

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

In the Matter of) File No. EB-00-IH-0228
)
Citadel Broadcasting Company) NAL/Acct. No. 200132080057
) Facility ID #11229
Licensee of Station KKMGM(FM),)
Pueblo, Colorado)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 31, 2001

Released: June 1, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Citadel Broadcasting Company ("Citadel"), licensee of Station KKMGM(FM), Pueblo, Colorado, has apparently violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules, 47 C.F.R. § 73.3999, by willfully broadcasting indecent language. Based on our review of the facts and circumstances in this case, we conclude that Citadel is apparently liable for a monetary forfeiture in the amount of Seven Thousand Dollars (\$7,000.00).

II. BACKGROUND

2. The Commission received a complaint dated July 18, 2000, concerning repeated broadcasts of a song entitled "The Real Slim Shady" on Station KKMGM(FM). The complaint included lyrics that the complainant contends are offensive. After reviewing the lyrics, we issued a letter of inquiry to the licensee.

3. In its response, Citadel admits that it broadcast "The Real Slim Shady" on a "constant basis on or about July 18, 2000,"¹ but denies that it aired the version quoted by the complainant. Citadel claims that the station actually broadcast a "radio edit" version that omitted certain offensive language through the use of a muting device or overdubbed sound effect.² Citadel submitted a copy of the edited lyrics that it claims the station actually broadcast and argues that those lyrics are not indecent.

III. DISCUSSION

4. Section 503(b)(1) of the Communications Act (the "Act") provides in pertinent part:

¹ Citadel admits that it broadcast the song approximately 408 times during the period May through July 2000.

² Citadel contends that the complainant did not transcribe those lyrics from the actual broadcast, but instead retrieved them from an Internet website.

Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection to have ---

...

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code[]. . . .

shall be liable to the United States for a forfeiture penalty.

18 U.S.C. § 1464 provides criminal penalties for anyone who “utters any obscene, indecent or profane language by means of radio communication.” As explained below, we believe even that the version of “The Real Slim Shady” that Citadel claims to have broadcast over KKMGM(FM) contains indecent material and that the licensee’s broadcast thereof was willful and repeated.

5. The Commission has defined indecent speech as language that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. 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 Commission’s authority to restrict the broadcast of indecent material extends to times when there is a reasonable risk that children may be in the audience. Action for Children’s Television v. FCC, 852 F.2d 1332 (D.C. Cir. 1988). Current law holds that such times begin at 6 a.m. and conclude at 10 p.m. Action for Children’s Television v. FCC, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 116 S.Ct. 701 (1996).

6. After carefully considering the record before us, it appears that Citadel violated our indecency rule with respect to the broadcast of the edited version of “The Real Slim Shady.” Moreover, Citadel does not claim that its broadcast of the song was limited to the time period of 10 p.m. until 6 a.m. The edited version of the song contains unmistakable offensive sexual references. In this regard, portions of the lyrics contain sexual references in conjunction with sexual expletives that appear intended to pander and shock. See Attachment. As we have previously explained, “the context in which material is offered is essential to making a determination as to whether material is indecent.” See In the Matter of Industry Guidance On the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency (“Indecency Policy Statement”), ___ FCC Rcd ___ at para. 9 (FCC 01-90, released April 6, 2001), *citing* WPBN/WTOM License Subsidiary, Inc., 15 FCC Rcd 1838, 1841 (2000). Moreover, unlike the news story concerning organized crime boss, John Gotti, there is nothing about the context of “The Real Slim Shady” which removes the material from the realm of indecency.³ In sum, the lyrics the licensee admits were aired are inappropriate for broadcast during times when children may be in the audience. The Commission previously has found similar material to be indecent,⁴ and we see no basis for finding otherwise in this case.

7. We find also that the broadcast of the edited version of “The Real Slim Shady” was willful and repeated. Citadel does not dispute that the song was played repeatedly throughout the spring and summer months of 2000. Although Citadel contends that it attempted to render the song

³ *See* Peter Branton, 6 FCC Rcd 610 (1991) (subsequent history omitted).

⁴ *See, e.g.*, WQAM License Limited Partnership, 15 FCC Rcd 2518, *recon. denied*, 15 FCC Rcd 15349 (2000) (“The Girl from Ipanema” parody).

suitable for broadcast through editing, we believe that the licensee failed to purge a number of indecent references.

8. Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, both state that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the general action in question, without regard to any specific intent to violate the Commission's rules.⁵ As explained above, Citadel knew that KKMGM(FM) was broadcasting "The Real Slim Shady." In assessing a monetary forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act. Those factors include 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.⁶

9. The Commission's Forfeiture Guidelines set a base forfeiture amount of \$7,000 for transmission of indecent or obscene materials.⁷ After considering all the facts and circumstances, we believe the base forfeiture amount is the appropriate sanction and that neither an upward nor downward adjustment should be made.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,⁹ Citadel Broadcasting Company is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of Seven Thousand Dollars (\$7,000.00) for willfully violating the 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,¹⁰ within thirty days of this NOTICE OF APPARENT LIABILITY, Citadel Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection

⁵ See Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999) *recon. denied*, 14 FCC Rcd 20147 (1999) *petition for review pending sub nom. Grid Radio and Jerry Szoka v. FCC*, No. 99-1463 (D.C. Cir. November 17, 1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁶ 47 U.S.C. § 503(b)(2)(D). See also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Guidelines").

⁷ Forfeiture Guidelines, *supra* note 3, 12 FCC Rcd at 17113.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ 47 C.F.R. § 1.80.

Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to the Charles W. Kelley, 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. No. referenced above.

14. 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.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail -- Return Receipt Requested to Elizabeth E. Goldin, Esq., Counsel for Citadel Broadcasting Company, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914.

ATTACHMENT

Radio Station: KKMG(FM), Pueblo, Colorado
Date/Time Broadcast: May through July 2000
Material Broadcast: "The Real Slim Shady" (excerpts from song lyrics)

Various voices, including the recording artist, Eminem:

Feminist women love Eminem
(Eminem's vocal turntable sound effect: "sicka sicka sicka") Slim Shady, I'm sick of him
Look at him, walking around grabbin' his you know what, flippin' the you know who

"Yeah, but he's so cute, though"

Yeah, probably got a couple of screws up in my head loose
But the worse is what's going on in your parents' bedroom
Sometimes I want to get on TV and just let loose, but can't
But it's cool for Tom Green to hump a dead moose:

"My bum is on your lips
My bum is on your lips"

And if I'm lucky you might just give it a little kiss
And that's the message we deliver to little kids
And expect them not to know what a woman's BLEEP is
Of course, they're gonna know what intercourse is
by the time they hit fourth grade
They got the Discovery Channel, don't they?

"We ain't nothin' but mammals"
Well, some of us cannibals

* * * * *

It's funny cause at the rate I'm goin'
When I'm 30 I'll be the only person in the nursing home flirting
Pinching nurses asses when I'm BLEEP or jerkin'
Said I'm jerkin' but this whole bag of Viagra isn't workin'