

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

In the Matter of)	
)	
CAPSTAR TX LIMITED PARTNERSHIP)	File No. EB-03-IH-0483 et al.
)	Facility ID # 53597
Licensee of Station WDCG(FM),)	
Durham, North Carolina)	
)	
CITICASTERS LICENSES, L.P.)	File No. EB-03-IH-0487 et al.
)	Facility ID # 73268
Licensee of Station WMJI(FM),)	
Cleveland, Ohio)	
)	
AMFM TEXAS LICENSES LIMITED PARTNERSHIP)	File No. EB-03-IH-0488 et al.
)	Facility ID # 35073
)	
Licensee of Station KLOL(FM),)	
Houston, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2004

Released: June 25, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny complaints filed against the above-captioned licensees, all of which are subsidiaries of Clear Channel Communications, Inc. (“Clear Channel”), for broadcasting certain comments by radio station hosts and callers, which allegedly would lead to violence by automobile drivers against bicyclists. In view of the freedom accorded broadcasters by the First Amendment,¹ as interpreted by the courts and the Commission, and section 326 of the Communications Act of 1934, as amended (the “Act”),² and consistent with Commission precedent regarding this kind of commentary, we conclude that the comments do not merit enforcement action in the absence of an adjudication of a “clear and present danger” by a court of competent jurisdiction.

II. BACKGROUND

2. Over the course of several months, beginning in July 2003, the Commission received complaints that the above-captioned stations had broadcast material that encouraged listeners to harass and/or physically harm bicyclists. Specifically, by letter dated July 2, 2003, a complainant alleged that,

¹ U.S. CONST., amend. I.

² 47 U.S.C. § 326 provides: “Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated, or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.”

during the *Walton and Johnson Show*, Station KLOL(FM) broadcast material that advocated that automobile and truck drivers hit and seriously injure bicycle riders. Similarly, by letter dated July 18, 2003, a complainant alleged that, in June and July 2003, on-air talent at Station WMJI(FM) encouraged their listeners to pull around bicycles and slam on the brakes, pass bicyclists and then open the passenger door and slam on the brakes, and throw things and shout curses at bicyclists.³ Finally, by letter dated September 29, 2003, a complainant alleged that, on September 22 and 23, 2003, Station WDCG(FM) aired comments from hosts and callers during the *Bob and Madison Show*, which expressed contempt for law-abiding bicyclists and suggested that motorists run them off the road or throw bottles at them. Similar complaints followed.

3. By letters to the licensees of the three captioned stations dated January 26, 2004, the Enforcement Bureau's Investigations and Hearings Division directed that each licensee state whether it had broadcast language "advocating violence toward bicyclists," whether the licensee was a party to any criminal or civil litigation regarding any such broadcast, and, if so, to provide information relating to such litigation's status.⁴ The Division's letters also directed that the licensees provide copies and transcripts of any recordings of the subject broadcasts.

4. By letters dated March 5, 2004, Clear Channel, on behalf of the three licensees, responded to the Division's inquiries.⁵ Clear Channel represents that none of the three stations "broadcast language advocating violence toward bicyclists," and that none of the licensees was then or had been a party to any criminal or civil litigation involving the broadcasts.⁶ Finally, in light of the remedial actions that it took subsequent to the broadcasts in question in response to listener complaints, Clear Channel contends that it resolved the matter to the satisfaction of all involved months before its responses to the Commission.⁷

5. Specifically, regarding the complaints lodged against Station WDCG(FM), Clear Channel provides compact discs and transcripts of relevant portions of the September 22 and 23, 2003 *Bob and Madison Show*. Clear Channel submits that the material did not advocate violence and notes that, in fact,

³ One such complainant also alleged a violation of the Commission's Personal Attack Rule (former section 73.1920 of the Commission's rules) as a result of her treatment during an on-air conversation with station personnel of the *Lanigan and Malone Show*, which occurred on July 3, 2003. However, because the Commission repealed that rule on October 26, 2000 (*see Repeal of Modification of the Personal Attack and Political Editorial Rules*, 15 FCC Rcd 20697 (2000)), we will not discuss this matter further.

⁴ Letter from Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Capstar TX Limited Partnership, dated January 26, 2004 (WDCG(FM)); letter from Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Citicasters Licenses, L.P., dated January 26, 2004 (WMJI(FM)); letter from Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to AMFM Texas Licenses Limited Partnership, dated January 26, 2004 (KLOL(FM)).

⁵ Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 5, 2004 ("WDCG(FM) letter"); letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 5, 2004 ("WMJI(FM) letter"); letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 5, 2004 ("KLOL(FM) letter").

⁶ WDCG(FM) letter, *supra* note 5 at 1; WMJI(FM) letter, *supra* note 5 at 1; KLOL(FM) letter, *supra* note 5, at 1.

⁷ *E.g., id.* at 2.

one of the co-hosts repeatedly cautioned against committing acts of violence against bicyclists.⁸ In any event, Clear Channel states that, in response to complaints that it received about the show, between October 6 and December 2003, it aired on its five Raleigh-Durham area stations more than 1,200 bicycling safety public service announcements, the text of which it prepared in conjunction with the North Carolina Division of Bicycles and Pedestrian Transportation.⁹ Station WDCG(FM) also aired an apology during the *Bob and Madison Show* and suspended the co-hosts for two days.¹⁰

6. Concerning the programming aired over Station WMJI(FM), Clear Channel provides compact discs and transcripts of the relevant portions of the June 30 and July 1-3 and 7-8, 2003 *Lanigan and Malone Show*. Clear Channel maintains that the material did not advocate violence against bicyclists and that the show's personalities repeatedly stated that they do not condone or mean to encourage such violence.¹¹ Clear Channel also contends that discussions that it aired contained the opinions of callers and e-mailers, including bicycle advocates.¹² In addition, Clear Channel notes that, in response to concerns about the broadcasts that it received from members of the bicycling community, it aired, over a week, approximately 300 public service announcements over its six Cleveland-area radio stations.¹³ Finally, Clear Channel states that members of the *Lanigan and Malone Show* issued an on-air apology.¹⁴

7. Finally, with respect to the material broadcast over Station KLOL(FM), Clear Channel's Houston Director of Rock Programming, Vince Richards, states in a Declaration executed under penalty of perjury that the station records its programming on digital audio tapes, which are recycled every few days by recording over the old material unless the material is saved for a "best of" show.¹⁵ Mr. Richards states his belief that the complaints pertain to the June 27, 2003 *Walton and Johnson Show*, which he and several other members of station management listened to because it had generated some public comment.¹⁶ He acknowledges that, during the broadcast, one of the on-air personalities, John Walton, expressed frustration with bicyclists riding in the roadway.¹⁷ Mr. Richards relates that, although station management had asked the show's producer not to save the material for future use, it was saved and aired

⁸ WDCG(FM) letter, *supra* note 5 at 1.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2. Clear Channel also notes that John Hogan, President and CEO of Clear Channel Radio, met with Elissa Margolin, Executive Director of the League of American Bicyclists to discuss ways in which Clear Channel could work with the bicycling community to promote safe bicycling. Clear Channel relates that, subsequently, Ms. Margolin issued a statement noting that "[t]he League is pleased with the response from Clear Channel Radio." *Id.*

¹¹ WMJI(FM) letter, *supra* note 5, at 1-2.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Declaration of Vince Richards, attached to KLOL(FM) letter, *supra* note 5, ¶ 3.

¹⁶ *Id.*, ¶¶ 2, 4.

¹⁷ *Id.*, ¶ 5.

again on September 2, 2003 during a *Best of the Walton and Johnson Show*. Mr. Richards acknowledges that the September broadcast also generated public comment. Mr. Richards states that, following that broadcast, the station fired the program's producer and recycled the tape containing the programming. He indicates that station management directed cast members of the *Walton and Johnson Show* to issue several on-air apologies.¹⁸ In addition, according to Mr. Richards, all eight of Clear Channel's Houston-area stations are conducting an ongoing bicycle awareness/safety public service campaign. Since October 1, 2003, the stations have aired about 100 public service announcements per month about bicycle safety, which are coordinated with the Houston Police Department Bike Force. Mr. Richards concludes that Clear Channel has posted on each of eight area station websites a link to a Bicycle Safety Habits fact sheet, which contains a link to the City of Houston Bicycle Program.¹⁹

III. DISCUSSION

8. The Federal Communications Commission is authorized to license radio and television broadcast stations to serve the public interest and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. However, the Commission's role in overseeing program content is very limited. The First Amendment and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression.²⁰ There is no statutory provision or Commission rule that directly prohibits the complained-of broadcasts. Consequently, the only question before us is whether the broadcasts raise a substantial question about the licensees' basic qualifications.

9. In light of Commission precedent on point, we find that no question regarding the licensee's basic qualifications is raised. In addressing allegations similar to the ones now before us, the Commission has stated:

Commission action in response to an allegation that a broadcast should be characterized as an 'incitement' to violence or illegal action meeting the "clear and present danger" test is limited to situations where a local court of competent jurisdiction has made such a determination. *See Cattle Country Broadcasting*, 58 R.R.2d 1109, 1113 (1985); *see also Brandenburg v. Ohio*, ("Brandenburg"), 395 U.S. 444, 447 (1969) (speech becomes illegal advocacy when "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."). This aspect of the test requires a court to "make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression." *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843 (1975).

... Under *Brandenburg*, any determination that particular speech poses a "clear and present danger of serious substantive evil" presupposes a familiarity with the circumstances, issues, and concerns of the community where such speech was heard, a familiarity which the Commission, in most cases, does not have and cannot practically obtain. Local authorities responsible for keeping the peace and enforcing the law are

¹⁸ *Id.*, ¶ 6.

¹⁹ *Id.*, ¶ 7.

²⁰ U.S. CONST., amend. I; 47 U.S.C. § 326.

better positioned to know and assess the specific and unique circumstances in the ... community and, thus, to determine whether the *Brandenburg* test has been met.”²¹

10. The information before us reflects that no local court of competent jurisdiction has found that any of the material aired over the captioned stations, which is the subject of the instant complaints, met the “clear and present danger” test. Indeed, so far as we know, no civil or criminal action of any kind has been brought against any of the licensees for the complained-of broadcasts.²² Viewing these circumstances in light of the Commission’s clear directive (quoted above) regarding treatment of broadcast speech that allegedly advocates or incites violence, we conclude that no substantial question exists about the licensees’ qualifications and that initiation of a revocation proceeding is not warranted.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 0.111(a)(11) and 0.311 of the Commission’s rules,²³ that the above-described complaints filed against the licensees of Stations WDCG(FM), WMJI(FM), and KLOL(FM) are hereby DENIED.

12. IT IS FURTHER ORDERED, that a copy of this *Memorandum Opinion and Order* be sent by first class mail to each of the complainants for which the Commission has a return address and to Richard W. Wolf, Clear Channel Communications, Inc., 200 East Basse Road, San Antonio, Texas 78209-8328.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²¹ *Spanish Radio Network*, 10 FCC Rcd 9954, 9959, ¶¶ 21-22 (1995).

²² WDCG(FM) letter, *supra* note 5 at 2; WMJI(FM) letter, *supra* note 5, at 2-3; KLOL(FM) letter, *supra* note 5, at 2.

²³ 47 C.F.R. §§ 0.111(a)(11), 0.311.