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FCC Issues Forfeiture for Broadcast of Indecent Material

On October 12, 2000, the Enforcement Bureau of the Federal Communications Commission ("FCC" or "Commission") released a Forfeiture Order affirming an earlier Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$7,000 against Communicast Consultants, Inc. ("CCI"), licensee of Station KRXX(AM), Rexburg, Idaho, for violating the FCC's prohibition against the broadcast of indecent material between the hours of 6:00 a.m. and 10:00 p.m.

Pursuant to a listener complaint, the FCC began an investigation into the broadcast, between 8:00 a.m. and 10:00 a.m., of an allegedly indecent Spanish-language call-in talk show, culminating in the issuance of the NAL. In response to the NAL, CCI argued that the material was not indecent because the broadcast merely used correct anatomical terms that would be heard in any clinical or instructional course on human sexuality. The FCC rejected this argument, holding that while the use of certain terms does not render material indecent per se, the graphic sexual references in the broadcast, as well as the announcer's comments, laughter, and jokes indicated that the material was offered in "a pandering, titillating manner, rendering the material patently offensive," and thereby indecent.

CCI also argued that the Commission failed to consider the community standards of the Rexburg area Spanish-speaking community. The FCC rejected this argument, stating that it need not consider either the community standards of any particular geographic area or the community standards of Spanish speakers generally in order to find an indecency violation. Instead, the FCC evaluates material based on a "broader standard for broadcasting generally."

The FCC also rejected CCI's claims that the broadcast was not "willful" because the program was a syndicated program received via satellite and because the station had no way to predict or control what would be broadcast. The Commission reiterated that the term "willful" means simply that the violator knew it was taking the action in question, and that the licensee is ultimately responsible for all material aired on its station, regardless of its source. Furthermore, the FCC

noted that CCI could have used a delay mechanism in order to monitor the broadcast for potentially indecent material.

Finally, CCI argued that the Commission unfairly singled out CCI from among the approximately thirty other stations that broadcast the syndicated program, and that the \$7,000 forfeiture would be economically crippling. The FCC rejected these contentions, explaining that it generally initiates investigations of allegedly indecent material only in response to complaints filed against a station. The FCC did not accept CCI's claim that the forfeiture would be economically crippling, as CCI failed to provide any supporting financial documentation and could use the proceeds of a pending sale of the station to pay the forfeiture.

It is noted that the FCC continues to vigorously enforce the federal indecency and obscenity laws when presented with listener complaints. The base forfeiture for a single indecency violation is \$7,000, and the FCC has declined to impose lesser fines even though it has the authority to do so.