

### **Quarterly FCC Report on Consumer Complaints Shows Second Consecutive Substantial Increase in Complaints Regarding Broadcasters and Large Increase Regarding Indecency and Obscenity**

The report on inquiries and complaints for the second quarter of 2003 recently issued by the Commission's Consumer and Governmental Affairs Bureau shows a substantial increase in the number of complaints against broadcasters for the second consecutive quarter. Complaints against broadcasters rose from 439 in the first quarter of 2003 to 724 during the second quarter. In addition, when compared with the fourth quarter 2002 total of 253, the increase looms even larger. "Programming-General Criticism" complaints were down, however, from 111 in the first quarter to 75 for the months of April, May and June.

The number of consumer complaints to the FCC regarding "Programming-Indecency/Obscenity" rose dramatically from the first quarter total of 144 to the second quarter total of 351. Coincident with that increase, Commissioner Michael Copps has continued in recent months to decry the FCC's enforcement record with regard to indecency. In a July 2, 2003 letter to the Parents Television Council, Commissioner Copps gave the Commission a "grade of 'F' for the job it has failed to do in enforcing the statutes that exist to curb indecency." Copps went on to say that as he had traveled the country, he saw "first-hand the palpable and rising anger of the American people over what they and their children are being served up during prime-time viewing hours." Later in his letter, Copps sets forth an action plan of sorts: "I think there is a determination all cross [sic] America to do something now. That includes enforcing the law with sufficient resources so we don't make a mockery of the law; looking at possibly changing our definition of indecency if the current definition is not getting the job done (and seriously considering incorporating excessive violence into that definition, because such violence is every bit as indecent as excessively graphic sexual depictions); and having Congress pursue this matter to see what it can do to encourage more Commission vigilance

on these issues and what more might be done statute-wise. In this regard, I was enormously encouraged at recent Senate Commerce Committee passage of amendments to significantly strengthen our indecency enforcement."

In addition to the Parents Television Council, a number of interest groups, including the Christian Coalition, Morality in Media, the Family Research Council and the Salvation Army are lobbying significantly for stronger FCC action, tougher legal definitions, and new laws from Congress in this area. With the radio license renewal underway, and the television license renewal cycle due to begin next spring, broadcasters should be especially cautious with programming decisions in this superheated political atmosphere.

### **Advocacy Group Files Petitions to Deny License Renewal Applications Against 63 Stations, Alleging Unfitness Based on Group Owner's Record of Fines**

An advocacy group has filed an informal objection seeking to have the FCC deny the license renewal applications of 63 commonly owned stations, alleging that the licensees are unfit based on the record of fines levied against the owner during the license term. The informal objection, filed only seven days before the stations' licenses are set to expire, includes a five-page appendix detailing the violations of state and federal law that the advocacy group believes make the licensees unfit to hold any FCC license.

The informal objection alleges that the licensee and its subsidiaries violated FCC rules and various state laws 36 times over three years, including deceptive advertising, broadcasting telephone conversations without prior consent, airing indecent material during times when children were likely to be in the audience, violating the EAS rules, animal cruelty, misleading the public about the rules for radio contests, illegally taking operational control of a radio station, pleading guilty to a state law charge of criminal mischief, defacing public property and causing the false reporting of a public emergency. Significantly, the informal objection also alleges that one of the stations failed to report a fine for an

FCC rule violation in 2002 on the station's license renewal application, itself a separate violation of FCC rules.

The same advocacy group has filed comments in support of a December 2002 petition for rulemaking filed by the United Church of Christ that seeks a rulemaking on standards of conduct for Commission licensees. The group's comments urge that "a corporate entity that through its action or inaction evidences an absence of ethics or virtue, or tendency to habitually engage in activities which are detrimental to the public health, safety, or welfare including, but not limited to: patterns of misconduct, disregard for the law or government regulations designed to protect the public, failure to prevent deceptive practices, the abdication of responsibility, disregard for government reporting requirements, involvement in lawbreaking in any area of activity, lack of candor and forthrightness with governmental agencies, criminal activity, or patterns of regulatory violations should result in the corporate entity being sanctioned by the Federal Communications Commission."

Some observers are concerned that the Commission may be poised to make a history of rule violations a sort of litmus test for a licensee's fitness, elevating the cost of minor rule violations significantly, and giving advocacy groups a potent weapon. While it is impossible to predict at this time what action, if any, the Commission will take on the request for the rulemaking or the applications for license renewal, we will monitor both proceedings and report as events unfold.

### **Licensee of Illinois FM Station Fined \$21,000 for Broadcasting Indecent Material**

The licensee of an Illinois FM station has been fined \$21,000 for broadcasting indecent material in violation of 18 U.S.C. § 1464 and Section 73.3999 of the FCC Rules. The violations occurred on three different days between 8:00 a.m. and 9:00 a.m., and were brought to the FCC's attention by a listener who supplied audiotapes of the offending programs.

In its response to letters of inquiry from the Enforcement Bureau, the licensee stated that it could not verify the accuracy of transcripts of the programs submitted by the complainant because the station does not routinely archive tapes or transcripts of its programming. The licensee asserted that even if the transcripts were accurate, the programs were not "patently offensive as measured by contemporary community standards for the broadcast medium," the legal standard for determining indecency.

Rejecting all of the licensee's arguments, the Chief asserted that the programs violated the Commission's indecency rule: "First, we disagree with [the licensee's] assertion that the sexual references contained in the material broadcast . . . rely solely on innuendo and are not

explicit or graphic. In any event, the Commission has repeatedly held that 'innuendo may be patently offensive within the meaning of our indecency definition if it is understandable and clearly capable of a specific sexual or excretory meaning, which in context, is inescapable.' The material broadcast . . . contains sexual innuendo, including references to oral sex, genitalia, masturbation, ejaculation and excretory activities. Contrary to [the licensee's] assertion, the sexual references broadcast . . . were not fleeting. The material broadcast . . . which concerns the effect of a sexual stimulant on a female cast member and the reaction of others present to her sexual response has a sexual meaning that is unmistakable. We also reject [the licensee's] argument that the material broadcast . . . does not appear to have been presented to pander, titillate or shock. Moreover, the material broadcast . . . is similar to other material that has been found to be patently offensive."

### **Virginia AM Station Fined \$13,000 for Failing to Register Towers and Failing to Have Locked Fencing**

The licensee of a Virginia AM station has been fined \$13,000 for failing to register its four antenna structures and failing to have the structures enclosed by locked fencing, in violation of sections 17.49 and 73.49 of the FCC Rules. The fine came just a year after the licensee was fined \$3,000 by the Commission for the same rule violations. The first violation was discovered during a routine inspection, while the repeat violation was revealed by a complaint to the FCC.

The licensee's argument that its failure to register the structures was not intentional or willful was rejected out of hand by the Chief of the Enforcement Bureau, as was the argument that the licensee had only recently learned of the need to register the structures: "Licensees are expected to know and comply with the Commission's rules."

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