FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU

July 2, 2001

Mr. David Edward Smith

Chicago, Illinois

Re: File No. EB-00-IH-0401 (JWS)
WKQX(FM), Chicago, IL
Facility ID # 19525

Dear Mr. Smith:

By this letter, we dismiss three complaints against radio station WKQX(FM), Chicago, Illinois, all of which contended that the station aired indecent material during the "*Mancow's Morning Madhouse*" ("*Mancow*") program. The first complaint alleges that on February 23, 2000, the host Eric "Mancow" Muller and his staff talked euphemistically and directly about adult-child sexual intercourse and that Mr. Muller claimed that at age 27 he had had sex with a nine-year old. The second complaint claims that on May 22, 2000, Mr. Muller aired a caller who proclaimed that the show was the right place to find out if other males do what he does. The caller then explained that "I use my girlfriend's secretions" at which point he was cut off and asked to hold on. Approximately 30 minutes later, the conversation allegedly continued for another two minutes but only after the caller was warned more than once to substitute "feminine odor" for secretions. The third complaint alleges that on May 24, 2000, the *Mancow* program contained questions from a female air personality who asked a number of women "How do you feel about your vagina?" The complaint further contends that after the interview a song was played which repeated the phrase "dripping wet." Through a letter of inquiry, we submitted these complaints (along with certain others of your complaints) to the licensee for its comments. The licensee responded that it has neither a tape nor a transcript and cannot determine whether the alleged statements were made.

The Commission has defined indecency as material, which, in context, depicts or describes sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the broadcast medium. In determining whether broadcast material is patently offensive we look to, among other things, the explicitness or graphic nature of the description of sexual or excretory organs or activities and whether the

material dwells at length on such organs or activities. *See Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, FCC 01-90, released April 6, 2001. Subject matter alone does not render material indecent. *See WPBN/WTOM License Subsidiary, Inc. (WPBN-TV and WTOM-TV)*, 15 FCC Rcd 1838 (2000); *King Broadcasting Co. (KING-TV)*, 5 FCC Rcd 2971 (1990).

Although the programming you describe was clearly offensive to you, we do not believe there is sufficient information for us to determine that it is indecent. The first complaint charges that a 10-minute segment of *Mancow* featured a discussion about adult-child sexual intercourse and included a claim by the program's host that he had sex with a child of nine. Upon review of your complaint, we have determined that we cannot conclude, based on the information you provided, that the *Mancow* discussion is indecent. In making indecency determinations, it is imperative that the Commission have sufficient context in terms of the words and language used. Although we understand that this discussion was offensive to you, the allegation that a station aired a discussion on adult-child sex or even that an announcer claimed to have had sex with a child, without more, is not sufficient to find that a station has broadcast indecent material under relevant Commission precedent. (*See* cases cited above). Although we have previously found apparently indecent a crude joke about adult-child sex,[1] there is not sufficient context to ascertain whether the discussion was so explicit or graphic so as to rise to the level of being patently offensive.

The second complaint focuses on a caller's girlfriend's "secretions." However, the information available reveals that the caller was cut off before it became apparent what "secretions" were involved and what they were used for. Thus, at that point, the only possible reference to a sexual organ or activity was so fleeting as to be virtually meaningless. Moreover, although it further appears that when the conversation resumed, some 30 minutes later, the "secretions" probably involved those emanating from the caller's girlfriend's sexual organ, there is nothing before us suggesting what, exactly, was discussed. We are therefore in no position to determine whether the material aired was patently offensive.

The third complaint essentially has the same shortcomings as the second. While there is no question that a sexual organ was discussed, there is no way to know from the information available to us that the material did so in a patently offensive manner. Indeed, there is no way to tell what actually aired, other than the question posed. Moreover, while the song that followed the interview allegedly repeated the phrase, "dripping wet," we have no information upon which to base a reasoned decision that that portion of the material, much less the whole segment, contained patently offensive descriptions of sexual organs or activities. Based on the information available, we simply cannot tell whether "dripping wet" refers to the female sexual organ and, if so, does so in a patently offensive manner.

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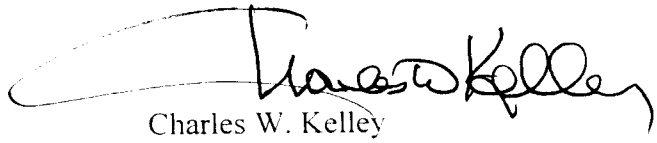
[1] *See Tempe Radio, Inc. (KUPD-FM)*, 12 FCC Rcd 21828 (Mass Media Bureau 1997).

Having concluded that the information now before us fails to show that indecent material was broadcast, we dismiss your complaints of February 23, May 22 and May 24, 2000. Your other complaints concerning *Mancow* will be addressed separately.

Sincerely,



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

cc: John Fiorini, III, Esquire

February 23, 2000

Ms. Linda Blair
Federal Communications Commission
Radio Complaints
Mass Media Bureau
445 12th Street SW, Room 2-A320
Washington, D C 20554

Dear Ms. Blair,

I am writing file an official complaint with the Federal Communications Commission (FCC) regarding the content of **WKQX**'s "*Mancow's Morning Madhouse*" show, heard on **Q101 FM**, from 6 am until 10:30 am, Monday through Friday here in Chicago.

The host, shock jock Eric "Mancow" Muller, continues to cross all lines of decency, and blatantly ignores obscenity laws. Wednesay, February 23rd, between 7:50 and 8:00 in the morning, Mancow and his staff talked euphemistically *and* directly about the particulars of adult-child sexual intercourse. During this broadcast, Mancow sanctions statutory rape by claiming that at age 27 he had sex with a 9 year old. Whether this confession is true or not, this type of material *is* indecent and extremely inappropriate for broadcast on the public's airwaves.

The FCC is governed by Title 47, of which section 73.399 states:

> "(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene. (b) No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent."

The foregoing broadcast mentioned here meet and/or exceed the definitions of indecent. I am requesting the FCC enforce these rules and regulations for the citizens who own the air waves that are being misused. Proactive measures must be taken against these types of abuses! Please act on my behalf!

Sincerely,

David Edward Smith

Chicago, Illinois

cc via email:
Senator Richard Durbin
Senator Peter Fitzgerald
Chair - Oversight and Investigations Subcommittee
Senator Conrad Burns,
Chair - Communications Subcommittee

Representative Jesse Jackson, Jr.
Representative Fred Upton,
Pat McGrath, Morality in Media
Kathy Valente, Citizens for Community Values