whistle it's a telescope. The policeman says, all right I'll see you in court. While in court the judge tells the man, I see that you are being charged with peeing in public and having your whistle out. The man says please you're wrong it was a telescope. The judge says, well it says here that it was a whistle. Please explain what you mean by a telescope. The man responds, well if you put in your mouth it does not whistle, but if you stick it in your little ass you'll see stars.

C: Shouldn't you use anus or backside, that would be the preferable term.

Caller: I have a joke. There was a wife and husband leaving a bar and they were drunk. The wife says wait for me a second I need to pee out there. Then along came a vampire and the husband said what do you want. The vampire responds "I come to suck you." The husband responds "suck me fast so my wife doesn't find out she's waiting for me." (recorded laughter)

December 8, 2000

The following excerpt is part of a local gossip segment:

Gossip Person: Wait I have something for you. (Singing to the tune of a Son-By-Four song): "I'm sorry but I have the runs at this moment. I'm pushing and clenching my teeth, when the turd comes out. I'm sweating, sweating very slowly, agonizing because the turd won't come out. Darling, pass me the Vaseline, it won't come out routinely, I'm constipated. And I feel it in my heart!" That's an original song.

January 8, 2001

Caller: I have a joke. A drunk man went into town on a little horse. He had a drink and needed to pee, so he went outside and pulled out "Juanito." A soldier passed by and said what are you doing, there are many young ladies that pass by around here, put your "whistle" back inside. The drunk man said this is not what you think. He said you better stop or I will arrest you, the drunk man said but this is not what you think, it's not a whistle, so the soldier arrested him. They appear in front of the judge and the judge says you have been arrested for exposing your whistle in public. The man responded that it was not a whistle, it was a telescope. If you put it in your mouth you see nothing, if you put it up your ass you'll see stars.

January 17, 2001

DJ Cassanova: It's time for the dumb joke segment. We'll start with an in house one. One time "Pepito" had just gotten up and heard moaning and groaning in his parent's bedroom (DJ begins to make sound effects of moans and groans). So he walked in and said "Dad, Dad I want to ride the horse." The Dad agreed so that "Pepito" didn't ask questions. He told him not to make any noise. Pepito gets on the Dad, and the Dad keeps going up and down. Pepito then says "this is going too slow." So the Dad starts going faster and faster. The Mother could not keep it in anymore and she started moaning. Then when the Dad was going faster, and the Mother was

screaming louder (DJ is making moaning and groaning sounds) Pepito says, Daddy don't stop because this is the part where the mail man always drops me.

Caller: I have a Fidel joke. There was a boat full of people on their way to visit Cuba. When they got there, Fidel is standing with many soldiers. He tells everyone, anyone who is here to see me must have my face tattooed on their chest. A woman thinks, what am I going to do, I don't have his face on my chest. When she gets in front of him, she says I don't have your face tattooed on my chest, but she opens up her pants, and tells him if you put your hand down there you will feel the beard. Fidel puts his hand in and starts feeling around, all of a sudden the woman slaps him. He asks, why did you do that? The woman responds, I told you, you could feel around for the beard but I didn't say you could put your finger in my mouth.

MDJ: I thought he was going to use his cigar.

ATTACHMENT B

October 2002

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

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| (1) Small Organization | |
| Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. | |
| (2) Small Governmental Jurisdiction | |
| Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. | |
| (3) Small Business | |
| Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below. | |
| Industry Type | Description of Small Business Size Standards |
| <i>Cable Services or Systems</i> | |
| Cable Systems | Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer |
| Cable and Other Program Distribution | \$12.5 Million in Annual Receipts or Less |
| Open Video Systems | |
| <i>Common Carrier Services and Related Entities</i> | |
| Wireline Carriers and Service providers | 1,500 Employees or Fewer |
| Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers | |

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

| <i>International Services</i> | |
|--|--|
| International Broadcast Stations | \$12.5 Million in Annual Receipts or Less |
| International Public Fixed Radio (Public and Control Stations) | |
| Fixed Satellite Transmit/Receive Earth Stations | |
| Fixed Satellite Very Small Aperture Terminal Systems | |
| Mobile Satellite Earth Stations | |
| Radio Determination Satellite Earth Stations | |
| Geostationary Space Stations | |
| Non-Geostationary Space Stations | |
| Direct Broadcast Satellites | |
| Home Satellite Dish Service | |
| <i>Mass Media Services</i> | |
| Television Services | \$12 Million in Annual Receipts or Less |
| Low Power Television Services and Television Translator Stations | |
| TV Auxiliary, Special Broadcast and Other Program Distribution Services | |
| Radio Services | \$6 Million in Annual Receipts or Less |
| Radio Auxiliary, Special Broadcast and Other Program Distribution Services | |
| Multipoint Distribution Service | Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years |
| <i>Wireless and Commercial Mobile Services</i> | |
| Cellular Licensees | 1,500 Employees or Fewer |
| 220 MHz Radio Service – Phase I Licensees | |
| 220 MHz Radio Service – Phase II Licensees | Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals) |
| 700 MHz Guard Band Licensees | |
| Private and Common Carrier Paging | 1,500 Employees or Fewer |
| Broadband Personal Communications Services (Blocks A, B, D, and E) | |
| Broadband Personal Communications Services (Block C) | |
| | Auction special size standard - Small Business is \$40M or less in annual gross revenues for |

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| Broadband Personal Communications Services (Block F) | three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) |
| Narrowband Personal Communications Services | |
| Rural Radiotelephone Service | 1,500 Employees or Fewer |
| Air-Ground Radiotelephone Service | |
| 800 MHz Specialized Mobile Radio | Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years |
| 900 MHz Specialized Mobile Radio | |
| Private Land Mobile Radio | 1,500 Employees or Fewer |
| Amateur Radio Service | N/A |
| Aviation and Marine Radio Service | 1,500 Employees or Fewer |
| Fixed Microwave Services | |
| Public Safety Radio Services | Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons |
| Wireless Telephony and Paging and Messaging | 1,500 Employees or Fewer |
| Personal Radio Services | N/A |
| Offshore Radiotelephone Service | 1,500 Employees or Fewer |
| Wireless Communications Services | Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years |
| 39 GHz Service | |
| Multipoint Distribution Service | Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less |
| Multichannel Multipoint Distribution Service | \$12.5 Million in Annual Receipts or Less |
| Instructional Television Fixed Service | |
| Local Multipoint Distribution Service | Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years |
| 218-219 MHz Service | First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their |

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| | affiliates) |
| Satellite Master Antenna Television Systems | \$12.5 Million in Annual Receipts or Less |
| 24 GHz – Incumbent Licensees | 1,500 Employees or Fewer |
| 24 GHz – Future Licensees | Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) |
| Miscellaneous | |
| On-Line Information Services | \$18 Million in Annual Receipts or Less |
| Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers | 750 Employees or Fewer |
| Audio and Video Equipment Manufacturers | |
| Telephone Apparatus Manufacturers (Except Cellular) | 1,000 Employees or Fewer |
| Medical Implant Device Manufacturers | 500 Employees or Fewer |
| Hospitals | \$29 Million in Annual Receipts or Less |
| Nursing Homes | \$11.5 Million in Annual Receipts or Less |
| Hotels and Motels | \$6 Million in Annual Receipts or Less |
| Tower Owners | (See Lessee's Type of Business) |