

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

In the matter of	)	
	)	
Infinity Broadcasting Operations, Inc.	)	
	)	File No. EB-02-IH-0109
Licensee of Station WKRK-FM	)	NAL/Acct. No. 200332080010
Detroit, Michigan	)	FRN 0003476074
	)	Facility ID #9618
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 20, 2004

**Released:** March 5, 2004

By the Commission: Commissioners Copps and Martin concurring and issuing separate statements;  
Commissioner Adelstein issuing a statement.

1. In this Memorandum Opinion and Order (“Order”), we deny a petition for reconsideration filed by Infinity Broadcasting Operations, Inc. (“Infinity”), licensee of Station WKRK-FM, Detroit, Michigan, of a Forfeiture Order issued in this proceeding on December 8, 2003. The Forfeiture Order assessed a monetary forfeiture in the amount of \$27,500 against Infinity for willful broadcast of indecent material in violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, during the “Deminski and Doyle Show” on January 9, 2002 between 4:30 p.m. and 5:00 p.m.

2. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters. *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(c). A petition that simply repeats arguments previously considered and rejected will be denied. *Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993). Infinity’s petition repeats its constitutional argument regarding the indecency standard as well as its arguments regarding the Commission’s statements in the NAL that it would consider initiating revocation proceedings for serious violations and may treat separate utterances as separate violations.<sup>1</sup> Review of Infinity’s petition and the Forfeiture Order reveals that the Forfeiture Order contains no material error or omission. We have already considered, and rejected, Infinity’s arguments regarding the constitutionality of the indecency standard.<sup>2</sup> Moreover, as we indicated in the Forfeiture Order,<sup>3</sup> we need not address Infinity’s arguments regarding the circumstances in which it would be appropriate to initiate revocation proceedings due to serious or repeated violations or to find multiple violations in a single program because we do not impose those sanctions in this case. These issues can best be considered in the context of specific cases.<sup>4</sup> We therefore deny Infinity’s petition.

<sup>1</sup> Infinity Broadcasting Operation, Inc. Petition for Reconsideration 1, 2-10 (filed January 7, 2004).

<sup>2</sup> *Infinity Broadcasting Operations, Inc.*, FCC 03-302, ¶ 5 (released December 8, 2003) (“*Infinity Forfeiture Order*”).

<sup>3</sup> *Id.* at ¶ 7.

<sup>4</sup> *See FCC v. Pacifica Foundation*, 438 U.S. 726, 742 (1978) (*plurality opinion*) (contextual approach is “appropriate for courts as well as the Commission when regulation of indecency is at stake . . .”).

3. ACCORDINGLY, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”)<sup>5</sup> and Section 1.106 of the Commission’s Rules,<sup>6</sup> Infinity Broadcasting Operations, Inc.’s petition for reconsideration of the Forfeiture Order **IS DENIED**.

4. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules<sup>7</sup> within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>8</sup> Payment may be made by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No 200332080010 and FRN 0003476074. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

5. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to Stephen Hildebrandt, Vice President, Infinity Broadcasting Operations, Inc., 2000 K Street, NW, Suite 725, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>5</sup> 47 U.S.C. § 405.

<sup>6</sup> 47 C.F.R. § 1.106.

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 47 U.S.C. § 504(a).

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

*Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan,  
Memorandum Opinion and Order*

I concur in the decision to reject Infinity's arguments that enforcement of the indecency statutes is unconstitutional. Nonetheless, I continue to believe that the majority's fine of \$27,500 is insufficient and not even a slap on the wrist to Infinity for airing what can only be described as a vulgar and disgusting broadcast.

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

*Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan,  
Memorandum Opinion and Order*

As I have said repeatedly in this and other proceedings, I am disappointed that a majority of the Commission refuses to use the full extent of our statutory authority to fine broadcasters who violate the indecency laws.<sup>1</sup>

While I agree that Infinity Broadcasting Operations, Inc. violated our indecency regulations during the broadcast of the “Deminski and Doyle Show” on January 9, 2002, I continue to believe the fine of \$27,500 is inadequate, and therefore I concur in this Order. I would have found several violations within this program and assessed the statutory maximum for each violation, for a total fine of over \$200,000.

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<sup>1</sup> See, e.g., *Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan, Notice of Apparent Liability*, 18 FCC Rcd. 6915, 6939 (2003) (Separate Statement of Commissioner Martin, urging the Commission to fine violators “per utterance”).

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit,  
Michigan; Memorandum Opinion and Order*

I am pleased that today we deny a reconsideration petition and allow this case to proceed. I strongly supported the imposition of the statutory maximum forfeiture amount against Infinity Broadcasting Operations, Inc., licensee of station WKRK-FM, Detroit, Michigan, for the willful broadcast of grossly indecent language during the “Deminski and Doyle Show” on January 9, 2002. The material was some of the most egregious broadcast indecency that I have yet encountered. I am disappointed that the licensee in this case continues to challenge this sanction rather than accept responsibility for such an extreme violation of our rules.