

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

In the Matter of)	
)	
AMFM RADIO LICENSES, L.L.C.,	)	File No. EB-03-IH-0121
	)	NAL/Acct. No. 200432080016
Licensee of Station	)	FRN# 0001656586
WWDC(FM), Washington, DC	)	Facility ID# 8682
)	
)	
CLEAR CHANNEL BROADCASTING LICENSES, INC.,	)	File No. EB-03-IH-0736
	)	NAL/Acct. No. 200432080017
	)	FRN# 0001587971
Licensee of Station	)	Facility ID# 11961
WRXL(FM), Richmond, Virginia)	
)	
)	
CAPSTAR TX LIMITED PARTNERSHIP,	)	File No. EB-03-IH-0737
	)	NAL/Acct. No. 200432080018
	)	FRN# 0003474905
Licensee of Station	)	Facility ID# 4674
WOSC(FM), Bethany Beach, Delaware)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 4, 2004

Released: March 12, 2004

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

I. INTRODUCTION

In this Notice of Apparent Liability for Forfeiture (“NAL”), issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the “Act”) and section 1.80 of the Commission’s rules,¹ we grant a complaint from Stephen M. Arner² and find that the captioned licensees, all of which are subsidiaries of Clear Channel Communications, Inc. (“Clear Channel”), apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, by willfully and repeatedly broadcasting indecent material over the stations on March 13, 2003. Based upon our review of the facts and circumstances in this case and Clear Channel’s history of transgressions relating to the broadcast of indecent material over stations licensed to its subsidiaries, we conclude that Clear Channel is apparently liable for a total monetary forfeiture in the amount of Two Hundred Forty-Seven Thousand Five Hundred Dollars (\$247,500), the statutory maximum for the nine apparent violations at issue here.

¹ 47 U.S.C. § 503(b) (2002); 47 C.F.R. § 1.80 (2002).

² See Letter from Stephen M. Arner to Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, dated March 17, 2003 (“Complaint Letter”).

II. BACKGROUND

2. The Commission received a complaint that Station WWDC(FM), Washington, D.C., broadcast indecent material on March 13, 2003, at approximately 5:51 p.m. The complaint regarded material that was apparently a clip rebroadcast from the program “Elliot in the Morning,” which was broadcast by three subsidiaries of Clear Channel, (1) AMFM Radio Licenses, LLC (“AMFM”), licensee of WWDC(FM), Washington, D.C., (2) Clear Channel Broadcasting Licenses, Inc. (“CCBL”), licensee of WRXL(FM), Richmond, Virginia, and (3) Capstar TX Limited Partnership (“Capstar”), licensee of WOSC(FM), Bethany Beach, Delaware. The complaint stated that the indecent material included an “on-air voice interviewing an unidentified person and discussing the birthday of Ron Jeremy, a famous actor from adult films” and that when asked what the interviewee liked about Jeremy she responded, “The way he licks pussy.”³

3. On August 11, 2003, the Enforcement Bureau issued a letter of inquiry (“LOI”) to AMFM, including the complaint as Attachment A to the LOI.⁴ Clear Channel, the ultimate parent company of AMFM, CCBL and Capstar, responded to the LOI.⁵ Clear Channel confirmed that on March 13, 2003, at approximately 9:50 a.m., AMFM, CCBL and Capstar, broadcast the following language during “Dianne’s Dirt of the Day” segment on the “Elliot in the Morning” program:

Diane’s Voice: Finally porn legend Ron Jeremy is hitting the half century mark.

Elliot’s Voice: Oh, Happy Birthday Ron.

Diane’s Voice: 50 years old today. Despite turning 50, Ron Jeremy says he’s still going strong in the sack and continues to film sex scenes without needing Viagra. He credits his good health to avoiding drugs for all these years. And I figured what a better time than now to play Craig’s interview with one Ron Jeremy fan.

Female Voice: I masturbate with Jeremy’s video every day. Uh, not every day, but every other weekend.

Craig’s Voice: Wow. What is it that you like about him so much?

Female Voice: The way he licks pussy. I want to do a threesome with him. See who’s the best. If I can lick better or he can lick better.

Diane’s Voice: She is a looker.

Elliot’s Voice: Hot. Got a great dental plan in her office.

³ Complaint Letter at 1.

⁴ See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to AMFM Radio Licenses, L.L.C., dated August 11, 2003 (“LOI”).

⁵ See Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 29, 2003 (“Clear Channel Response to Inquiry”). Clear Channel enclosed with its response to the LOI a compact disc recording of the material broadcast at approximately 9:50 a.m. on March 13, 2003.

This material was apparently rebroadcast on March 13, 2003 during promotional segments on WWDC(FM) at approximately 12:50 and 5:50 p.m., on WRXL(FM) at approximately 1:40 and 6:40 p.m., and on WOSC(FM) at approximately 12:50 and 7:50 p.m.⁶

III. DISCUSSION

4. 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. The Commission's role in overseeing program content is very limited. The First Amendment to the United States Constitution and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression.⁷ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, Section 1464 prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁸ In addition, section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast obscene material at any time, and, consistent with a subsequent statute and court decision,⁹ shall not broadcast indecent material during the period 6 a.m. through 10 p.m.¹⁰

5. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ In order to

⁶ In its response to the LOI, Clear Channel states that it rebroadcast the material in Attachment A to the LOI, *i.e.*, the Complaint Letter, which described the interview with the Jeremy fan and specifically referenced the words, "[t]he way he licks pussy." Clear Channel also states that its program promotions are approximately one minute in length, which is the approximate duration of the entire segment concerning Jeremy. *See* Clear Channel Response to Inquiry at 1-2.

⁷ *See* 47 U.S.C. § 326.

⁸ 18 U.S.C. § 1464.

⁹ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992) (setting the current safe harbor of 10 p.m. to 6 a.m. for the broadcast of indecent material); *see also* *Action for Children's Television v. FCC*, 58 F. 3d 654 (D.C. Cir. 1995) (*en banc*), *cert. denied*, 516 U.S. 1072 (1996) ("*ACT III*") (affirming restrictions prohibiting the transmission of indecent material between the hours of 6 a.m. and 10 p.m.).

¹⁰ *See* 47 C.F.R. § 73.3999.

¹¹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means

impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹² The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹³ As we set forth in greater detail below, we conclude under this standard that Clear Channel is apparently liable for forfeitures for its apparent willful and repeated violations of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

A. Indecency Analysis

6. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.¹⁴ The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent material, as well the Commission's interpretation and implementation of the governing statute.¹⁵ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹⁶

7. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹⁷

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second,

that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹² 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹³ See, e.g., *SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

¹⁴ U.S. CONST., amend. I; see *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) (“*ACT I*”).

¹⁵ 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.” *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), cert. denied, 503 U.S. 914 (1992) (“*ACT IP*”); *ACT III*, 58 F. 3d at 657.

¹⁶ *ACT I*, 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 the high value our Constitution places on freedom and choice in what people may say and hear.”). See *id.* at 1340 n.14 (“ . . . the potential chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy.”).

¹⁷ *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)).

the broadcast must be patently offensive as measured by contemporary community standards for the broadcast medium.¹⁸

8. As an initial matter, Clear Channel does not dispute that it aired material describing or depicting sexual and excretory activities and organs.¹⁹ The material contained discussions of the sexual performance of an adult film actor, masturbation, group sex, and oral sex. Accordingly, we conclude that the broadcasts satisfy the first prong of our indecency analysis. The material, therefore, warrants further scrutiny to determine whether or not it was patently offensive as measured by contemporary community standards for the broadcast medium.²⁰

9. In our assessment of whether broadcast material is patently offensive, “the full context in which the material appeared is critically important.”²¹ Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (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.²² In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”²³ In particular cases, the weight of one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,²⁴ or, alternatively, removing the broadcast material from the realm of indecency.²⁵ We turn now to our analysis of the three principal factors in our decision.

¹⁸ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶¶ 7-8 (*emphasis in original*).

¹⁹ See Clear Channel Response to Inquiry at 3 (arguing that the material was “brief and fleeting, not presented in a pandering fashion, and certainly not expressed in terms sufficiently graphic or explicit enough to be considered patently offensive.”)

²⁰ The “contemporary standards for the broadcast medium” criterion is that of an average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. See *Indecency Policy Statement* 16 FCC Rcd at 8002, ¶ 8 and n. 15.

²¹ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (*emphasis in original*).

²² *Id.* at 8002-15, ¶¶ 8-23.

²³ *Id.* at 8003, ¶ 10.

²⁴ *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same); see also *Indecency Policy Statement*, 16 FCC Rcd at 8009, ¶ 19 (citing *LBJS Broadcasting Company, L.P. (KLBJ(FM))*, 13 FCC Rcd 20956 (MMB 1998) (forfeiture paid) (brief statement “suck my dick you fucking cunt” found indecent due to explicit nature). “The more explicit or graphic the description or depiction, the greater the likelihood that the material will be considered patently offensive.” *Indecency Policy Statement*, 16 FCC Rcd at 8003, ¶ 12, 13 (citing *WQAM License Limited Partnership (WQAM(AM))*, 15 FCC Rcd 1475 (1999), *affd* 15 FCC Rcd 2518 (2000), *recon. denied*, 15 FCC Rcd 13549 (song including lyrics “[y]ou’ll have more fun when I make you come, with my nose between your thighs” found indecent by Commission because “song’s sexual import is lewd, inescapable and understandable”).

²⁵ *Indecency Policy Statement*, 16 FCC Rcd at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

10. First, the comments and dialogue carried on by the program hosts and the Jeremy fan during the broadcasts contained graphic and explicit references to sexual activities, including repeated discussion of oral sex, group sex, masturbation and the sexual performance of a “porn legend.” The Jeremy fan states how frequently she “masturbate[s] with Jeremy’s video.” She states that she likes “[t]he way he licks pussy. I want to do a threesome with him [to see] if I can lick better or he can lick better.” To the extent that colloquial terms that the program hosts and the Jeremy fan used to describe sexual activities could be described as innuendo rather than as direct references, they are nonetheless sufficient to render the material actionably indecent because the sexual import of those terms was “unmistakable.”²⁶ Given the explicit references and the graphic manner in which the broadcasts described the activities of the subjects engaging in the purported sex acts, in particular the reference to “licking pussy,” there is no non-sexual meaning that a listener could possibly have attributed to these terms.²⁷ Clear Channel argues that the “five isolated words,” *i.e.*, “[t]he way he licks pussy,” were not patently offensive. Clear Channel ignores the full context of these words -- the discussion of a “porn legend” not needing Viagra at age 50 to perform in sex scenes; a female fan’s masturbation practices involving the adult film actor’s videos; and the fan’s desire to have a group sex with the actor to determine who can perform better oral sex. Therefore, we find that the broadcast at issue described sexual activities through the use of direct references, and/or innuendo that were sufficiently explicit or graphic to be deemed patently offensive as measured by contemporary community standards for the broadcast medium.

11. Second, the comments and dialogue carried on by the program hosts and the Jeremy fan continuously focused on sexual activities in graphic detail. The sexual discussion and references were not fleeting or isolated. Rather, discussions about and references to sexual activity pervaded the Jeremy segment. Each of the three captioned Clear Channel stations not only aired the Jeremy segment live, but rebroadcast the segment two more times to promote the “Elliot in the Morning” program. The sexual discussions and references were sufficiently dwelled upon and repeated to constitute patently offensive material as measured by contemporary standards for the broadcast medium.

12. Finally, several characteristics of the manner in which the stations presented this material establish that the licensees broadcast this material to pander to, titillate and/or shock listeners. The interview with the Jeremy fan elicited specific information regarding her sexual practices and desires, focusing on the topics of masturbation, oral sex, and group sex in particular. By broadcasting this interview, the program hosts set out to pander to and to shock listeners. Further, the broadcasts and rebroadcasts occurred at times when there was a reasonable risk that children, whom the government has a recognized and compelling interest to shield from indecent material,²⁸ would be in the audience. For these reasons, we find that all of the March 13, 2003 broadcasts were patently offensive as measured by contemporary community standards for the broadcast medium.

13. Each of the Clear Channel entities broadcast and rebroadcast the Jeremy segment between 6 a.m. and 10 p.m., at times of day when the broadcast of indecent material is explicitly prohibited by section 73.3999 of the Commission’s rules. Because the Jeremy segment appears to have contained indecent speech and was broadcast at times of the day when indecent speech is prohibited, each

²⁶ See *Indecency Policy Statement*, 16 FCC Rcd at 8003-04, ¶ 12; see also *Telemundo of Puerto Rico License Corp. (WKAQ-TV)*, 16 FCC Rcd 7157 (EB 2001) (forfeiture paid); *Citcasters Co. (KEGL(FM))*, 15 FCC Rcd 19091 (EB 2000) (forfeiture paid).

²⁷ See *Sagittarius Broadcast Corporation*, 7 FCC Rcd 6873, 6874 (1972) (subsequent history omitted).

²⁸ See *ACT III*, 58 F.3d at 660-63.

of the broadcasts and rebroadcasts is legally actionable. We therefore find that each of the three captioned stations (Stations WWDC(FM), WRXL(FM), and WOSC(FM)) each broadcast three apparently indecent segments, in apparent and willful violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

B. Proposed Forfeiture

14. Based upon our review of the record in this case, we conclude that Clear Channel is apparently liable for forfeitures for willful and repeated violations of our rules for broadcasting indecent material over Stations WWDC(FM), WRXL(FM) and WOSC(FM). The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000.00 for transmission of indecent materials.²⁹ 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."³⁰ In this case, taking all of these factors into consideration, we find that Clear Channel is apparently liable for forfeitures reflecting the proposed imposition of the statutory maximum of \$27,500 for each broadcast and rebroadcast of apparently indecent material over Stations WWDC(FM), WRXL(FM) and WOSC(FM). Each station broadcast the apparently indecent material three times for a total of nine times. Accordingly, Clear Channel is apparently liable for a total monetary forfeiture in the amount of Two Hundred Forty-Seven Thousand Five Hundred Dollars (\$247,500), which represents \$27,500 for each of the nine apparent violations at issue. Based upon our review of the entire record, we believe that this upward adjustment to the statutory maximum is warranted. There is a recent history of indecent broadcasts on stations controlled by Clear Channel, which justifies imposition of the maximum forfeiture amount.³¹ We reiterate our recent statement that multiple serious violations of our indecency rule by broadcasters for broadcasts after our April 2003 warning may well lead to license revocation proceedings.³² Furthermore, separate indecent utterances within a program segment may be separately actionable.

²⁹ *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).

³⁰ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.

³¹ *Clear Channel Broadcasting Licenses, Inc.*, FCC 04-17 (Jan. 27, 2004); *AMFM Radio Licenses, LLC (WWDC(FM))*, FCC 03-233 (Oct. 2, 2003) (forfeiture paid) (indecent broadcast involving the "Elliot in the Morning" program); *Citicasters Co. (KEGL(FM))*, 16 FCC Rcd 7546 (EB 2001) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, 15 FCC Rcd 25,453 (2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, 15 FCC Rcd 19,095 (EB 2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, 15 FCC Rcd 19091 (EB 2000) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, 15 FCC Rcd 11,906 (2000) (forfeiture paid).

³² *See Infinity Broadcasting NAL(WKRK-FM)*, 18 FCC Rcd 6915, 6919, ¶ 13 (2003); Forfeiture Order, FCC 03-302, rel. Dec. 8, 2003; *see also AMFM FM Radio Licenses LLC (WWDC(FM))*, 2003 WL 22251146 (2003) (forfeiture paid). We note that the misconduct at issue here before us occurred prior to our warning regarding possible revocation proceedings.

IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,³³ that Clear Channel Communications, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Two Hundred Forty-Seven Thousand Five Hundred Dollars (\$247,500) for willfully and repeatedly violating 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

16. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, Clear Channel Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeitures 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 Numbers ("FRN") referenced above and also should note the NAL/Account Numbers referenced above.

18. The responses, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington D.C. 20554 and MUST INCLUDE the NAL/Acct. Nos. referenced above.

19. 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.

20. 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. 20554.³⁴

21. 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. 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 A 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 A, please contact OCBO at (202) 418-0990.

³³ 47 C.F.R. § 1.80.

³⁴ See 47 C.F.R. § 1.1914.

22. Accordingly, IT IS ORDERED, that the complaint filed against Station WWDC-FM's broadcast of March 13, 2003, IS GRANTED, and the complaint proceeding IS HEREBY TERMINATED.

23. IT IS FURTHER ORDERED, that a copy of this *Notice of Apparent Liability For Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, to Richard W. Wolf, Vice President, Clear Channel Communications Inc., 200 East Basse Road, San Antonio, TX 78209-8328; Troy G. Langham, FCC Specialist, Clear Channel Communications Inc., 2625 S. Memorial Drive, Suite A, Tulsa, OK 74129; Capstar TX Limited Partnership, FCC Contact, 600 Congress Ave., Suite 1400, Austin, TX 78701.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Attachment A

FCC List of Small Entities

October 2002

ATTACHMENT A

FCC List of Small Entities

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

(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	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for 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)
Broadband Personal Communications Services (Block F)	
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 -

900 MHz Specialized Mobile Radio	Small Business is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
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
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
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	
Instructional Television Fixed Service	\$12.5 Million in Annual Receipts or Less
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 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	<p>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)</p> <p>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)</p>
<i>Miscellaneous</i>	
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)

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

Re: AMFM Radio Licenses, L.L.C., Licensee of Station WWDC-FM, Washington, D.C.; Clear Channel Broadcasting Licenses, Inc., Licensee of Station WRXL(FM), Richmond, Virginia; Capstar TX Limited Partnership, Licensee of Station WOSC(FM), Bethany Beach, Delaware; Notice of Apparent Liability for Forfeiture

In this case, three Clear Channel stations aired graphic and explicit sexual content on nine different occasions -- including the use of sexual material in promotional rebroadcasts. Clear Channel has been the subject of repeated indecency actions at the FCC, and this show in particular has been the subject of previous complaints. Yet, notwithstanding the repeated nature of Clear Channel's transgressions, the majority proposes a mere \$27,500 fine for each incident. Such a "cost of doing business fine" is never going to stop the media's slide to the bottom.

For repeat offenders as in this case, I believe the Commission should have designated these cases for license revocation hearings. I recognize that Clear Channel has taken some steps in recent days to address indecency on its stations. A hearing would have provided the Commission with the ability to consider what actions the stations took in response to these broadcasts and to decide on the appropriate penalty.

I am discouraged that my colleagues would not join me in taking a firm stand here against indecency on the airwaves. The time has come for the Commission to send a message that it is serious about enforcing the indecency laws of our country. That message has yet to go forth.

**CONCURRING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: AMFM Radio Licenses, L.L.C., Licensee of Station WWDC(FM), Washington, DC; Clear Channel Broadcasting Licenses, Inc., Licensee of Station WRXL(FM), Richmond, Virginia; Capstar TX Limited Partnership, Licensee of Station WOSC(FM), Bethany Beach, Delaware; Notice of Apparent Liability for Forfeiture

Consistent with my past statements, I believe we should be fining broadcasters on a “per utterance” basis.³⁵ I also believe that, when determining the amount of fine, we should take into consideration the circumstances and actions of the particular broadcaster. Unlike some broadcasters, Clear Channel recently has agreed to pay an unprecedented fine, without contest, for past indecency violations. In addition, it has announced a comprehensive policy to reduce the likelihood that indecent broadcasts occur. Indeed, it has already taken steps to implement its “zero-tolerance” policy. We also should take such steps into consideration.

³⁵ See, e.g., Separate Statement of Commissioner Martin, *Infinity Broadcasting Operations, Inc., Licensee of Station WKRR-FM, Detroit, Michigan*, Notice of Apparent Liability, 18 FCC Rcd. 6915, 6939 (2003) (urging the Commission to fine violators “per utterance”).

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: AMFM Radio Licenses, L.L.C., Licensee of Station WWDC(FM), Washington, DC; Clear Channel Broadcasting Licenses, Inc., Licensee of Station WRXL(FM), Richmond, Virginia; Capstar TX Limited Partnership, Licensee of Station WOSC(FM), Bethany Beach, Delaware; Notice of Apparent Liability for Forfeiture

I support this Notice of Apparent Liability for the broadcast of indecent material at a time when children may be in the audience. By issuing this NAL, we step up to our responsibility to enforce statutory and regulatory provisions restricting broadcast indecency. Once again, we impose statutory maximum fines and remind broadcasters that the Commission can and will avail itself of a range of enforcement sanctions, including acting on each separate indecent utterance, or initiating proceedings that could result in the revocation of station licenses for serious, repeated violations.

Since I arrived at the Commission, we have greatly stepped up our enforcement against indecent broadcasts. I expect that these stepped-up actions will convince broadcasters that they cannot ignore their responsibility to serve the public interest and to avoid the broadcast of indecent material over the public airwaves. Indeed, Clear Channel has recently taken steps to show that it is meeting this obligation, including the payment of an unprecedented fine without objection for a past indecency violation.