FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, S.W., Room 3-B443
Washington, D.C. 20554

July 2, 2001

In Reply Refer to:
EB-01-IH-0056 RBP
ID# 53597

Ms. Joyce Moller

Burlington, North Carolina

Dear Ms. Moller:

This is in response to your complaint against radio station WDCG (FM), Durham, North Carolina, for airing allegedly indecent material on February 5, 2001 at 8:00 a.m. during " The Bob and Madison Showgram." In support of your complaint, you submitted a general description of the programming broadcast. Further, you state that you submitted a complaint last year about the "mile high club" broadcast. Based on our research of our Division's records, we have found that this earlier complaint was never received.

Congress has given the Federal Communications Commission the responsibility for administratively enforcing 18 U.S.C. § 1464, which prohibits the broadcast of obscene and indecent programs. To be obscene, material must meet a three-prong test: (1) an average person, applying contemporary community standards, must find that the material as a whole, appeals to the prurient interest; (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political, or scientific value. *See Miller v. California*, 413 U.S. 15 (1973). Upon review of your abbreviated description of what you heard, we cannot determine that the elements of the aforementioned three-prong test have been satisfied to meet the definition of obscenity.

As to the February 5, 2001 complaint, we understand that you are offended by the programming described, however, it does not appear that we have any basis for action at this time. The Commission has defined indecency 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. *Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, FCC 01-90 (Apr. 6, 2001). Although we understand that you find the programming offensive, the material as you describe it, is not sufficiently explicit to conclude that it is patently offensive so as to constitute indecency.

We appreciate and recognize your concern over the possible adverse impact such programming may have on children. One of the most effective means to affect programming is to contact your station management and station advertisers to express your opinion.

To assist you further, we include an information sheet which discusses the law with respect to indecent broadcasts and our enforcement procedures.

Thank you for your interest in this matter.

Sincerely,

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau

Enclosure

From: "bk2thgrdn"
To: <jcrutchf@fcc.gov>
Date: 2/7/01 5:59PM
Subject: complaint regarding radio station

Dear Sir or Madame,

I am writing to inform you of a radio station in my area that is chronically obscene. It is FM station WDCG 105.1 (G105). The program in particular that I am complaining about is called The Bob And Madison Showgram. Last year I reported to your office that they were broadcasting a thing called the "mile high club" in which they sent people up in an airplane to have sex. They also sent a crew to give us little snippets. I have no idea what if anything was done about that. Whatever it was, it appears, that they didn't consider it severe enough to stop their practices.

At 8 am this past Monday morning, February 5, 2001, they were taking calls from people that had never masturbated (shaking hands with the queen or something to that effect). Once getting several callers on the phone they told the listener in question that they would give them 10 minutes to put the phone down and try it. If they did they would give them "a bunch of prizes". They did give her about 10 minutes to herself , assuring her that they wouldn't listen in. "But you really have to try". And being the upstanding people that they are, even though the lady wasn't able to carry out the deed (she just felt it was wrong and it "grossed her out") they gave her prizes anyway because after all she "really did try".

I stopped listening to that station long ago but this particular morning my antenna was broken and they were one of the few stations I could tune in. Once I picked up on what was going on I was caught like a deer in headlights. I honestly couldn't believe what I was hearing. I couldn't believe that it was actually on the radio and once that settled in I couldn't believe that they would air this trash at 8 am! Parents can't and shouldn't have to monitor everything their children listen to on the radio. And who would expect something like that to be broadcast? Aside from children, I am terribly offended. Is our society truly that disturbed and apathetic? Do we not have the right to clean airwaves? The music that they play is sexual enough, not much I can ask from you all on that issue, (or is there?) but I think this is really stepping over the line.

I am asking you to pull the plug on this genitalia obsessed duo. They really won't get any other message. Every time I have heard that they have gotten into trouble with their station manager for something they have said they laugh it off ... on the air. It is apparent that it just doesn't bother them or discourage them.

I understand marketing. I understand that there

are people that find these things amusing and quite possibly even informing and freeing but what of the rest of us?! What of the thousands that have morals and taste? We are mocked. We may be in the minority but we do count. I am asking that you be our voice and our advocate. We deserve representation.

I leave this in your able hands. But I implore you to make our values count.

Very Sincerely,

Joyce Moller

Burlington, N.C.