



NEWS

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FOR IMMEDIATE RELEASE
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PRESS STATEMENT OF COMMISSIONER GLORIA TRISTANI

Re: Enforcement Bureau Letter Ruling on Indecency Complaint Against WDGC(FM), Durham, North Carolina

The FCC's Enforcement Bureau has issued a letter dismissing a complaint from Joyce Moller of Burlington, North Carolina. Ms. Moller had filed a complaint with the Commission regarding the broadcast of potentially indecent material by WDCG (FM). Ms. Moller's complaint says that at 8 a.m. on February 5, 2001, hosts of the "Bob and Madison Showgram" on WDCG were taking calls from people that had never masturbated (shaking hands with the queen or something to that effect). ... [T]hey told the listener in question that they would give them ten minutes to put the phone down and try it. If they did they would give them 'a bunch of prizes.'

Ms. Moller went on to say:

I couldn't believe that it was actually on the radio and once that settled in, I couldn't believe that they would air this trash at 8 am! Parents can't and shouldn't have to monitor everything their children listen to on the radio.

Actually, Ms. Moller's observation about the need to protect children is precisely why the Supreme Court has upheld the FCC's authority to limit indecent broadcasts. In *FCC v. Pacifica Foundation*, the Court said indecency regulation is appropriate because parents need help in protecting their children from potentially harmful broadcast material and because "broadcasting is uniquely accessible to children."¹

The statute passed by Congress that gives the FCC authority to regulate indecent broadcasts says: "Whoever utters obscene, indecent, or profane language by means of radio communications shall be fined not more than \$10,000 or imprisoned not more than two years, or both."² It is well established that the context is essential in determining whether a particular broadcast is indecent.³

Of the three factors recently identified by the Commission as that establish context, two seem particularly relevant here: (1) whether the material appears to pander or is used to titillate;

¹ *FCC v. Pacifica Foundation*, 438 U.S. 726, 749-750 (1978).

² 18 U.S.C. § 1464; Communications Act, § 503(b)(1)(D).

³ *Pacifica*, 438 U.S. 726, 750 ("context is all-important").

and (2) whether the material dwells on the sexual or excretory activity.⁴ First, Ms. Moller explains that the on air personality used a slang term (“shaking hands with the queen”) for masturbation. Ms. Moller also stated that the on air personalities offered prizes to a caller who would masturbate during the program. These two facts suggest that this discussion about masturbation was not a bona fide news cast but a conversation intended to titillate and pander. Second, as to whether the material dwelled on the discussion of sexual activity, Ms. Moller’s complaint indicates that this segment of the program apparently lasted for at least 10 minutes. This implies something much closer to a persistent focus than a fleeting reference.

Given this, Ms. Moller's complaint deserved a careful investigation rather than the summary dismissal it received. At the very least, the Bureau should have contacted the station to request a tape or transcript of this program. As I suggest in a separate Press Statement, I believe the Bureau also should contact the complainant where it appears reasonably likely that additional “context” would result in a finding that our indecency ban has been violated.⁵ Such follow up, had it occurred in this case, might well have led to the finding that WDCG violated our broadcast indecency limitations. Without a change in the Commission’s process for enforcing the broadcast indecency regulations, far too many complaints will be dismissed for “lack of context” when all that is required for reasoned decisionmaking is a minimal amount of follow up.

⁴ *In the Matter of Industry Guidance On the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, FCC 01-90 (rel. Apr. 6, 2001) at 5.

⁵ Press Statement of Commissioner Gloria Tristani Re: Enforcement Bureau Letter Ruling on WKQX (FM), Chicago, Illinois Indecency Complaints (rel. June __, 2001).