

APPENDIX A

COMPLIANCE POLICY OF MID COAST RADIO PROJECT, INC. WITH RESPECT TO OBSCENE, INDECENT AND PROFANE PROGRAMMING

As an FCC licensee, Mid Coast Radio Project, Inc. (the "Company"), and its employees and volunteers must adhere strictly to applicable law and Company policy with respect to the airing of obscene, indecent or profane programming. Section 1464 of the United States Criminal Code provides for a fine and imprisonment of up to two years for anyone airing obscene, indecent or profane programming over a television or radio station. The Communications Act of 1934 and the rules and policies of the Federal Communications Commission (the "Commission" or the "FCC") provide for fines and sanctions that can be levied against a licensee or an employee or volunteer that uses a station's facilities for the broadcasting of obscene, indecent or profane programming.

Statement of Policy

I. General Policy

No person responsible for the content of any programming broadcast over a Company station shall permit any programming that is obscene, indecent or profane, as those terms are defined by the Federal Communications Commission, to be aired over a Company station in violation of FCC rules and policies or Company policy. The Company reserves the right to set limits on programming that may be more restrictive than FCC policy.

II. No Obscene Programming at Any Time

No obscene programming shall be broadcast over any Company station at any time. Programming is obscene if (1) an average person, applying contemporary community standards, would find that the material, as a whole, appeals to the "prurient interest," that is, that it seeks to stir up lustful thoughts; (2) it depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable law and (3) taken as a whole, it lacks serious literary, artistic, political, or scientific value. Under the FCC's policies, there is no "safe harbor" period during which obscene programming can be aired. It has no protection under the U.S. Constitution and can lead both to criminal prosecution and sanction by the FCC.

III. No Indecent or Profane Programming at Any Time

A. No indecent or profane programming shall be broadcast over the station at any time.

The FCC considers a broadcast to be indecent if it contains "language or 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." The FCC considers three factors in determining whether material is indecent. The first factor is the *explicitness or graphic nature of the material*. The issue is whether, in context, the material depicts or describes sexual or excretory organs or activities. The second factor is whether the material *dwells on or repeats sexual or excretory matters at length*. Although this factor is still "on the books," recent FCC decisions make clear that even one fleeting or isolated use of a

single sexually-related word (the F-word and its variations), or of the word “bullshit,” can produce heavy fines for an indecency violation. The third factor is *whether the material panders, titillates or is used for shock value*. Not all of these factors need to be present for the material to be considered to be indecent. Material is considered to be offensive if it offends the “average” broadcast viewer or listener. Programming is profane if it consists of “personally reviling epithets naturally tending to provoke violent resentment” or of language “so grossly offensive to members of the public who actually hear it as to amount to a nuisance” or of “the most offensive words in the English language, the broadcast of which are likely to shock the viewer and disturb the peace of the home.” Recently the FCC has limited profanity to sexual and excretory terms, and has excluded racial and religious epithets from its definition of profanity.

- B. Caution should be used and discretion exercised in airing any double-entendres with sexual or excretory overtones.** For example, the FCC imposed sanctions for airing “Candy Wrapper,” a song in which various candy bar names symbolized sexual activities. (“I whipped out my Whopper and whispered, Hey, Sweettart, how'd you like to Crunch on my Big Hunk for a Million Dollar Bar? Well, she immediately went down on my Tootsie Roll and you know, it was like pure Almond Joy.”).
- C. Exercise caution and discretion in the broadcasting of any puns or jokes with overtones or connotations that are sexually explicit.** For example, in radio, a DJ's comment that “Liberace was great on the piano but sucked on the organ” led to FCC action.
- D. Songs, even popular songs, which contain language that is obscene or indecent, including songs that contain repeated references to sex or sexual organs, are not to be broadcast.**
- E. Refrain from any non-clinical references to sexual body parts, oral sex, anal sex, gay or lesbian sex, sexual relations with children, masturbation, ejaculation, bestiality, intercourse, urination, defecation, penis or breast size, menstruation, erections, orgasms, or the like and avoid any description or simulation of sexual acts.** The Commission has fined stations for all of these.
- F. Use caution and exercise discretion with respect to any banter concerning tabloid sex scandals, amusing news stories or any other content involving sexual or excretory matters.** That banter frequently starts off innocuously enough, but often leads to discussions that could be deemed to be indecent.
- G. Do not become involved in discussions with talk show guests or callers concerning intimate sexual questions.**
- H. Prohibited Terms.** The following terms shall not be used over the air by Company personnel on any Company station: fuck (or any word containing the word “fuck”), shit (or any word containing the word “shit”), cunt, cocksucker, motherfucker, cock, dick, pussy, blow job, piss, tits and any other slang terms for any of the foregoing.

- I. Screen All Recorded or Taped Material and All Programs or Other Content Produced or Provided by a Source Other Than the Company.** The Commission has no sympathy for stations that air prerecorded material that contains obscene, indecent or profane material. The Company and its personnel are liable for violations for the airing of material obtained from outside sources. If a program has both a broadcast and an uncensored version, make sure that only the broadcast version is obtained, and review it before it is aired. Remember that the FCC will decide each complaint on its particular facts. In reviewing programs, recognize that recently the FCC has given little deference to the artistic or other merit of programs or to the judgment of the licensee. For example, the FCC makes its own evaluation of whether offending parts of audio are essential to the nature of the artistic or educational work or essential to informing the public about a matter of public importance. If the FCC finds that substituting other language or not showing certain video would not have materially altered the nature of the work, it will find a violation. The case of the World War II film “Saving Private Ryan” is the main exception; there the Commission decided that the use of indecent language was necessary to realistic presentation of the story line and not used to shock or titillate.
- J. If It Becomes Necessary to Broadcast Programming that Mentions Sexual or Excretory Activity or Sexual Organs (For Example, As Part of a News Story or Documentary), Broadcast the Material Without Unnecessary Repetition and Without Presenting the Material in a Pandering or Titillating Fashion.** Although it may in some instances be acceptable merely to mention such activities or organs, descriptions of such matters are more likely to be deemed to be indecent if the discussion dwells on them in a pandering or titillating fashion or if the discussion becomes repetitious or goes into great detail, especially if the description or discussion uses highly sensational language intended to shock the listener.
- K. Don't Treat Any References to Excretory or Sexual Activities or Bodily Parts in a Patently Offensive Manner.** Each case will be dealt with based upon its own facts. The guidelines set forth in this policy statement highlight the situations in which the Commission or the Company is likely to find that programming is patently offensive. It cannot take all fact patterns into account, however, and, as a result, Company personnel responsible for programming must look at any programming that deals with excretory or sexual matters and make a determination as to whether the programming is patently offensive.
- L. Don't Use Profanity (i.e., Swear or Cuss Words) on the Air.**

IV. Questionable Materials Should Be Cleared in Advance by the General Manager or Other Designated Person.

While obscene programming is never justifiable on rare occasion, a question may arise as to whether certain programming that is particularly worthy of airtime is indecent or profane. For example, a public affairs program dealing with adult themes may include language that could conceivably be considered to be indecent or profane. Although the FCC does take merit and context into account in determining whether programming is indecent or profane, those are only two factors considered by the Commission and the video and/or audio in the program could be such as to outweigh the merit of the program and the context in which it was aired. No indecency or profanity complaint has yet been denied by the Commission solely on the grounds that the material was meritorious. In fact, the Commission refused to issue a declaratory ruling that James Joyce’s Ulysses, arguably one of the greatest works of 20th Century literature, is not indecent. Similarly, the Commission found that broadcast excerpts from a play about AIDS were indecent

despite the context. Rather than relying on the possibility that the FCC will find that the merit or context of a program will outweigh the graphic nature of the language used in the program, personnel responsible for programming should discuss the matter with Company management to determine whether the program should be aired, keep in mind that KKFI does not recognize any safe harbor time period.

V. Caller Conversations and Other “Live” Material to be Broadcast Should Be Pre-recorded or Delayed.

This reduces the possibility that a caller's obscene, indecent or profane material will be broadcast.

VI. Report Any Obscene, Indecent or Profane Programming to Company Management.

The Commission expects licensees, and the Company expects local management and staff, to take immediate, unprompted remedial action if programming that violates the Commission's or the Company's obscenity, indecency or profanity policies is broadcast. Commission penalties may be substantially reduced if a licensee can show that it took such action. If the licensee waits until a complaint is filed with the Commission, it may well be too late. On occasion, particularly in the case of syndicated or music programming, management may not be aware that there is a problem with programming that has aired. Reporting these instances to management permits management to determine whether remedial action needs to be taken.

VII. Report Any Complaints of Obscene, Indecent or Profane Programming to Management.

Listener complaints are often the canary in the mineshaft, alerting management to the fact that a station's programming has crept too close to the obscene, indecent or profane. In addition, listener complaints registered with the station may signal that a complaint will be filed with the Commission. If management is promptly apprised of a listener complaint, remedial action, if necessary, can be taken quickly and, even, perhaps, in advance of any complaint being filed with the FCC – thus making it easier to make the case that management has been diligent in taking remedial action.

VIII. Company Management Must Promptly Investigate Any Violation of this Policy and Any Listener Complaints. The fact that an investigation is taking place, and the results of the investigation, must be promptly reported to the Company.

Penalties For Noncompliance

I. Company Sanctions

Failure to comply with this policy may subject an employee or volunteer to Company-imposed sanctions, up to and including termination, whether or not the failure to comply with this policy results in a determination of violation of law or FCC regulations.

II. Federal Law Penalties