

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

In the Matter of)	
)	
EMMIS COMMUNICATIONS CORPORATION)	NAL/Acct. No. 200432080193
)	FRN No. 0004161410
EMMIS RADIO LICENSE CORPORATION)	FRN No. 0001529346
)	
Licensee of Station WKQX(FM), Chicago, Illinois)	Facility ID No. 19525
)	
Forfeiture Order released January 8, 2002 (DA 02-26) ¹)	NAL/Acct. No. 200132080029
)	
Forfeiture Order released November 1, 2002 (DA 02-2937) ²)	NAL/Acct. No. 200232080008
)	
Forfeiture Order released February 18, 2004 (DA 04-386) ³)	NAL/Acct. No. 200232080014
)	

ORDER

Adopted: August 10, 2004

Released: August 12, 2004

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Adelstein issuing a statement.

1. The Commission has been investigating whether Emmis Communications Corporation and its direct and indirect subsidiaries that hold FCC authorizations (collectively “Emmis”) may have violated restrictions on the broadcast of obscene, indecent or profane material.⁴

2. The Commission and Emmis have negotiated the terms of the Consent Decree, a copy of which is attached hereto and incorporated by reference.

¹ *Emmis FM License Corporation of Chicago*, DA 02-26, released January 8, 2002; *review denied, Emmis Radio License Corporation*, Memorandum Opinion and Order, FCC 04-62, released April 8, 2004 (File No. EB-00-IH-0401) (Petition for Reconsideration, filed May 10, 2004, pending). Emmis FM License Corporation of Chicago (FRN No. 0001529387) and Emmis Radio License Corporation, its successor-in-interest as licensee of Station WKQX(FM), are each subsidiaries of Emmis Communications Corporation.

² *Emmis Radio License Corporation*, Forfeiture Order, DA 02-2937, released November 1, 2002 (File Nos. EB-01-IH-0124, EB-01-IH-0319 and EB-01-IH-0408). On March 19, 2004, Emmis filed an Application for Review of the Enforcement Bureau’s Memorandum Opinion and Order denying reconsideration of the Forfeiture Order, which imposed a monetary forfeiture penalty of Twenty-One Thousand Dollars (\$21,000) against it for willful and repeated violations of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. *See Emmis Radio License Corporation*, Forfeiture Order, DA 04-387, released February 18, 2004.

³ *Emmis Radio License Corporation*, Forfeiture Order, DA 04-386, released February 18, 2004 (File No. EB-01-IH-0121) (Petition for Reconsideration, filed March 19, 2004, pending).

⁴ 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating all pending proceedings against Emmis relating to restrictions on the broadcast of obscene, indecent or profane material.

4. Based on the record before us, in particular Emmis's admission that some of the material it broadcast was indecent in violation of 47 C.F.R. § 73.3999, and the remedial efforts to which Emmis has agreed, we conclude that there are no substantial and material questions of fact in regard to these matters as to whether Emmis possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,⁵ that the attached Consent Decree IS ADOPTED.

6. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

7. IT IS FURTHER ORDERED that the above-captioned Commission Forfeiture Orders and Memorandum Opinion and Order against Emmis regarding violations of 18 U.S.C. §1464 and 47 C.F.R. § 73.3999 ARE RESCINDED, VACATED and CANCELLED, all Enforcement Bureau investigations regarding possible violations by Emmis of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 ARE TERMINATED, and all third-party Complaints against Emmis for possible violations of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 pending before the Enforcement Bureau as of the date of the Consent Decree ARE DISMISSED WITH PREJUDICE.

8. IT IS FURTHER ORDERED that the July 16, 2004, Petition for Reconsideration of David Edward Smith IS DENIED.⁶

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Consent Decree

⁵ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁶ Therein, Mr. Smith seeks reconsideration of the Enforcement Bureau's June 16, 2004, letter disposing of certain of his indecency complaints against Emmis, the further consideration of which is rendered moot by the attached Consent Decree. With regard to Mr. Smith's request in the Petition that the Commission designate for revocation or denial of the renewal application for Emmis's license for Station WKQX(FM), Chicago, Illinois, due to the filing of a lawsuit against him involving his indecency complaints by Erich ("Mancow") Muller before the Circuit Court of Cook County, Illinois (Case No. 04-CH-5015), we note that the lawsuit was dismissed by the Court, with prejudice, on July 26, 2004. Moreover, with its July 29, 2004, Opposition to the Petition, Emmis provides the Declaration of Charles DuCoty, General Manager of the station, who represents that Emmis had no role, and provided no encouragement or assistance to Mr. Muller, in connection with the lawsuit.

1. The Federal Communications Commission and Emmis Communications Corporation, for itself and on behalf of its direct and indirect owned or controlled subsidiaries that hold FCC authorizations, hereby enter into this Consent Decree for the purpose of resolving and terminating certain forfeiture proceedings, investigations and complaints currently being conducted by, or pending before, the Commission relating to possible violations of the Indecency Laws by Emmis Stations.
2. For purposes of this Consent Decree the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*;
 - (b) "Adopting Order" means an order of the FCC adopting this Consent Decree, without any modifications adverse to Emmis or any Emmis Station;
 - (c) "Bureau" means the FCC's Enforcement Bureau;
 - (d) "Emmis Station" and "Emmis Stations" means one or more broadcast stations licensed to Emmis;
 - (e) "Emmis" means Emmis Communications Corporation and all of its direct and indirect owned or controlled subsidiaries that hold authorizations issued by the FCC;
 - (f) "Commission" or "FCC" means the Federal Communications Commission;
 - (g) "Complaints" means third-party complaints received by, or in the possession of, the Bureau or the Commission, alleging violations of the Indecency Laws by Emmis Stations, including (but not limited to) complaints that have previously been dismissed and complaints that have resulted in letters of inquiry from the Bureau ("LOIs").
 - (h) "Effective Date" means the date on which the FCC releases the Adopting Order;
 - (i) "Final Order" means the status of the Adopting Order after the period for administrative and judicial review has lapsed;
 - (j) "Forfeiture Orders" means those certain Forfeiture Orders respecting Station WKQX released (a) Jan. 8, 2002 (File No. EB-00-IH-0401, DA 02-26), (b) Nov. 1, 2002 (File Nos. EB-01-IH-0124, -0319, -0408, DA 02-2937) and (c) February 18, 2004 (File No. EB-01-IH-0121, DA 04-386).

- (k) "Indecency Laws" means 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999;
- (l) "Inquiries" means investigations of alleged violations of the Indecency Laws by Emmis Stations that have resulted in LOIs to Emmis, or to other licensees that relate to Emmis Stations;
- (m) "MO&O" means that certain Memorandum Opinion and Order of the Commission released April 8, 2004 (File No. EB-00-IH-0401, FCC 04-62);
- (n) "NAL" means a Notice of Apparent Liability issued pursuant to Section 1.80(f) of the Rules;
- (o) "Parties" means Emmis and the Commission;
- (p) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

I. BACKGROUND

3. Both the Commission and Emmis acknowledge that any proceedings that might result from the Forfeiture Orders, the MO&O, the Inquiries and/or the Complaints will be time-consuming and will require substantial expenditure of public and private resources.

4. In order to conserve such resources, and to promote compliance by Emmis with the Indecency Laws, the Commission and Emmis are entering into this Consent Decree, in consideration of the mutual commitments made herein.

II. AGREEMENT

5. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Commission by incorporation of such provisions by reference in an Adopting Order.

6. The Parties agree that this Consent Decree shall become effective on the date on which the Commission releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. Emmis agrees that the Commission has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. As part of the Adopting Order, the Commission shall rescind, vacate and cancel the MO&O and the Forfeiture Orders, shall terminate the Inquiries, and shall dismiss with prejudice the Complaints. From and after the Effective Date, the Commission shall not, either on its own motion or in response to any petition to deny or other third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Emmis, any Emmis Station, or any pending or future application to which Emmis is a party (including, without limitation, any application for a new station, for renewal of license, for assignment of license, or for transfer of control), based in whole or in part on (i) the Forfeiture Orders, (ii) the Inquiries, (iii) the Complaints, (iv) any other similar complaints alleging violation by any Emmis Station of the Indecency Laws with respect to any broadcast occurring prior to the Effective Date, or (v) the allegations contained in any of the foregoing. Without limitation to the foregoing, the FCC shall not use the facts of this Consent Decree, the Forfeiture Orders, the Inquiries, the Complaints, any other similar complaints alleging violation by any Emmis Station of the Indecency Laws with respect to any broadcast occurring prior to the Effective Date, or the underlying facts, behavior, or broadcasts that relate to any of the foregoing, for any purpose relating to Emmis or any Emmis Station, and shall treat all such matters as null and void for all purposes.

9. Within five (5) business days after the Adopting Order becomes a Final Order, without any modifications to this Consent Decree adverse to Emmis or to any Emmis Station, Emmis will withdraw all pending pleadings seeking review or reconsideration of the MO&O and the Forfeiture Orders.

10. Emmis represents that it has adopted, and will modify in accordance with the Attachment hereto, a company-wide compliance plan for the purpose of preventing the broadcast of material violative of the Indecency Laws. A summary of that plan is set forth in the attachment. Emmis agrees, to the extent it has not already done so, to implement this compliance plan within thirty (30) days of the Effective Date and to keep such compliance plan in effect for three (3) years after the Effective Date. Emmis reserves the right to revise the plan from time to time, provided that the Commission shall be given not less than thirty (30) days advance written notice of any revisions to the plan.

11. Within five (5) business days after the Adopting Order becomes a Final Order, without any modifications to this Consent Decree adverse to Emmis or to any Emmis Station, Emmis shall make a voluntary contribution to the United States Treasury in the amount of Three Hundred Thousand Dollars (\$300,000). Emmis must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order shall refer to Acct. No. 200432080193 and FRN No. 0004161410. If Emmis makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 606073-7482. If Emmis makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

12. Emmis waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the

validity of this Consent Decree and the Adopting Order, provided no modifications are made to the Consent Decree adverse to Emmis or any Emmis Station. If the Commission, or the United States acting on its behalf, brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, Emmis will not contest the validity of this Consent Decree or of the Adopting Order and will waive any statutory right to a trial *de novo*. If Emmis brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, the Commission will not contest the validity of this Consent Decree or of the Adopting Order.

13. Emmis admits, solely for the purpose of this Consent Decree and for FCC civil enforcement purposes, and in express reliance on the provisions of Paragraph 8 hereof, that the broadcast material at issue in the Forfeiture Orders and certain of the broadcast material at issue in the Inquiries is indecent in violation of 47 C.F.R. § 73.3999, assuming construction of this term as it is construed by the Commission as of the date hereof. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or Paragraph 8 hereof, or both, are breached by the Commission, or are invalidated or modified to Emmis' prejudice by the Commission or by any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Emmis shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any material broadcast on any Emmis Station.

14. In the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. Emmis hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

16. Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

17. This Consent Decree may be executed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By:

Marlene H. Dortch

Secretary

Date:

EMMIS COMMUNICATIONS CORPORATION

(For itself and on behalf of its direct and indirect owned or controlled subsidiaries that hold FCC authorizations)

By:

Gary L. Kaseff

Executive Vice-President and General Counsel

Date:

Attachment

Compliance Plan

1. Emmis will conduct training on obscenity and indecency for all on-air TV and radio talent and employees who materially participate in programming decisions, which will include tutorials regarding material that the FCC does not permit broadcasters to air. Training will be provided to all such employees, except those who have already received such training within the past twelve (12) months, within thirty (30) days of the Effective Date of this Plan. Training will also be provided to all such new employees promptly after they commence their duties. Refresher training will be provided to all employees described above at least every twelve (12) months.
2. If Emmis receives a Notice of Apparent Liability or other proposed action for a broadcast occurring after the adoption of this Plan that the Commission believes to be obscene or indecent, the following steps will be taken:
 - (a) The employees accused of airing or materially participating in the decision to air obscene or indecent content will be suspended and an investigation will immediately be undertaken;
 - (b) Such employees will be required to undergo remedial training on FCC obscenity and indecency regulations and policies and satisfy station management that they understand where the line between acceptable and unacceptable programming falls before resuming their duties; and
 - (c) If any such employee who is on-air talent is permitted to return to the air, his or her broadcasts will be subject to a significant time delay – up to five minutes – so that a program monitor will have the ability to interrupt a broadcast if its content crosses the line.
3. If a Notice of Apparent Liability or other proposed action issued by the FCC is finally adjudicated and Emmis is finally found to have aired or decided to air an obscene or indecent program that results in enforcement action by the Commission, the offending employees will be terminated without delay. This will ensure that those employees who break the law by broadcasting, or by materially participating in a decision to broadcast, obscene or indecent material will not work for Emmis.
4. Emmis will fully participate in industry efforts that may emerge to develop a voluntary industry-wide response to indecency and violence.

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Emmis Communications Corporation

Recently, when the Commission entered into a settlement agreement with Clear Channel Communications, I dissented because we had not investigated dozens of pending complaints or even sought information about those broadcasts as part of the settlement discussions. Today, on the other hand, the Commission enters into a consent decree with Emmis Communications in which it has taken at least initial action on the pending citizen complaints.

I am, however, troubled by certain aspects of the settlement agreement. I am most concerned about the effect of today's decision on the Commission's license renewal process. The totality of a broadcaster's record is pertinent and should be considered when licenses are renewed. Today's decision takes an entire part of the record off the table. It is bad enough that our re-licensing process has degenerated to the point where the Commission generally does not even look at a station's public file or inquire further into the station's service to its community unless a citizen of that particular community brings an issue to our attention. Today, the Commission tells those citizens that some information is no longer relevant in evaluating a broadcaster's overall performance in its community. If we are not actually changing the rules of the game, we are at a minimum sending a wrong and discouraging signal to those citizens upon whom we rely in implementing the law.

For the foregoing reasons, I only concur in this decision to settle pending indecency complaints against Emmis. Going forward, I urge my colleagues to accord prompt and vigorous attention to any future listener complaints against this licensee.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Emmis Communications Corporation et al., Order

I am pleased that as we enter into this settlement agreement, we have conducted at least a preliminary investigation of all pending indecency complaints against the company. Citizens who have taken the time to notify us of offensive material heard on radio or television should know that we have considered their complaints in resolving the matters before us.