



NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE
January 27, 2004

NEWS MEDIA CONTACTS:
Suzanne Tetreault (202) 418-7450
Lisa Fowlkes (202) 418-7450

**COMMISSION PROPOSES TO FINE CLEAR CHANNEL COMMUNICATIONS
\$755,000 FOR APPARENT VIOLATIONS OF INDECENCY
AND PUBLIC INSPECTION FILE RULES**

Washington, D.C. – Today, the Federal Communications Commission issued a Notice of Apparent Liability for Forfeiture against several subsidiaries of Clear Channel Communications for apparently airing indecent material over several broadcast stations during several days. The material at issue was aired in connection with the “Bubba the Love Sponge” program. The Commission proposed the statutory maximum forfeiture of \$27,500 for each of 26 apparent indecency violations. This forfeiture is the highest ever proposed against a broadcast licensee.

The Commission found 26 apparent indecency violations that involved graphic and explicit sexual and/or excretory material, and were designed to pander to, titillate and shock listeners. The Commission proposed the statutory maximum forfeiture amount because of Clear Channel’s history of transgressions relating to the broadcast of indecent material over stations licensed to its subsidiaries.

The proposed forfeiture also includes \$40,000 for Clear Channel’s apparent failure to maintain certain required documents in the public inspection files of these stations.

Action by the Commission, January 27, 2004, Notice of Apparent Liability for Forfeiture (FCC 04-17). Chairman Powell, Commissioners Abernathy, Martin, and Adelstein. Commissioner Copps dissenting and issuing a separate statement. Chairman Powell issuing a separate statement. Commissioner Martin issuing a separate statement. Commissioner Adelstein issuing a separate statement.

Enforcement Bureau Contacts: Suzanne Tetreault or Lisa Fowlkes (202) 418-7450.

-FCC-

**STATEMENT STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida; WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida.

Seven broadcasts, twenty-six indecency violations, four public file violations and fines equaling \$755,000. By today's action, we provide yet another example of this Commission's commitment to enforce its rules and regulations—especially as it relates to indecent programming engulfing our broadcast airwaves.

As the Commission with the strongest enforcement record in decades, it should come as little surprise that this Commission's indecency enforcement has dwarfed its predecessors. I am proud of the fact that over the past three years, we have proposed nearly twice the dollar amount of indecency fines than the previous two Commissions combined (over seven years) and ten times the amount of fines proposed by the last Commission.

Now is not, however, a time to rest on our laurels and no broadcaster should believe that we will. Indeed, due to the leadership on this issue from Commissioner Martin, the Commission will soon begin considering fines for each separate utterance found indecent in a broadcast. In addition, we will continue to look to Congress to dramatically increase the enforcement penalties available to us to prosecute clear indecency violations. I applaud Chairman Upton, Chairman Tauzin, Congressmen Dingell and Markey, Chairman McCain, Senator Hollings and the many others on both sides of the aisle in Congress for providing vital leadership on this issue.

As the Commission continues the challenging task of balancing the protections of the First Amendment with the need to protect our young, these increased enforcement actions will allow the Commission to turn what is now a "cost of doing business" into a significant "cost for doing indecent business."

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

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida, WCKT(FM), Port Charlotte, Florida; Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

I agree with this Notice's conclusion that the licensees at issue apparently violated our indecency rule and public file requirements.

I write separately to emphasize again that we could, and should, be placing higher fines on those who broadcast indecent programming during the hours when children may be watching or listening, in violation of our rules and statute. The governing statute targets "whoever utters" indecent or profane language, and the Commission should not continue to treat an entire program full of indecent "utterances" as just one violation.¹ We should not continue to give a broadcaster who violates our indecency rule at the beginning of a program a "free pass" for the next two hours.

In this case, I would have found numerous violations, for a total indecency fine significantly higher than that proposed (it appears there were at least 49 indecency violations, for a total forfeiture exceeding \$1,000,000).

¹ See 18 U.S.C. § 1864 ("Whoever 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"), 47 C.F.R. § 73.3999 ("No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent").

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Clear Channel Broadcasting Licenses, Inc., Notice of Apparent Liability for Forfeiture

The Commission has a duty to enforce statutory and regulatory provisions restricting broadcast indecency. The material broadcast by these four Clear Channel radio stations is undeniably graphic and explicit in its sexual content and clearly intended to shock listeners. Clear Channel and, indeed, this particular “Bubba the Love Sponge” program have been the subject of repeated Commission indecency actions in the past. Given the explicit nature of the broadcast material and the history of prior offenses, this is the type of serious repeated behavior that I believe would warrant initiation of license revocation hearings.

In fairness, however, this material was broadcast in 2001. The Commission clarified in an April 2003 order that it was broadening its range of enforcement approaches and tools to combat indecency on our nation’s public airwaves. For this reason, I approve of today’s Order as legally appropriate. The egregious nature of the material clearly warrants the statutory maximum \$27,500 fine per violation. While the Commission at all times has the authority to initiate license revocation hearings or sanction for multiple indecent utterances in a given program segment, it can be argued that the Commission was not employing these approaches at the time this material was broadcast. Nonetheless, as we made clear last year, broadcasters are now aware that the Commission will not hesitate to use its full range of enforcement sanctions for indecent material broadcast after April 2003.

I also acknowledge the importance of broadcasters adhering to the public inspection file rules. Documents pertaining to an FCC investigation are clearly within the scope of the information that must be maintained in a manner accessible to the listening public. In this case, each of the stations inexplicably failed to include complaints related to the airing of this material in their public files.

A broadcast license is a public privilege. In return, broadcasters have a responsibility to serve the public. This public interest responsibility clearly encompasses protecting children from indecency on the airwaves and facilitating public access to documentation through which the station can remain accountable to its local community and listening public. These stations exhibited a blatant disregard for both.

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

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Stations WPLA(FM), Callahan, Florida, and WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

In this case, four Clear Channel stations aired on several occasions graphic and explicit sexual content as entertainment. The extreme nature of these broadcasts and the fact that the show at issue has been the subject of repeated indecency actions gives the FCC the obligation to take serious action. Instead, the majority proposes a mere \$27,500 fine for each incident. Such a fine will be easily absorbed as a “cost of doing business” and fails to send a message that the Commission is serious about enforcing the nation’s indecency laws. “Cost of doing business fines” are never going to stop the media’s slide to the bottom.

To fulfill our duty under the law, I believe the Commission should have designated these cases for a hearing on the revocation of these stations’ licenses, as provided for by Section 312(a)(6) of the Communications Act. I am discouraged that my colleagues would not join me in taking a firm stand against indecency on the airwaves.

If the Commission can’t bring itself to go to a revocation hearing, at least the Commission should have used its current statutory authority to impose a higher and meaningful fine. The Commission could have proposed a fine for each separate “utterance” that was indecent, rather than one fine for each lengthy segment. As Commissioner Martin points out, such an approach would have led to a significantly higher fine.

Here, four Clear Channel stations ran several segments of the “Bubba the Love Sponge” show which contained graphic and explicit sexual content. The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material numerous times. But then the majority inexplicably determines that the appropriate recourse for this filth is a \$27,500 fine for each violation.

The majority states that, in light of Clear Channel’s history of violations of the indecency rules, other serious multiple violations “may well lead to license revocation proceedings.” The majority fails to acknowledge that not just Clear Channel, but the “Bubba the Love Sponge” show, has been the subject of at least three previous fines for violating our nation’s indecency laws. This is not even “three strikes and you are out” enforcement. How many strikes are we going to give them?

This case may well lead broadcasters to believe that this Commission will never use the enforcement authority it currently has available to it. 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 is merely a cost of doing business.

The time has come for this Commission to take a firm stand against the “race to the bottom” as the level of discourse on the public’s airwaves gets progressively coarser and more violent. Our enforcement actions should convince broadcasters that they cannot ignore their responsibility to serve the public interest and to protect children. The FCC’s action today fails to do so.