



# NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Circ 1974).

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**FOR IMMEDIATE RELEASE**  
October 2, 2003

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**COMMISSION PROPOSES STATUTORY MAXIMUM FORFEITURE OF \$55,000  
AGAINST AMFM RADIO LICENSES  
FOR APPARENT VIOLATIONS OF INDECENCY RULES**

**Washington, D.C.** - Today, the Commission issued a *Notice of Apparent Liability for Forfeiture* against AMFM Radio Licenses, LLC ("AMFM"), licensee of Station WWDC-FM, Washington, D.C., for apparently willfully and repeatedly broadcasting indecent material between the hours of 6 a.m. to 10 p.m. on May 7 and 8, 2002, in apparent violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's Rules. The Commission proposed a monetary penalty against AMFM for the maximum statutory amount of \$27,500 for each separate broadcast, for a total of \$55,000.

The Commission based its action on complaints concerning material broadcast over Station WWDC-FM during the May 7 and 8, 2002, "Elliot in the Morning" programs. The complaints alleged that, on May 7, AMFM aired a station-sponsored promotion, to which two female students at a local high school responded by calling the station. During the course of the station hosts' on-air interviews of the girls, the hosts questioned them about their sexual activities at the school and made repeated and graphic references to oral sex. On May 8, the station aired conversations between the hosts and additional callers, including other students, that also focused on oral sex.

The Commission concluded that the material in these broadcasts appeared to meet the Commission's indecency definition. Specifically, there were graphic and explicit references to the sexual activities of the school's students and administrators, and the discussions about and references to sexual activities pervaded both broadcasts. In addition, the manner in which the station presented this material appeared to demonstrate an intent by the station's licensee that both broadcasts pander and shock listeners. The Commission proposed a forfeiture for the maximum statutory amount because of the egregious nature of the material, the degree of licensee culpability and the recent history of the airing of indecent broadcasts on stations controlled by Clear Channel Communications, Inc., the corporate parent of AMFM.

Action by the Commission, October 2, 2003, Notice of Apparent Liability for Forfeiture (FCC 03-233). Chairman Powell, Commissioners Abernathy and Adelstein. Commissioner Copps

dissenting and issuing a statement. Commissioner Martin concurring and issuing a statement. Commissioner Adelstein issuing a separate statement.

Enforcement Bureau contacts: Suzanne Tetreault, at (202) 418-7450; William Freedman, at (202) 418-1415.

**Statement of Commissioner Michael J. Copps,  
Dissenting**

*Re: Infinity Broadcasting Operations, Inc., Licensee of Stations WNEW(FM), New York, New York; WYSP(FM), Philadelphia, Pennsylvania; KYCY(AM), San Francisco, California; Infinity Radio Operations, Inc., Licensee of Stations WBUF(FM), Buffalo, New York; KSFN(AM), North Las Vegas, Nevada; WXTM(FM), Cleveland Heights, Ohio; WAZU(FM), Circleville, Ohio; KUPL(AM), Portland, Oregon; Infinity Radio Subsidiary Operations, Inc., Licensee of Station KXOA(FM), Roseville, California; Infinity Broadcasting Corporation of Dallas, Licensee of Station KLLI(FM), Dallas, Texas; Infinity Broadcasting Corporation of Washington, D.C., Licensee of Station WJFK-FM, Manassas, Virginia; Infinity Holdings Corporation, Licensee of Station WCKG(FM), Elmwood park, Illinois; Hemisphere Broadcasting Corporation, Licensee of Station WBCN(FM), Boston, Massachusetts, Notice of Apparent Liability for Forfeiture; AMFM Radio Licenses, Licensee of Station WWDC-FM, Washington, D.C., Notice of Apparent Liability for Forfeiture*

I dissent from the Commission's decisions to provide no more than a slap on the wrist to Infinity (owned by Viacom) and Clear Channel rather than take serious action to address indecency on our airwaves. Today, the majority proposes a \$27,500 fine for each incident of airing what the majority agrees appears to be indecent programming at a time when children likely composed a significant portion of the audience.

In the case of Infinity/Viacom, thirteen stations ran the "Opie & Anthony Show" which contained a broadcast of sexual activity at St. Patrick's Cathedral in New York as part of an on-air stunt. In this stunt, called "Sex for Sam," couples received points for having sex in public places. In addition to St. Patrick's Cathedral, the broadcast described sexual activity at restaurants, at the Disney Store and at FAO Schwartz. In the case of Clear Channel, one of its stations, WWDC-FM, broadcast an "Elliot in the Morning" show which included a station-sponsored promotion to which female high school students called in for the opportunity to audition to dance in a cage at an upcoming rock concert. The show's hosts questioned the girls about their sexual activities at their school -- Bishop Denis J. O'Connell High School -- actively solicited other high school students to call, and made repeated and graphic references to oral sex.

Neither of these cases is a difficult call. Both are outrageous and both were run by stations whose owners knew better and whose parent companies have had previous indecent broadcasts brought before this Commission. I believe we should designate these cases for a hearing on the possible revocation of these stations' licenses, as provided for by section 312(a)(6) of the Communications Act.

I am particularly troubled by the decision on the "Opie and Anthony Show." I defy anyone to read the transcript and argue that this broadcast does not violate the statutory prohibition against airing indecent material. And I defy anyone to argue that a \$27,500 fine to each of the stations owned by a multi-billion dollar conglomerate is adequate to address this clear violation of federal law.

Infinity/Viacom could pay this entire fine by tacking just one more commercial onto one of its prime-time TV shows and probably pocket a profit to boot. Some punishment!

The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material. The majority claims further to recognize the seriousness of the offense. And it even concedes that the Commission has the option of the license revocation process. But then it turns timid and decides that the appropriate recourse for this filth is a \$27,500 fine against each station. In other words, the majority determines that these stations deserve yet another chance before the Commission even considers revoking a license. When, I ask, will this end?

This is not the first action against a station owned by Infinity. Infinity stations paid \$1.7 million in 1995 to settle a series of indecency cases. As part of that settlement, Infinity agreed to take steps to prevent further broadcast of indecent material. More complaints involving other Infinity broadcasts followed. Last April, this Commission issued another tepid proposed fine against another station owned by this same company – WKRK-FM in Detroit – which had aired some of the most vulgar and disgusting indecency that I have had the misfortune to examine. In that decision, the majority warned that repeated serious violations by Infinity could result in the revocation of station licenses. The majority repeats that same warning again in this decision.

Yet, two months prior to the airing of “Sex for Sam” on the “Opie and Anthony Show,” this agency cited the same show for three separate apparent violations of the indecency statutes. These shows aired between November 2000 and January 2001. In one instance, a graphic song about a father having oral sex with his young daughter was broadcast. In the second instance, the “Opie and Anthony Show” aired another graphic song by a man seeking girls between the ages of two and three for sex. In the third instance, the show provided detailed instructions to a teenager and then broadcast her rubbing a telephone between her legs.

If this situation does not meet the majority’s test for repeated violators, I fail to understand what would. The message to licensees is clear. Even egregious repeated violations will not result in revocation of a license. Rather, they will result only in a financial penalty that doesn’t even rise to a serious cost of doing business.

I wonder when this Commission will finally take a firm stand against the “race to the bottom” on our airwaves. The time has come for us to send a message that we are serious about enforcing the indecency laws of our country and that we will be especially vigilant about the actions of repeat offenders such as those cases before us here. Instead we turn an apparently incurable deaf ear to millions of Americans who are fed up with the patently offensive programming sent into their homes so regularly. Today’s decision does nothing to discourage such programming.

It all comes down to this: station owners aren’t given licenses to use the public’s airwaves to peddle smut. They are given licenses to serve the public interest.

## Separate Statement of Commissioner Kevin J. Martin

*Re: AMFM Radio Licenses, LLC, Licensee of Station WWDC-FM, Washington, DC., Notice of Apparent Liability for Forfeiture*

I support the finding in this Notice of Apparent Liability that the licensee apparently violated our rule against the broadcast of indecent content, but I would have proposed a higher fine. I am concerned, for example, that the hosts of this show engaged in these on-the-air telephone conversations with minors. As I have said in similar cases, we could have found that each time the show's hosts started talking about an indecent topic or had a separate distinct conversation, the ensuing conversation constituted a separate violation.<sup>1</sup> In prior cases, the Commission has acknowledged that we have the discretion to consider each indecent utterance a separate violation.<sup>2</sup>

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<sup>1</sup> See Separate Statement of Commissioner Kevin J. Martin, *Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 6915 (2003) (*Infinity Detroit NAL*).

<sup>2</sup> *Infinity Detroit NAL* at para. 13 (clarifying that the Commission could pursue enforcement action for each indecent utterance). See also 18 U.S.C. § 1464 (specifying that “[w]hoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.”).

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN ADELSTEIN**

*Re: AMFM Radio Licenses, LLC, Notice of Apparent Liability for Forfeiture*

This Notice sends the unmistakable message to Clear Channel and other broadcasters who violate our indecency rules: We are stepping up our enforcement. Once again, we give fair warning that the Commission can and will avail itself of a range of enforcement sanctions, including the initiation of proceedings that could result in the revocation of these stations' licenses. I will not hesitate to consider such revocation proceedings for serious violations that occur after the explicit notice we provided in April in WKRK-FM. Similarly, as broadcasters were explicitly notified in April, I will also support on a going-forward basis an approach that treats each indecent utterance, such as distinct conversations or program segments, as a separate violation under our rules. This will substantially increase our fines, which by statute are capped at an inadequate level, so they will be more commensurate with the offenses.

The Commission reached the obvious conclusion that AMFM Radio Licenses, whose corporate parent is Clear Channel, broadcast indecent material and should be liable for the full statutory maximum forfeiture amount. It took far too long for us to reach this conclusion, and I hope we will act more swiftly in the future to send a clear message.

AMFM's actions here were unquestionably willful and egregious. Hosts of the "Elliot in the Morning" program repeatedly probed school students about sexual activity conducted inside a Catholic high school and actively solicited calls from other students to elicit similar information. The hosts amplified their sexual banter by simulating the act of oral sex with numerous sound effects broadcast over the air. Goading school children in a pandering manner to discuss sexual activities of students and administrators in a school setting shows a deliberate attempt to heighten the shock to listeners. The broadcasts clearly offended community standards.

Unfortunately, the statutory constraints on our ability to level fines are currently inadequate, as the low fines can be considered by broadcasters as a cost of doing business and not a serious deterrent. In this case, a fine below the statutory maximum would not accurately reflect the circumstances and AMFM's culpability. I believe strongly that our fines, or other appropriate enforcement actions, should be sufficient to deter broadcasters from broadcasting indecent material on the public's airwaves at a time when children are listening. Today's action, while an important step in that direction, must be followed by more stringent, swifter and stricter enforcement of our statutory obligation to prevent indecent broadcasts over the public airwaves.