



Legislation Text

File #: Res 0335-2006, **Version:** *

Res. No. 335

Resolution calling upon the the Federal Communications Commission to strengthen and broaden the scope of its rules and consistently enforce higher penalties for unlawful and threatening language over the airways and condemning the recent actions of radio disc jockey Troi “Star” Torain of Power 105 WWPR-FM’s “Star and Buckwild” morning show.

By Council Members Baez, Comrie, Fidler, Gennaro, James, Koppell, Liu, Mark-Viverito, Palma, Seabrook, Weprin, White Jr., and Vallone Jr.

Whereas, The New York City Council recognizes the importance of the First Amendment, guaranteeing the right to free speech, one of the foundations of a liberal and democratic society; and

Whereas, In 1859’s *On Liberty*, a definitive and groundbreaking discourse on free speech, philosopher John Stuart Mill recognized in his often-referenced “Harm Principle” that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others;” and

Whereas, Title 18 of the United States Code, Section 1464, prohibits the broadcasting of “any obscene, indecent, or profane language by means of radio communication;” and

Whereas, The United States Supreme Court has fashioned a three-pronged test to define “obscene” communications such that material in question must be found by an average person to appeal to prurient interest; depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and the material, considered in its full context, must lack serious literary, artistic, political, or scientific value; and

Whereas, The Federal Communications Commission, in determining whether material is “patently offensive,” employs its own three-pronged test of factors any or all of which might lead to penalty, seeking to

determine whether broadcast material is explicit or graphic; dwells on portrayals of sexual organs; and seems panderous or intentionally shocking in nature; and

Whereas, New York State law defines the crime of “menacing” as action or speech in which the target of such action or speech causes fear of the potential victim’s imminent serious injury; and

Whereas, Troi Torain, a disc jockey for popular hip-hop station Power 105 WWPR-FM better known as “DJ Star” and who is known for past offensive statements regarding Asian and Jewish communities, recently and on air voiced a stream of violently sexually graphic and degrading statements regarding the young daughter of rival colleague Rashawn “DJ Envy” Casey; and

Whereas, Mr. Torian further supplemented such statements with repugnant, misogynistic, and racial slurs directed toward Mr. Casey’s wife; and

Whereas, Mr. Torain’s statements could not be considered anything other than harmful under John Stuart Mill’s foundational definition, obscene under the definition constructed by the United States Supreme Court, patently offensive under the definition constructed by the Federal Communications Commission, or menacing under the definition of New York State law; and

Whereas, Shortly after making such statements, Mr. Torain was arrested on charges of endangering the welfare of a child and aggravated harassment as well as criminal possession of a weapon and failure to report a change of address on a gun permit; and

Whereas, Recognizing the transgressive nature of Mr. Torain’s statements, both in terms of overstepping legal boundaries and violating the security and well-being of Mr. Casey and his family, Power 105 WWPR-FM, at the urging of members of the City Council, terminated Mr. Torain’s employment; and

Whereas, The Federal Communications Commission is currently conducting an investigation into this matter and determining any applicable penalties; and

Whereas, Federal Communications Commission violation penalties inflicted upon individual radio stations are consistently lower than those levied upon the television industry, and radio industry penalties often

do not surpass the exceedingly modest sum of \$55,000; and

Whereas, the Federal Communications Commission is empowered only to penalize obscenity and profanity-related speech, has no regulations regarding threatening, menacing, or hateful speech; and

Whereas, The New York City radio industry, while like many industries often the unfortunate subject of public scrutiny only in sporadic instances of unbecoming conduct, has in the past several years appeared to have become a breeding ground for increasingly offensive and insensitive speech; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Federal Communications Commission to strengthen and broaden the scope of its rules and consistently enforce higher penalties for unlawful and threatening language over the airways and condemns the recent actions of radio disc jockey Troi “Star” Torain of Power 105 WWPR-FM’s “Star and Buckwild” morning show.