



**FEDERAL COMMUNICATIONS COMMISSION**  
Enforcement Bureau, Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Room 3-B443  
Washington, D.C. 20554  
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In Reply Refer to:  
EB-02-IH-0472/DJB  
ID#8682

Catherine P. Henry  
6606 Pinedale Court  
Falls Church, Virginia 22041

Dear Ms. Henry:

This letter denies your complaint, accompanied by letters from a number of students, against radio station WWDC-FM in Washington, DC, for airing allegedly indecent material. Specifically you complain about the "Elliott in the Morning program" which aired on May 7th and 8th, 2002, between 7:50 a.m. and 8:10 a.m. We have reviewed a tape of the broadcast which was submitted by another complainant.

It is important to note that any consideration of government action against allegedly indecent programming must take account of the fact that such speech is protected under the First Amendment. The Commission defines indecent speech as material 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. In making indecency determinations we consider the graphic nature or explicitness of the material, whether there is a repetitive or persistent focus on sexual or excretory material and whether the material is pandering or titillating or is used for shock value. Applying this standard, we cannot conclude that the material broadcast by WWDC-FM is indecent. We do not find that the material depicts or describes sexual activities or organs in a patently offensive manner. Specifically, although it may be offensive, the material is not so graphic or explicit so as to meet our indecency standard.

The Federal Communications Commission is responsible for the licensing and regulation of radio and television broadcast stations and for assuring that they comply with Commission rules and statutory requirements. With certain exceptions, such as for matters such as obscenity and broadcast indecency, however, the Commission is prohibited by Section 326 of the Communications Act of 1934, as amended, from engaging in activities that might be regarded as program censorship. As offensive as these remarks may be, they are not subject to review and action by this agency. The First Amendment protects the right of broadcasters to air programming that may be offensive. Thus, the Commission may not curb expression, even if it may be offensive to religious faiths. See *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5354 (1993) (quoting *Anti-Defamation League of B'nai B'rith*, 4 FCC 2d 190, 191 (1966), *aff'd*, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969)).

We appreciate and recognize your concern. One of the most effective means to affect programming is to

contact station management to express your opinion. To assist you further, we include an information sheet which discusses the law with respect to indecency and our enforcement procedures.

Your interest in writing is appreciated.

Sincerely,

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

Enclosure