

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

In the Matter of)	
)	
GREATER BOSTON RADIO, INC.)	File No. EB-04-IH-0181
)	Facility ID # 25050
Licensee of Station WTKK(FM),)	
Boston, Massachusetts)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 2004

Released: July 14, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny complaints filed against Greater Boston Radio, Inc. (“Greater Boston”), licensee of Station WTKK(FM), Boston, Massachusetts, for broadcasting certain comments over the station by a talk show host by which he allegedly advocated violence against Muslims. 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 type of commentary, we conclude that the broadcast in question does not warrant enforcement action prior to an adjudication by a court of competent jurisdiction that the broadcast posed a “clear and present danger.”

II. BACKGROUND

2. This matter involves a number of similar complaints alleging that, on or about April 22, 2004, Station WTKK(FM) broadcast comments by a talk show host in which he advocated violence against Muslims.³ Specifically, the complaints allege that the host stated over the air, “I believe that Muslims in this country are a fifth column . . . You believe that we should befriend them. I think we should kill them.” The complaints also allege that the host advocated dropping bombs in the Middle East to kill Muslims. The complainants generally express outrage that Station WTKK(FM) broadcast such inflammatory speech, and many of them request that the Commission assess a fine against the station and/or prohibit future broadcasts of such language.

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.”

³ To date, the Commission has received approximately eighty complaints concerning this broadcast.

III. DISCUSSION

3. The Federal Communications Commission is authorized to license radio and television broadcast stations 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.⁴

4. Consistent with those constraints, the Commission has previously held:

It is the judgment of the Commission, as it has been the judgment of those who drafted our Constitution and of the overwhelming majority of our legislators and judges over the years, that the public interest is best served by permitting the expression of any views that do not involve "a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Terminiello v. Chicago*, 337 US 1, 4 (1949); *Chaplinsky v. New Hampshire*, 315 US 568; *Ashton v. Kentucky*, 384 US 195, 34 LW 4398 (1966). This most assuredly does not mean that those who uphold this principle approve of the opinions that are expressed under its protection. On the contrary, this principle insures that the most diverse and opposing opinions will be expressed, many of which may be even highly offensive to those officials who thus protect the rights of others to free speech. If there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable or congenial.⁵

5. There is no statutory provision or Commission rule that the complained-of broadcast would appear to violate. Instead, the only issue before us is whether the broadcast calls to question the basic qualifications of Greater Boston to be and remain a licensee of the Commission. In light of Commission precedent on point, we find that no question regarding the licensee's basic qualifications are raised in the absence of a decision by a court of competent jurisdiction:

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.*

⁴ U.S. CONST., amend. I; 47 U.S.C. § 326.

⁵ *Anti-Defamation League of B'nai B'rith*, 4 FCC 2d 190, 191 (1966), *aff'd sub nom. Anti-Defamation League of B'nai B'rith v. FCC*, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969); *see also In re Complaint of Julian Bond, Atlanta NAACP*, 69 FCC 2d 943 (Broadcast. Bur. 1978).

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 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.”⁶

6. It appears that, to date, no local court of competent jurisdiction has found that any of the material aired over Station WTKK(FM) that is the subject of the instant complaints met the “clear and present danger” test. Indeed, as far as we know, no civil or criminal action of any kind has been brought against Greater Boston regarding the complained-of broadcast. Viewing these circumstances in light of the Commission’s clear directive regarding treatment of broadcast speech that allegedly advocates or incites violence, we conclude that no substantial question exists concerning Greater Boston’s qualifications and that Commission action is not warranted.

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, pursuant to sections 0.111(a)(11) and 0.311 of the Commission’s rules,⁷ that the above-described complaints filed against Greater Boston Radio, Inc. are hereby DENIED.

8. IT IS FURTHER ORDERED, that a copy of this *Memorandum Opinion and Order* be sent by first class mail or e-mail to each of the complainants for which the Commission has a return or e-mail address and to Greater Boston Radio, Inc., 35 Braintree Hill Office Park, Suite 300, Braintree, Massachusetts 02184.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁶ *Spanish Radio Network*, 10 FCC Rcd 9954, 9959, ¶¶ 21-22 (1995).

⁷ 47 C.F.R. §§ 0.111(a)(11), 0.311.