

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

In the Matter of	)	
	)	
<b>CLEAR CHANNEL COMMUNICATIONS, INC.</b>	)	NAL/Acct. No. 200432080140
	)	FRN No. 0005813753
	)	
<b>AMFM RADIO LICENSES, L.L.C.,</b>	)	FRN No. 0001656586
	)	NAL/Acct. No. 200432080016
<b>CLEAR CHANNEL BROADCASTING LICENSES, INC. AND</b>	)	FRN No. 0001587971
	)	NAL Acct. No. 200432080017
	)	
<b>CAPSTAR TX LIMITED PARTNERSHIP</b>	)	FRN No. 0003474905
	)	NAL/Acct. No. 200432080018
Licenses of Stations	)	
WWDC(FM), Washington, D.C., WRXL(FM),	)	Facility ID No. 8682
Richmond, Virginia and WOSC(FM), Bethany	)	Facility ID No. 11961
Beach, Delaware	)	Facility ID No. 4674
	)	
Notice of Apparent Liability for Forfeiture	)	
released March 12, 2004 (FCC 04-47) <sup>1</sup>	)	
	)	
<b>CAPSTAR TX LIMITED PARTNERSHIP</b>	)	NAL/Acct. No. 200432080012
	)	FRN No. 0003474947
Licenses of Stations	)	
WAVW(FM), Stuart, Florida and WCZR(FM),	)	Facility ID No. 14376
Vero Beach, Florida	)	Facility ID No. 41066
	)	
Notice of Apparent Liability for Forfeiture	)	
released March 18, 2004 (FCC 04-36) <sup>2</sup>	)	
	)	
<b>CLEAR CHANNEL BROADCASTING LICENSES, INC.</b>	)	NAL/Acct. No. 20042380023
<b>CITICASTERS LICENSES, L.P. AND</b>	)	FRN No. 0004953659
<b>CAPSTAR TX LIMITED PARTNERSHIP</b>	)	
	)	
Licenses of Stations	)	
WBGG-FM, Fort Lauderdale, Florida, WTKS-	)	Facility ID No. 11965
FM, Cocoa Beach, Florida,	)	Facility ID No. 53457
WTFX-FM, Louisville, Kentucky, KIOZ(FM),	)	Facility ID No. 53593
San Diego, California, WNVE(FM), Honeoye	)	Facility ID No. 13504
Falls, New York and WXDX-FM, Pittsburgh,	)	Facility ID No. 24958
Pennsylvania	)	Facility ID No. 60153
	)	
Notice of Apparent Liability for Forfeiture	)	
released April 8, 2004 (FCC 04-88) <sup>3</sup>	)	

<sup>1</sup> File Nos. EB-03-0121, EB-IH-0736 and EB-03-IH-0737.

<sup>2</sup> File No. EB-02-IH-0564-AHB.

**ORDER****Adopted: June 4, 2004****Released: June 9, 2004**

By the Commission: Chairman Powell issuing a statement; Commissioner Adelstein approving in part, dissenting in part and issuing a statement; Commissioner Copps dissenting and issuing a statement.

1. The Commission has been investigating whether Clear Channel Communications, Inc. and its direct and indirect subsidiaries that hold FCC authorizations ("Clear Channel") may have violated restrictions on the broadcast of obscene, indecent or profane material.<sup>4</sup>

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

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 Clear Channel relating to restrictions on the broadcast of obscene, indecent or profane material.

4. Based on the record before us, in particular Clear Channel's admission that some of the material it broadcast was indecent in violation of 47 C.F.R. § 73.3999, the significant remedial efforts that Clear Channel has already taken and the additional remedial efforts to which Clear Channel has agreed, we conclude that there are no substantial and material questions of fact in regard to these matters as to whether Clear Channel 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,<sup>5</sup> 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 Notices of Apparent Liability for Forfeitures against Clear Channel regarding possible 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 Clear Channel of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 ARE TERMINATED, and all third-party Complaints against Clear Channel 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>3</sup> File No. EB-03-IH-0159.

<sup>4</sup> 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

<sup>5</sup> 47 U.S.C. §§ 154(i), 154(j), 503(b).

Consent Decree

1. The Federal Communications Commission and Clear Channel Communications, Inc., for itself and on behalf of its direct and indirect 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 Clear Channel 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 Clear Channel or any Clear Channel Station;
- (c) "Bureau" means the FCC's Enforcement Bureau;
- (d) "Clear Channel Station" and "Clear Channel Stations" means one or more broadcast stations operated by Clear Channel;
- (e) "Clear Channel" means Clear Channel Communications, Inc., and all of its direct and indirect 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, alleging violations of the Indecency Laws by Clear Channel Stations, including (but not limited to) 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) "Indecency Laws" means 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.
- (k) "Inquiries" means investigations of alleged violations of the Indecency Laws by Clear Channel Stations that have resulted in LOIs to Clear Channel, or to other licensees that relate to Clear Channel Stations;
- (l) "NALs" means Notices of Apparent Liability for Forfeiture issued pursuant to Section 1.80 of the Rules, including (i) that certain Notice of Apparent Liability for Forfeiture concerning AMFM Radio Licenses, L.L.C., et al., released March 12, 2004 (FCC 04-47), (ii) that certain Notice of Apparent Liability for Forfeiture concerning Capstar TX Limited Partnership released March 18, 2004 (FCC 04-36), and (iii) that certain Notice of Apparent Liability for Forfeiture concerning Clear Channel Broadcasting Licenses, Inc., released April 8, 2004 (FCC 04-88).
- (m) "Parties" means Clear Channel Communications, Inc., and the Commission;
- (n) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations;

## I. BACKGROUND

3. Both the Commission and Clear Channel acknowledge that any proceedings that might result from the NALs, 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 Clear Channel with the Indecency Laws, the Commission and Clear Channel 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. Clear Channel 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 NALs, 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 Clear Channel, any Clear Channel Station, or any pending or future application to which Clear Channel 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 NALs, (ii) the Inquiries, (iii) the Complaints, (iv) any other similar complaints alleging violation by any Clear Channel 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 NALs, the Inquiries, the Complaints, any other similar complaints alleging violation by any Clear Channel 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 Clear Channel or any Clear Channel Station, and shall treat all such matters as null and void for all purposes.

9. Clear Channel represents that it has adopted, and is currently in the process of implementing, 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. Clear Channel 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. Clear Channel 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.

10. Within five (5) business days after the Adopting Order becomes a Final Order, without any modifications to this Consent Decree adverse to Clear Channel or to any Clear Channel Station, Clear Channel shall make a voluntary contribution to the United States Treasury in the amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). Clear Channel 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. 200432080140 and FRN No. 0005813753. If Clear Channel 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 Clear Channel makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

11. Clear Channel 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 Clear Channel or any Clear Channel 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, Clear Channel 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 Clear Channel 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.

12. Clear Channel 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 NALs 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 Clear Channel's 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 Clear Channel 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 Clear Channel Station.

13. 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.

14. Clear Channel 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.

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

16. This Consent Decree may be executed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: \_\_\_\_\_  
Marlene H. Dortch  
Secretary  
Date:

CLEAR CHANNEL COMMUNICATIONS, INC .

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

By: \_\_\_\_\_

Andrew W. Levin  
Executive Vice-President and Chief Legal Officer  
Date:

**COMPLIANCE PLAN**

Clear Channel has adopted, and is implementing, a company-wide compliance plan for the purpose of preventing the broadcast over radio or television of material violative of the Indecency Laws. This compliance plan, known as the “Responsible Broadcasting Initiative,” consists of the following four components:

1. Clear Channel will conduct training on obscenity and indecency for all on-air talent and employees who materially participate in programming decisions, which will include tutorials regarding material that the FCC does not permit broadcasters to air. This training will also include components that educate Clear Channel employees about its values, mission and sense of corporate responsibility. Such training will be provided to all such Clear Channel employees within thirty (30) days of the Effective Date of this Compliance Plan. The training will be provided to all such new Clear Channel employees promptly after they commence their duties. Refresher training will be provided to all employees described above at least once every twelve (12) months.

2. If a Clear Channel station receives a Notice of Apparent Liability or other proposed action for a broadcast occurring after the adoption of this Initiative 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 the FCC’s 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 on a Clear Channel station following remedial training, his or her broadcasts will be subjected 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 Clear Channel 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 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 Clear Channel.

4. Clear Channel will fully participate with representatives of the broadcast, cable and satellite industries in any efforts that may emerge to develop a voluntary industry-wide response to indecency and violence.

**STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Clear Channel Communications, Inc.*

Today's consent decree marks a significant victory for the Commission and the American public. Through the consent decree, we have secured the highest enforcement concessions by a broadcaster in Commission history. Clear Channel has agreed to make the highest enforcement-related payment to the Treasury by a broadcaster in Commission history--\$1.75 million. In addition, Clear Channel has now formally admitted that it violated the law and has made binding commitments to clean up its act, including preventive measures such as training for on-air personalities and employees that participate in programming decisions and the use of time delays in its broadcasts. In addition, those accused of violating the Commission's rules will be suspended and if ultimately found to violate our rules, will be terminated.

Notwithstanding these accomplishments, the government's involvement in content regulation can be a dangerous game. Even where well intended, in our desire, for instance, to protect children from indecent broadcasts, encroachments on content can have adverse affects on the public interest. By its very nature, government action, or even mere threats, to quell protected speech can have the unintended consequence of depriving the public of a speaker's artistic, literary, scientific or political viewpoint.

Grounded in the First Amendment is our forefathers' concern that the policymaker could be tempted to misuse power for their own self-interest. They knew that the sword that wields the power to intentionally abridge speech and information is the most potent instrument of all. As the Commission is tasked with walking the delicate balance of protecting the interests of the First Amendment with the need to protect our children, it is incumbent upon us to make best efforts to avoid the realization of our forefathers' concerns.

This task is made easier when our licensees wrestle the difficult decisions away from the government and take the responsibility for what they broadcast over our nation's airwaves. In the case of Clear Channel Communications, they have done just that through the substantial commitments agreed to in this consent decree.

Oddly enough, these actions are not sufficient for some on the Commission. In their zealously, they would prefer to expend valuable Commission resources to fully investigate each complaint against Clear Channel only to inflict more punishment. Enforcement of our regulations is not, however, simply a matter of punishment for past behavior. More importantly, our enforcement regime is designed to deter future illegal behavior.

Where, as here, the licensee has taken significant steps to guard against future violations, the benefits of entering into a consent decree for the government and the public are obvious. Not only will a substantial amount of money be submitted to the Treasury by the company, but we achieve significant commitments from the company that the fines are intended to produce. In addition, the government, and therefore the public, will save time and resources, which can be redeployed to focus on more egregious violators that are less willing to take preventive steps. Finally, the government gains an admission of responsibility from the licensee without going to the laborious and expensive process of prosecuting these actions in court.

For one to toss aside these public benefits and demand another pound of flesh suggests that nothing short of economic ruin or license revocation will truly satisfy. I believe such stances are excessively chilling of protected speech in this country and fail to be respectful of the limits imposed upon us by the First Amendment.

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

*Re: Clear Channel Communications, Inc.*

Before the Commission enters into a settlement agreement, it should understand the full scope of what it is addressing. Today, the Commission instead enters into a consent decree with Clear Channel to settle all of the outstanding indecency complaints against the company without understanding the extent of the indecency that was broadcast. Additionally, the Commission removes all consideration of this issue from the license reapplication process. Despite my colleague's assertion, my dissent is about process—and the process here is inadequate. What message do we send to citizens when we fail even to investigate their complaints before making a sweeping settlement?

Here is what we do know. We know there are indecency complaints concerning at least 200 broadcasts pending against Clear Channel. To the extent that some of these broadcasts were likely aired on more than one station, the number of indecency incidents could grow much larger. We also know that over two-thirds of the indecency fines proposed by the Commission since 2000 have been against Clear Channel. We further know that the Commission relies entirely on viewers and listeners to file complaints about indecent broadcasts. The FCC places a heavy burden on complaining citizens to submit tapes, transcripts, or significant excerpts of broadcasts before it will even initiate an investigation. Citizens have a right to expect Commission follow-through on their complaints. Yet all too often, these complaints languish unaddressed at the Commission for a year or more. Today a majority decides that, rather than investigate these pending complaints or even seek information about these broadcasts as part of the settlement discussions, it will wipe the slate clean for Clear Channel.

I recognize that Clear Channel in recent months has taken promising steps to curtail indecency on its stations. I commend the company's initiative, yet I believe the Commission has a duty to get an accounting of the broadcasts at issue before finalizing a settlement agreement. Absent this process, I do not believe we have the information needed to evaluate whether this consent decree truly serves the public interest or whether it even responds to the many pending but uninvestigated complaints.

I am also troubled by the possible 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 this entire part of the record off the table. We are closing our ears to any citizen who believes that a station's indecency actions over the term of its license have any bearing on its fitness to continue using the public airwaves. This settlement reaches too far and grants too much. 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 their complaints no longer matter. 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.

It should be a cautionary note that the Commission has gone down this road before. Over eight years ago, the FCC entered into a similar kind of agreement with Infinity Broadcasting to settle a smaller number of proposed forfeitures and pending indecency complaints. Under that agreement, Infinity paid practically the same amount that Clear Channel is paying here and adopted a similar compliance plan to reduce indecent broadcasts. At that time, the Commission praised the level of the payment and the steps Infinity took to ensure compliance with the indecency laws. I don't know of anyone who claims that the 1995 consent decree has resulted in less indecency on the airwaves. In fact, over the past few years, Infinity is second only to Clear Channel in the number of fines. Some would have us believe these fines are powerful disincentives to big companies broadcasting indecency. But one or two million dollar fines need to be seen in the context of these mega-companies' multi-billion dollar revenue streams.

Going forward, I hope my colleagues will accord prompt and vigorous attention to any future listener complaints against Clear Channel. Perhaps the company will be so vigilant that there will be none. In the meantime, I am reminded that President Reagan, whose passing America mourns this week, admonished us “to trust but verify.” His statement was made in a foreign policy context, but I think it is equally applicable here.

This Commission, charged with significant public responsibilities, must always be at pains to demonstrate to citizens that their complaints will not be brushed aside and to let industry know that Commission involvement in these issues is not a passing fancy. Our job at the FCC is to enforce the law and to ensure that all avenues of citizen redress are open to those who wish to use them.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
APPROVING IN PART AND DISSENTING IN PART**

*Re: Clear Channel Communications, Inc.*

I support much of today's action. By admitting that certain broadcasts violated our indecency rules, by making a sizable contribution to the U.S. Treasury, and by entering into a company-wide compliance plan involving training, internal investigations and suspensions, and program delays, Clear Channel has shown that it understands its responsibility to prevent the broadcast of indecent material on its stations. Faithful adherence to the compliance plan should obviate the need for Commission enforcement in this area.

Yet before the Commission enters into a settlement that seeks to resolve all pending matters involving a company's indecency compliance, it should have conducted at least preliminary investigations of those matters to understand the full extent of the possible violations and the suitability of the remedy. With respect to many of the pending Clear Channel matters before the Commission, the staff has indeed investigated the nature of the complaint and in some cases sent out inquiry letters. Yet some of the pending complaints have not even been investigated. It's no threat to the First Amendment to, at a minimum, do some measure of investigation when we receive public complaints seeking to enforce a law that Congress tasked to us and that the courts have upheld under the First Amendment. With respect to including these pending but uninvestigated complaints within the scope of this decree, I dissent in part.