

DUPLICATE

REGISTRATION SERVICES DIVISION

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554 NOV - 8 A II: 2 RECEIVED

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Federal Communications Commission
Office of Secretary

In re Application of)
)
Infinity Broadcasting East Inc.)
)
For Renewal of License for)
Station WKRK-FM, Detroit, Michigan)

File Nos. BRH-20040601BHZ
Facility ID # 9618

To: The Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

INFINITY BROADCASTING EAST INC.

Steven A. Lerman
Dennis P. Corbett
David S. Keir
Philip A. Bonomo

Leventhal Senter & Lerman PLLC
Suite 600
2000 K Street, NW
Washington, DC 20006-1809
(202) 429-8970

November 5, 2004

Its Attorneys

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SUMMARY

The Petition to Deny the WKRK renewal application falls well short of the statutory standards established for petitions to deny. Neither declaration provided by the Petitioners claims unqualified “personal knowledge” of the specific allegations upon which the Petition is premised, as required by Section 309(d)(1) of the Communications Act and applicable precedent.

The Commission should therefore dismiss the Petition as procedurally defective. ①

The Petition is largely comprised of irrelevant claims and unsubstantiated assertions with no bearing on the renewal application now before the Bureau. Only a small fraction of the discussion even relates to WKRK’s performance during the current license term, while the bulk of the pleading focuses on allegations regarding other stations controlled by Infinity’s parent company and prior license terms, as well as non-broadcast-related issues.

Once the many irrelevant claims are stripped away, the Petition ultimately rests on just two broadcast segments amounting to less than sixty minutes of programming material over the eight-year license period. This exceedingly limited amount of programming cannot possibly justify the extreme relief that Petitioners seek. In addition, the two matters raised are not final. Infinity has not paid the subject forfeiture in either case, nor has a court ordered it to do so. In the absence of such final disposition, Section 504(c) of the Communications Act prohibits the Commission from using these NALs to Infinity’s prejudice in this, or any other, proceeding.

Commission precedent makes clear that violations of the FCC’s indecency standard, even where a resulting forfeiture *has* been paid, do not justify the severe step of designating a license renewal application for hearing. In numerous instances during the current renewal cycle, the Commission has granted renewal applications on a routine basis despite the pendency of an

indecent letter of inquiry, an indecent NAL or the actual payment of an indecent forfeiture. No reasonable distinction could be drawn between those proceedings and this one.

As to Petitioners' "new" allegations of indecent broadcasts, only two clearly relate to WKRK programming. Neither has been the subject of any Commission-initiated enforcement inquiry, and each involves only Petitioners' generalized claims. Such broadcasts are not indecent in any event under the Commission's indecent standard.

Finally, the allegations raised by Petitioners focus on the content of WKRK programming, and any initiation of further proceedings would squarely implicate Infinity's constitutionally protected right of free speech. This factor weighs strongly against designating WKRK's renewal application for hearing.

SERVICES DIVISION

BEFORE THE
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WASHINGTON, D.C. 20554

2004 NOV -8 A 11: 30

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To: The Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

Infinity Broadcasting East Inc. ("Infinity"), licensee of Station WKRK-FM, Detroit, Michigan ("WKRK" or "Station"), hereby opposes the "Petition to Deny" ("Petition") its license renewal application filed September 1, 2004 by Right to Decency, Inc. ("RDI") and the American Decency Association ("ADA") (collectively "Petitioners"). The Petition is a procedurally defective, scattershot attack on WKRK premised on rhetorical hyperbole rather than relevant facts and law. Stripped of its numerous immaterial and unsupported allegations, the Petition clearly fails to warrant designation of the application for a hearing. The Media Bureau ("Bureau") should deny the Petition and promptly grant WKRK's license renewal application.¹

I. Petitioners Fail to Meet The Minimum Standards for a Petition to Deny.

As a threshold matter, the Petition falls far short of the statutory standards established for petitions to deny, as the Petitioners have failed to provide affidavits or declarations that meet the Commission's standard for "personal knowledge" set forth in Section 309(d)(1) of the

¹ On September 23, 2004, Infinity and Petitioners filed a consent motion for extension of time, requesting that Infinity be permitted to file its Opposition today, November 5, 2004. This Opposition is therefore timely filed.

Communications Act of 1934, as amended (the "Act"). See 47 U.S.C. § 309(d)(1). Accordingly, the Commission should dismiss the Petition as procedurally defective.

Section 309(d)(1) of the Act requires that a petition to deny include "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with" the Act. *Id.* These allegations of fact must be supported by an affidavit or declaration from a person (or persons) with *personal knowledge* thereof.² The Commission has made plain that "affidavits are insufficient under Section 309(d)(1) where the verification of the affiant is only according to the best of the affiant's knowledge, information and belief, or true in substance and fact."³ Under 47 C.F.R. § 1.16, declarants must simply declare facts to be "true and correct" without any "best knowledge" qualifier.

procedurally defective

Petitioners included declarations made "under penalty of perjury" by the Presidents of their respective organizations, yet neither declaration on its face is without qualification as required by Section 309(d)(1) and Commission rules and precedent. Mary Ellen Gavin, on behalf of RDI, certifies only that "[t]he facts and circumstances stated in the foregoing Petition are true and correct *to the best of my knowledge.*" (Emphasis added.) She then states that, while certain exhibits attached to the Petition to Deny "are true and correct" (Exhibits N-Q), the majority of those exhibits (Exhibits A-C, E-M and R-T) were prepared by others and merely "believed to be true." Without the requisite unqualified attestation, the Gavin Declaration is inadequate to support the Petition. Similarly, the ADA's William Johnson declares that the

² See *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). See also, e.g., *Letter Decision, KLUV(FM), Dallas, TX, Transfer of Control of Station License Assignment*, 10 FCC Rcd 4517 (MMB 1995) (denying an indecency challenge to a transfer of control application and citing *Columbia Broadcasting System*, 46 F.C.C. 2d 903, 905 (1974)).

³ *Columbia Broadcasting System*, 46 F.C.C. 2d at 905.

Petition's facts and circumstances are true and correct only "to the best of my knowledge," and that Exhibits A-C and E-M were prepared from audiotapes "made by others and sent to us," rather than based on broadcasts that he himself heard on Station WKRK. Johnson also lacks first-hand knowledge of Exhibits R-T and, like Gavin, only "believe[s] them to be true."⁴

Because neither declarant is able to attest to possessing the required unqualified knowledge of the facts and circumstances alleged, the Petition is insufficiently supported and must be dismissed.

II. The Petition Consists Principally Of Extraneous Allegations Unrelated To Station WKRK.

The procedurally defective Petition is largely comprised of irrelevant allegations with no bearing on the renewal application now before the Bureau. The Petition is a sweeping attack not limited to WKRK, but aimed more generally at Infinity Broadcasting Corporation ("IBC") and other stations licensed to it. Petitioners assert, among other things, that IBC, through its licensee affiliates, is a "recidivist violator of a federal felony criminal statute," has "orchestrated the desecration" of St. Patrick's Cathedral, fused "atheism" and "pornography," committed "hate crimes against Catholics, women and children," and allied itself with "stunning evil" and "virulently diabolical forces." Petition at 2-3, 4, 8, 16, and 19. Petitioners go so far as to

⁴ Johnson's credibility is, in any event, very much in question. The Petition which Johnson has supported "under penalty of perjury" twice states that, "so far as we know," the Petition's allegations of "new" indecency violations have not previously been brought before the Commission. See Petition at 3 and 4. Johnson knew or should have known that this statement was false. In April of this year, *Johnson himself*, acting on behalf of the ADA, filed a complaint involving material from five segments of the "Howard Stern Show," all of which are part of what ADA is now trying to label as first time, "new" violations. See Exhibit 1 hereto, an e-mail from W. Johnson to Federal Communications Commission dated April 5, 2004. In his complaint, Mr. Johnson states that "Volunteers have assisted us in monitoring Howard Stern's radio show in 24 radio markets," a statement that creates further doubt as to whether the transcripts included with the Petition were based on WKRK broadcasts. *Id.*

compare IBC unfavorably to the Ku Klux Klan. Petition at 4. These claims are uniformly meritless, indeed reckless. Moreover, they involve religious matters and criminal accusations that the Commission is in no position to adjudicate under any circumstances. Most significantly for purposes of the pending application, most of the assertions do not even relate to WKRK, the station for which license renewal is at issue here.

The applicable standard for considering a broadcast license renewal application requires examination of only the record of the subject station during the preceding license term.⁵

Petitioners ignore this standard entirely, suggesting instead that alleged violations concerning other stations licensed to other IBC entities have a bearing upon whether WKRK's license should be renewed. In particular, the Petition relies heavily on alleged broadcast indecency "violations" for which it has established no clear link to WKRK, raises matters involving IBC stations other than WKRK, and attempts to resurrect long-settled enforcement matters involving other stations that occurred during the previous license renewal cycle. When these irrelevant allegations are properly disregarded, the Petition is seen for what it is -- a rhetorical broadside against IBC and WKRK that fails to support its basic claims, let alone its extraordinary request for an administrative hearing.

First, the Petition alleges that indecent material was aired on WKRK during various episodes of the "Howard Stern Show" ("Stern Show"), but fails to provide evidence that the material cited actually aired on WKRK. See Petition at 4-6. Such a demonstration is critical

⁵ Letter from Peter Doyle, Chief, Audio Division, Media Bureau, to James Donohue, Gregory L. Masters and Richard J. Bodorff, File No. BRH-20030602CKX et al., 9-10 and n. 9 (October 7, 2003). For this reason, the broadcast license renewal application form (FCC Form 303-S) makes clear that violations of the Commission's rules need be reported only for "the station(s) for which renewal is requested," with the instructions stating even more plainly that "an applicant is required to disclose only violations of the Communications Act of 1934, as amended, or the Rules of the Commission *that occurred at the subject station during the license term.*" FCC Form 303-S, Section II, Item 4 and Instructions for FCC Form 303-S (emphasis added).

because during the time period that the Stern Show has aired on WKRK, it has also been broadcast on dozens of other stations, including both those licensed to Infinity and stations owned and operated by other companies. Each Infinity station is independently responsible for reviewing and editing the Stern program to conform to its understanding of suitable broadcast content. In other words, IBC stations, including WKRK, exercise independent programming discretion by editing the program, as they deem appropriate. Accordingly, a transcript of the Stern Show as aired on one IBC station cannot be deemed to represent the content of the same episode of the program on any other IBC station.

With respect to license renewals, the Commission has specifically held that the content of a syndicated program broadcast on one station cannot be used to establish what aired on a second, editorially independent station.⁶ In *Eagle Radio, Inc.*, an informal objector to a license renewal application asked the Commission to examine the syndicated programming of a Fort Worth, Texas station based solely upon allegedly indecent material from the same syndicated program that he heard on a Nevada station. The Commission rejected the request because the Fort Worth station was an “independent editorial entity,” a fact that undermined any presumption that syndicated material airing on the Nevada station necessarily aired on the Fort Worth station.⁷ Because the informal objector had failed to provide evidence to corroborate his indecency allegation as to the Fort Worth station, the Commission dismissed the objection. The

⁶ See *Eagle Radio, Inc.*, 9 FCC Rcd 1294 (1994) (“*Eagle Radio*”).

⁷ *Id.* at 1294.

Commission has recently affirmed this approach.⁸ Significantly, the allegations at issue in both *Eagle Radio* and *Sagittarius* were directed against the syndicated Stern Show.

The various transcripts of episodes of the Stern Show annexed to the Petition are therefore immaterial to this proceeding because the Petitioners merely assert, but offer no supporting evidence, that the transcribed material aired on WKRK (Exhibits A-C and E-M). Specifically, none of these transcripts either includes a reference to Station WKRK (call sign, dial position or other station identification) or otherwise indicates that it is based on the WKRK broadcast of the Stern Show on the date provided. This is of particular significance because, as discussed above, the two declarations provided by the Petitioners make clear that all of the “new” Stern Show excerpts included with the Petition were based on “audio tapes made by others and sent to us,” and merely transcribed by the Petitioners. The actual circumstances of these broadcasts therefore have not been shown to be within the personal knowledge of the Petitioners, as required by the FCC’s rules. Given this fundamental defect, the Commission cannot credit the Petitioners’ unsupported allegations that the complained of material aired on WKRK.⁹

Even assuming the veracity of Petitioners’ allegations that the Stern Show aired on WKRK as transcribed, the subject broadcasts do not include material that is indecent within the meaning of the Commission’s indecency definition. The material contained in these excerpts

⁸ See *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551 (2003) (“*Sagittarius*”) (refusing to review indecency allegations directed against WXRK(FM), New York, by a California listener, and explicitly acknowledging that the “independent editing” of syndicated programming by stations located in separate markets can affect what listeners in those markets ultimately hear).

⁹ Moreover, it is significant that all of the alleged Stern Show material dates from 2001 and 2002, two years or more before the filing of the Petition, yet apparently this information was not brought to the Commission’s attention until this year. See also note 4 *supra*. Not only does this suggest that the Petitioners themselves were not concerned that these segments be brought to the FCC’s attention in a timely manner, but the belated submission in connection with this license renewal proceeding is prejudicial to WKRK.

does not describe sexual or excretory organs or activities in a patently offensive manner. *See* Petition, Exhibits A-C, F-H, and E-M.

Broadcasts plainly alleged by the Petitioners themselves to have aired on stations other than WKRK have no relevance in the instant license renewal proceeding. For example, a substantial portion of the Petition (pp. 4, 8-9 & 18-19) pertains to a 2002 broadcast of the “Opie & Anthony” program that originated on Station WNEW, New York, New York, and was *never aired on WKRK* in any form at any time. Similarly, Petitioners cite a 1999 broadcast on Station WLLD, Holmes Beach, Florida, programming that also did not air on WKRK. Regardless of whether these programs contained indecent material – and the licensees involved have steadfastly maintained that neither broadcast included material that violated the statute – neither matter is relevant to this proceeding under the applicable standard.

Petitioners’ reference to “a seventeen year record” also seeks to look beyond Infinity’s record as licensee of WKRK. Only the current eight-year license term, however, has a bearing on whether the WKRK license should be renewed. Indecency cases involving other stations licensed to subsidiaries of IBC during the previous license renewal cycle are of no relevance here, not only because none involves WKRK, which in and of itself is dispositive, but also because the Commission and the Justice Department have specifically and definitively settled all claims with respect to the underlying facts of these cases pursuant to a 1995 Settlement

Agreement with IBC (“1995 Settlement Agreement”).¹⁰ Under that Settlement Agreement, none of these broadcasts can be used against Infinity in any way.

Finally, contrary to the Petitioners’ assertion, Infinity is not in violation of the 1995 Settlement Agreement, all terms of which IBC fully and properly satisfied many years ago. Indeed, the terms of the 1995 Settlement Agreement were met during the prior license term of the subject licensees, and each of the stations involved was granted a license renewal in due course. Petitioners’ allegation that 1995 Settlement Agreement has been violated appears to be based on a fundamental misunderstanding of the terms of that agreement. Petitioners find fault with Infinity’s alleged failure to take “any disciplinary action” against on-air employees accused of airing indecent material. No such obligation was imposed in the 1995 Settlement Agreement.

Thus, out of twenty-three pages of narrative assailing IBC and its affiliates, only a small fraction of the discussion even relates to WKRK’s performance during the current license term. See Petition at 6-7 and 7-8. As discussed below, these remaining allegations involve only a minute portion of WKRK’s programming during the term, and have either already been addressed by the Commission or do not constitute any violation of FCC Rules at all.

III. The Remaining Allegations of Petitioners Involve A Very Small Amount of Programming That Cannot Support The Extreme Relief That Petitioners Seek.

Once the many irrelevant claims raised by Petitioners are properly stripped away, its case ultimately rests on two broadcasts amounting to less than sixty minutes of programming material over an eight-year period – more than 4,000,000 minutes of programming overall. Petitioners

¹⁰ WKRK was not even licensed to Infinity at the time that these respective FCC decisions were issued to subsidiaries of IBC. The 1995 Settlement Agreement was entered into on behalf of IBC and the licensees of four stations to which the FCC had issued Notices of Apparent Liability (“NALs”) or Forfeiture Orders for broadcast of allegedly indecent material. WKRK did not become part of the IBC group of stations until 1996, the year after the Settlement Agreement was signed, when CBS Inc., WKRK’s then parent company, merged with IBC.

cite one decision involving the Howard Stern broadcast of July 26, 2001 (Exhibit S) and one decision involving the Deminski & Doyle broadcast of January 9, 2002 (Exhibit R) – in each of which indecency forfeitures have been assessed against Infinity for material aired on WKRK.¹¹ Petition to Deny at 7-8. Both of these matters remain pending. Infinity has not paid the subject forfeiture in either case. In the absence of such a payment, Section 504(c) of the Act prohibits the Commission from using the Stern or Deminski & Doyle NALs to Infinity's prejudice in this proceeding. *See* 47 U.S.C. § 504(c) ("In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final."). Because Infinity has not paid any forfeiture in connection with either broadcast, and no court has entered a final order compelling such payment, the existence of these two NALs is of no legal consequence and may not factor into the Commission's consideration of WKRK's license renewal application.

Quite apart from these Section 504(c) considerations, these broadcasts do not provide any basis to deny or delay the renewal of WKRK's license. Infinity has previously shown that the July 26, 2001 Stern broadcast involved an exceedingly small amount of material that, in any event, was not indecent under the FCC's standards.¹² In any event, the FCC has already found an NAL to be the appropriate response to this broadcast, without any other adverse action. The same holds true for the proceeding involving the Deminski & Doyle broadcast of

¹¹ The Petition misidentifies the Stern transcript as Exhibit R and the Deminski & Doyle transcript as Exhibit S.

¹² *See* Response to Notice of Apparent Liability for Forfeiture, EB-01-IH-0633/MG (filed April 19, 2004).

January 9, 2002, in which, after full consideration by the Commission, an NAL was found by the FCC to be the appropriate action.¹³

Commission precedent makes clear that violations of the FCC's indecency standard by a licensee, even where a forfeiture covering multiple indecent incidents has been paid, do not justify the severe step of designating that licensee's renewal application for hearing. In numerous instances during the current renewal cycle, the Commission has routinely granted the renewal application of a licensee despite the pendency of an indecency letter of inquiry, indecency NAL or the actual payment of an indecency forfeiture.¹⁴

In four of these renewals (WXTB(FM), WPLA(FM), WRLX(FM), and WCKT(FM)), the relevant \$715,000 NAL related to a syndicated show, "Bubba the Love Sponge," and covered seven separate incidents of indecency on that show. *See Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd 1768 (2004) (involving two "Bubba the Love Sponge" segments on July 19, 2001 and additional segments of that show on November 14, 19, 26 and 27, 2001 and December

¹³ To the extent that the Commission used the Deminski & Doyle NAL to warn broadcasters regarding the initiation of revocation proceedings, that warning was strictly *prospective* in nature, and cannot be used retroactively to Infinity's detriment. *See Infinity Broadcasting Operations, Inc.*, 18 FCC Rcd 6915, 6919 (2003). *Cf. Complaints Against Various Broadcast Licensees Regarding Their Airing Of The "Golden Globe Awards" Program*, 19 FCC Rcd 4975, 4981-82 (2004) ("Golden Globe Awards") (FCC held that a change in its interpretation of 18 U.S.C. § 1464 could *not* be used to penalize a broadcaster for material aired before the announced change because the broadcasters in question "did not have the requisite notice to justify a penalty"), *citing Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000) (court reversed Commission decision that denied a renewal application for abuse of process in connection with the Commission's minority ownership rules because the court held the Commission had not provided sufficiently clear notice of what those rules required).

¹⁴ *See, e.g.*, FCC File Nos. BRH-20031121APL (WAZX-FM, Cleveland, Georgia) (\$7,000 indecency NAL paid; renewal granted); BRH-20031001CFF (WXTB(FM), Clearwater, Florida); BRH-20031001AAD (WPLA(FM), Callahan, Florida); BRH-20030930BDG (WRLX(FM), West Palm Beach, Florida); BRH-20030930ARG (WCKT(FM), Port Charlotte, Florida); BRH-20031001ABB (WTKS-FM, Cocoa Beach, Florida); BRH-20031001BSU (WBGG-FM, Fort Lauderdale, Florida); BRH-20030602CMN (WRXL(FM), Richmond, Virginia); and BRH-20030602CLS (WWDC-FM, Washington, DC). *See also* FCC File No. BRH-20031001AKI (WLLD(FM), Holmes Beach, Florida).

27, 2001) (a copy of this NAL is attached hereto as Exhibit 2). The license renewals of these four stations were granted on March 27, 2004, *after* the forfeitures were paid. In at least two other cases, the licensee also paid the subject indecency forfeiture, and the license renewals were subsequently granted (WAZX-FM and WWDC-FM). Indeed, the WWDC-FM renewal application was granted despite a \$55,000 indecency NAL issued against the station, and paid by the licensee, for broadcasts of the “Elliott in the Morning” show. *See AMFM Radio Licenses, LLC*, 18 FCC Rcd 19917 (2003) (a copy of this NAL is attached hereto as Exhibit 3). Here, Infinity has been found apparently liable in connection with just two instances of alleged indecent programming and neither assessed forfeiture is final. Under Commission precedent, the Stern and Deminski & Doyle NALs do not serve as a bar to the grant of WKRK’s license renewal application.

As to Petitioners’ “new” allegations of indecent broadcasts, only two – the Deminski & Doyle broadcasts of October 16, 2001 (Exhibit N) and July 18, 2002 (Exhibit O) – include specific claims relating to WKRK programming.¹⁵ Petition at 6-7. Importantly, neither has been the subject of a Letter of Inquiry or any other Commission-initiated fact-finding effort. They involve only Petitioners’ generalized claims. Even assuming, however, that the Petitioners’ untested transcripts accurately reflect what actually aired on WKRK, these broadcasts are devoid of any explicit description of sexual or excretory acts or organs and are otherwise not patently offensive under the Commission’s indecency standards. Neither forms the basis for denial of WKRK’s renewal application.

¹⁵ Petitioners’ allegations involving former WKRK personalities Kramer & Twitch (Exhibits P and Q) are unsupported and irrelevant. Petition at 7. Petitioners fail to make any specific allegations regarding the content of the broadcast cited, and rely on non-broadcast material allegedly used to promote the “Kramer & Twitch Show.”

IV. Designating WKRK's Renewal Application For A Hearing Is Particularly Inappropriate Given The Sensitive Constitutional Issues Involved.

The allegations raised by Petitioners focus on the content of WKRK programming, which squarely implicates Infinity's constitutionally protected right of free speech. Yet paradoxically, Petitioners would have the Bureau believe that "[t]his case should not be about the first amendment because, in broadcast renewal proceedings, there is no inherent first amendment right in favor of the broadcaster."¹⁶ The Petitioners are wrong. The Bureau cannot ignore the critical constitutional ramifications of designating WKRK's renewal application for a hearing on the basis of that station's programming content.

As the Commission has repeatedly recognized, the First Amendment requires that the agency's content-based regulation be exercised in a cautious and restrained manner.¹⁷ Taking the drastic step of designating WKRK's renewal application for a hearing – even if Petitioners' claims were not so meager – would clearly violate this obligation, and invariably result in a profound "chilling" effect on the broadcast industry as a whole. As regulated parties whose

¹⁶ Petition at 15. The Petitioners cite *Red Lion Broadcasting*, 395 U.S. 367, in support of their argument, but do not cite a specific portion of that decision or explain how it supports the Petitioners' argument. Moreover, the language quoted by Petitioners does not appear anywhere in the *Red Lion* decision. The Supreme Court's boilerplate recitation in *Red Lion* that the FCC must "consider the demands of the public interest in the course of granting licenses," *id.* at 379, says nothing about the First Amendment implications of this case and, in particular, does not alter the Commission's obligation to respect the First Amendment rights of broadcasters when considering a broadcast license renewal application.

¹⁷ See, e.g., *Golden Globe Awards* at 4977, citing *Action for Children's Television v. FCC*, 852 F. 2d 1332, 1334 (D.C. Cir. 1988) ("*ACTF*") ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."). See also *id.* at 340 n. 14 ("the potential chilling effect of the FCC's generic definition of indecency will be tempered by the Commission's restrained enforcement policy."); *FCC v. Pacifica Foundation*, 438 U.S. 726, 761 n. 4 (1978) (Justice Powell concluding in concurring statement that "[S]ince the Commission may be expected to proceed cautiously, as it has in the past, I do not foresee an undue 'chilling' effect on broadcasters' exercise of their rights.").

existence depends on the authority granted to them by the Commission, broadcasters rationally can be expected to react (indeed, overreact) to the threat of renewal hearings with “safe” programming intended to avoid the pitfalls of indecency enforcement.¹⁸ This regrettable chilling effect would sweep unnecessarily broadly, suppressing fully protected, non-indecent speech intended for adults in a way prohibited by the First Amendment. *See Reno v. ACLU*, 521 U.S. 844, 875 (1997) (“The Government cannot, consistent with the First Amendment, “reduce[e] the adult population . . . to . . . only what is fit for children.”).

Furthermore, the cases cited by the Petitioners in which the Commission either forced a licensee to relinquish its licenses or designated renewal applications for hearing involved violations unrelated to the content of the programming aired on those stations.¹⁹ These cases are simply inapplicable here, as they involved violations of technical and public safety rules, as well as silent station status, not issues related to the programming content. The cases relied on by Petitioners have no bearing on this proceeding, and the Bureau should disregard them. Indeed, the Petitioners’ claim that the *Willis* and *Family Broadcasting* decisions demonstrate that the Commission treats large corporate licensees more favorably than smaller, minority-owned licensees such as *Willis Broadcasting* and *Family Broadcasting*, is reckless and unsupported. It improperly attributes discriminatory motives, without a shred of evidence, to Commission personnel. Petition at 19-21.

¹⁸ Courts and the Commission have consistently recognized that “vagueness is inherent” in the indecency definition. *See ACT I*, 852 F. 2d at 1344. Indeed, Infinity has consistently argued that the Commission’s indecency enforcement scheme is unconstitutional for a variety of reasons. *See, e.g., Response to Notice of Apparent Liability for Forfeiture*, EB-02-IH-0109 (filed June 4, 2003). *See also* Petition for Reconsideration, File No. 99090433 (Station WLLD(FM), Holmes Beach, FL), filed April 19, 2004. All of these arguments are incorporated by reference herein.


¹⁹ Petition at 12, 19-21 (citing Hearing Designation Order, *Family Broadcasting, Inc.*, 11 FCC Rcd 6647 (1996); Memorandum Opinion and Order and Hearing Designation Order, *Family Broadcasting, Inc.*, 17 FCC Rcd 6180 (2002); and Order, *Willis Broadcasting Corporation*, 19 FCC Rcd 10502 (2004).

V. Conclusion

For all of the foregoing reasons, the Petition should be dismissed without further action, and the application for renewal of the WKRK license should be promptly granted.

Respectfully submitted,

INFINITY BROADCASTING EAST INC.

By: 

Steven A. Lerman
Dennis P. Corbett
David S. Keir
Philip A. Bonomo

Leventhal Senter & Lerman PLLC
Suite 600
2000 K Street, NW
Washington, DC 20006-1809
(202) 429-8970

November 5, 2004

Its Attorneys

DECLARATION

I, Stephen A. Hildebrandt, Vice President of Infinity Broadcasting East Inc., the licensee of Station WKRK-FM, Detroit, Michigan, hereby declare under penalty of perjury that I have reviewed the foregoing Opposition to Petition to Deny, which is dated November 5, 2004, and that the facts set forth therein are true and correct.



Stephen A. Hildebrandt
Vice President
Infinity Broadcasting East Inc.

11-5-04

Date

EXHIBIT 1

Email Complaint of Bill Johnson,
American Decency Association, dated April 5, 2004

-----Original Message-----

From: Bill Johnson [mailto:bjohnson@americandecency.org]

April 5, 2004

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Complaints
445 12th Street, SW
Washington, D.C. 20554

Dear Sir/Madam:

Enclosed you will find official complaints on the Howard Stern Radio Show for five separate dates for various cities throughout the U.S.. Volunteers have assisted us in monitoring Howard Stern's radio show in 24 radio markets. We have in our possession audio tapes containing content which we believe is in direct violation of FCC decency standards.

We are filing official complaints on the 5 separate dates as follows:

April 22, 2002 - discussion of masturbation and oral sex
April 29, 2002 -- THE PRIEST AND MOLESTING KIDS IN CONFESSIONALS May 2, 2002 - Lady Di/anal sex and accompanying sound effects January 2, 2002 - "Gay Wheel of Sex" September 20, 2002 - segment on ejaculation

At your request, we will furnish you any and all audio tapes specific to the particular radio stations.

Our complaint is with all the stations

Again underscoring the above, we have tape recordings for a number of radio stations.

Additionally, enclosed, you will find typed transcripts attached for the complaints which we are filing.

Bill Johnson, president
American Decency Association
231-924-4050

EXHIBIT 2

Clear Channel Broadcasting Licenses, Inc.,
19 FCC Rcd 1768 (2004)

("Bubba the Love Sponge" broadcasts of July 19, 2001(two);
November 14, 19, 26 and 27, 2001; and December 27, 2001 on
Station WPLA(FM), Callahan, Florida;
Station WCKT(FM), Port Charlotte, Florida;
Station WXTB(FM), Clearwater, Florida; and
Station WRLX(FM), West Palm Beach, Florida)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	File No. EB-02-IH-0261
	)	NAL Acct. No. 2004 3208 0011
CLEAR CHANNEL BROADCASTING LICENSES, INC.	)	FRN # 0001587971
)	
Licensee of Stations)	
WPLA(FM), Callahan, Florida	)	Facility ID # 51975
WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM))	)	Facility ID # 35213
)	
CITICASTERS LICENSES, L.P.	)	FRN # 0003017423
)	
Licensee of Station)	
WXTB(FM), Clearwater, Florida	)	Facility ID # 11274
)	
CAPSTAR TX LIMITED PARTNERSHIP	)	FRN # 0003474947
)	
Licensee of Station)	
WRLX(FM), West Palm Beach, Florida	)	Facility ID # 20442

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 26, 2004

Released: January 27, 2004

By the Commission: Chairman Powell, Commissioners Martin and Adelstein issuing separate statements; Commissioner Copps dissenting and issuing a separate statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability For Forfeiture* ("NAL"), issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's rules,¹ we find that the captioned licensees, all of which are subsidiaries of Clear Channel Communications, Inc. ("Clear Channel"), apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, by willfully and repeatedly airing indecent material over the captioned stations during the July 19, November 14, 19, 26 and 27 and December 27, 2001, broadcasts of the "Bubba the Love Sponge" program. Furthermore, we find that they each appear to have failed to maintain copies of certain required documents in the public inspection files of each of their respective captioned stations, in apparent willful violation of Section 73.3526(e)(10) of the Commission's rules.² Based on the totality of the evidence before us and Clear Channel's history of transgressions relating to the broadcast of indecent material over stations licensed to its

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² 47 C.F.R. § 73.3526(e)(10).

subsidiaries, we conclude that Clear Channel is apparently liable for a monetary forfeiture in the amount of Seven Hundred Fifty-Five Thousand Dollars (\$755,000), the statutory maximum of \$27,500 each for 26 indecency violations (\$715,000), and the base amount of \$10,000 each for four public file violations (\$40,000).

II. BACKGROUND

2. This proceeding arises out of a series of formal complaints filed on behalf of Douglas Vanderlaan against Clear Channel alleging: (1) indecency violations; (2) public inspection file violations; (3) improper intimidation by Clear Channel against the complainant; and (4) the promotion and glorification of the use of illegal drugs in Clear Channel's broadcasts and on its web site.³ The Enforcement Bureau (the "Bureau") issued a series of letters of inquiry⁴ and the record includes responses by Clear Channel⁵ and by the complainant, to Clear Channel's responses.⁶

III. DISCUSSION

A. Indecency Analysis

3. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. The Commission's role in overseeing program content is very limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material and from

³ Complaint of Douglas Vanderlaan, dated April 3, 2002 ("*First Complaint*"); Second Complaint of Douglas Vanderlaan, dated October 10, 2002 ("*Second Complaint*"); Third Complaint and Supplement of Douglas Vanderlaan, dated January 27, 2003 ("*Third Complaint*").

⁴ Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc. and Citicasters Licenses, L.P., dated July 5, 2002 ("*Initial LOI*"); Letters from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Clear Channel Broadcasting Licenses, Inc., Citicasters Licenses, L.P., Capstar TX Limited Partnership and Kenneth E. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., dated August 18, 2003 ("*Second LOI*" and "*Third LOI*").

⁵ Letter from John M. Burgett, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 15, 2002; Letter from Kenneth W. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 1, 2002 ("*Initial LOI Response*"); Letter from Kenneth W. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 28, 2002 ("*Supplement to Initial LOI Response*"); Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 16, 2003 ("*Second LOI Response*"); Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 16, 2003 ("*Third LOI Response*"); Letter from John M. Burgett, Esq., to Judy Lancaster, Esq., Investigations and Hearings Division, Enforcement Bureau

⁶ Letter from Arthur V. Belendiuk, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 13, 2002 ("*First Vanderlaan Reply*"); Letter from Douglas G. Vanderlaan to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 24, 2003. ("*Second Vanderlaan Reply*")

interfering with broadcasters' freedom of expression.⁷ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency and obscenity. Specifically, it is a violation of federal law to broadcast obscene or indecent programming. Title 18 of the United States Code, Section 1464, prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."⁸ In addition, consistent with a subsequent statute and court case,⁹ Section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast indecent material during the period 6 a.m. through 10 p.m.

4. As an initial matter, we find that all of the seven segments at issue in this NAL were broadcast during this prohibited time period, at the time of day and on the specific dates alleged by Mr. Vanderlaan in his *First Complaint*,¹⁰ albeit not by all four of the captioned stations. In this regard, Clear Channel has acknowledged that segments 1, 2 and 7 were indeed broadcast, and that the transcripts for these segments submitted by Mr. Vanderlaan are accurate.¹¹ Clear Channel states that it did not retain audio recordings or transcripts of its own for the broadcasts encompassed by the remaining three segments, segments 3, 4, 5 and 6. Consequently, as to those segments, Clear Channel refuses to "admit or acknowledge that the material in the transcripts provided by Mr. Vanderlaan aired as he alleges."¹² However, based upon the evidence before us, including Clear Channel's failure to refute adequately Mr. Vanderlaan's allegations, we find that Segments 3, 4, 5 and 6 were also broadcast at the time and on the dates indicated in the *First Complaint*, and that the transcripts for those segments accurately depict those broadcasts.¹³ Clear Channel concedes that Stations WXTB(FM), WRLX(FM) and WPLA(FM) regularly aired the "Bubba the Love Sponge" program during the entire period of time encompassed by all seven segments and does not claim that any of the stations edited the show. Consequently, we find that Stations WXTB(FM), WRLX(FM) and WPLA(FM) broadcast all seven of the segments, as alleged. Clear Channel, however, represents that Station WCKT(FM) did not begin carrying the "Bubba the Love Sponge" program until October 29, 2001.¹⁴ Because segments 1 and 2 were broadcast before WCKT(FM) commenced airing the program, we find that the station broadcast only segments 3 through 7.

5. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.¹⁵ The

⁷ See 47 U.S.C. § 326.

⁸ 18 U.S.C. § 1464.

⁹ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir 1995), cert. denied, 516 U.S. 1043 (1996) ("Act IIP").

¹⁰ See Attachment A.

¹¹ *Supplement to Initial LOI Response* at 2.

¹² *Initial LOI Response* at 1.

¹³ *Infinity Broadcasting Corp. of Los Angeles (KROQ-FM)*, Memorandum Opinion and Order, 17 FCC Rcd 9892, 9896, ¶¶ 17-18 (2002).

¹⁴ See *Third LOI Response* at 1.

¹⁵ U.S. CONST., amend. I; *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("ACT P").

federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent material, as well the Commission's interpretation and implementation of the governing statute.¹⁶ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹⁷

6. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.¹⁸

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition – that is, the material must describe or depict sexual or excretory organs or activities. Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.¹⁹

7. As an initial matter, all of the seven program segments, in one manner or another, unquestionably involved on-air discussions relating to descriptions or depictions of sexual organs, excretory organs and/or activities of a sexual nature. The broadcasts involved conversations about such things as oral sex, penises, testicles, masturbation, intercourse, orgasms and breasts. Clear Channel does not dispute that the broadcasts involved such descriptions or depictions.²⁰ Accordingly, we conclude that each of the segments that were broadcast satisfies the first prong of our indecency analysis.

8. Having satisfied the first prong, we now turn to an analysis of whether the material in the seven segments subject to this NAL satisfies the second prong of the Commission's two-part indecency analysis – that is, whether the broadcasts were patently offensive as measured by

¹⁶ Title 18 of the United States Code, Section 1464 (18 U.S.C. § 1464), prohibits the utterance of "any obscene, indecent or profane language by means of radio communication." *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *ACT I*, 852 F.2d at 1339; *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), cert. denied, 503 U.S. 914 (1992) ("*ACT II*"); *ACT III*, 58 F.3d 654.

¹⁷ *ACT I*, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear."); *ACT I*, 852 F.2d at 1340, n.14 ("the potential chilling effect of the FCC's general definition of indecency will be tempered by the Commission's restrained enforcement policy.") See also *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

¹⁸ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), aff'd sub nom. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁹ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency ("Indecency Policy Statement")*, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) (emphasis in original).

²⁰ See *Initial LOI Response* at 2-6. As a preface to its analysis of each segment, Clear Channel states "Although the transcripts do include references and phrases of a sexual nature, and while some may find such material to be distasteful or offensive, these references and phrases alone do not make the broadcasts indecent." *Id.* at 2.

contemporary community standards for the broadcast medium.²¹ In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”²² Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.²³ In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because “[e]ach indecency case presents its own particular mix of these, and possibly, other factors.”²⁴ In particular cases, the weight of one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,²⁵ or, alternatively, removing the broadcast material from the realm of indecency.²⁶

9. We turn now to an analysis of these factors as they relate to each segment,²⁷ to determine whether the material that was broadcast, taken in context, is patently offensive as measured by contemporary community standards for the broadcast medium.

Segment 1 (aired July 19, 2001 between 6:30 and 8:30 a.m.).²⁸ In this segment,²⁹ skits in which the voices of purported cartoon characters talk about drugs and sex are inserted between advertisements for Cartoon Network’s Friday night cartoons that are identified as “provocative adult cartoons to help you get your freak on.” The first skit begins when Shaggy tells Scooby Doo that he needs crack cocaine but has no money to buy it. Scooby Doo responds that Shaggy could “su(bleep)ck d(bleep)ick” to pay for the drugs. In the next skit, Fat Albert, a/k/a Phat Diddy Daddy, gets killed in a drive-by shooting after bragging that Jennifer Lopez had been “s(bleep)ing Diddy Daddy’s (bleep)ck the previous night. The third skit begins with the theme music from “The Jetsons” cartoon show. George Jetson then begins telling Jane that he no longer needs Viagra because he got a “Spacely

²¹ The “contemporary standards for the broadcast medium” criterion is that of an average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. See *WPBN/WTOM License Subsidiary, Inc.*, 15 FCC Rcd 1838, 1841 (2000).

²² *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original).

²³ *Id.* at 8002-15, ¶¶ 8-23.

²⁴ *Id.* at 8003, ¶ 10.

²⁵ *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same)).

²⁶ *Id.* at 8010, ¶ 20 (“the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding”).

²⁷ See Attachment A *passim*.

²⁸ The complainant’s transcript reflects bleeps of certain offensive words. A review of the relevant tapes indicates that the letters before the word “(bleep)” in many cases were aired. However, although the transcript suggests otherwise, a review of the relevant tape indicates that the letters after the word “(bleep)” were completely bleeped. In any event, our indecency finding is not based on airing of the specific bleeped words.

²⁹ See Attachment A at 1-2.

Sprocket (bleep)ck ring.” After George flips a switch to activate the device, sound effects indicate that the device malfunctions, and the skit ends with George calling for Jane to turn off the device. Next, Alvin the Chipmunk complains that he hasn’t “been laid in almost six weeks.” Another chipmunk responds that his problem is due to the “f(bleep)cking pussy music we play” and begins to sing a more “kick ass” song directing a “filthy chipmunk-whore” to “[s]uck on my (inaudible) Chipmunk (bleep)s,” “[p]ut ‘em in your mouth and (bleep)uck ‘em.” He continues by singing “They taste like pistachios. They’re warm and fuzzy. Suck my (bleep).” The song is interrupted by a final advertisement for “Cartoons with Balls.”

This segment contains sufficiently graphic and explicit references to sexual and excretory organs and activities to satisfy the first criterion of our contextual analysis. Such sexual references are found in each of the skits and are repeated throughout the segment, satisfying the second factor of our contextual analysis. Finally, the use of cartoon characters in such a sexually explicit manner during hours of the day when children are likely to be listening is shocking and makes this segment patently offensive. It is foreseeable that young children would be particularly attentive listeners to this segment because of the character voices and the cartoon theme music used in the segment. The calculated and callous nature of the stations’ decision to impose this predictably offensive material upon young, vulnerable listeners is particularly compelling and weighs heavily in our analysis. Thus, the segment also satisfies the third factor of our contextual analysis. Consequently, this segment is apparently indecent.

Segment 2 (July 19, 2001, between 6:30 and 8:14 a.m.): In this segment,³⁰ a male applicant for a job as an underwear model calls the model search hotline and describes his as the “perfect penis,” so gorgeous that “[e]very f(bleep)ing, every -- every ounce of f(bleep)cking co(bleep) purple (inaudible) of it” “should be hanging in the f(bleep)cking Louvre,” and so strong that it can lift a 25-pound weight and can split his pants like the Incredible Hulk. Such vivid descriptions of the caller’s penis satisfy the first criterion of our contextual analysis. The entire segment discusses the man’s penis, and graphic descriptions of it are referenced throughout the segment. Thus, the second criterion of the contextual analysis is also satisfied. The sole purpose of these vivid descriptions apparently is to shock and titillate listeners. Thus, the third criterion of our contextual analysis is satisfied. Because this segment repeats graphic and explicit descriptions of a sexual organ in an effort to titillate listeners, it appears to be patently offensive and indecent.

Segment 3 (November 14, 2001, between 7:00 and 8:55 a.m.): In this segment,³¹ one of the men participating in the on-air discussion is Ned, a self-described “loud masturbator.” He views the act of masturbating in public as a performance and states that he looks as though he’s having a “grand mal seizure” when he does it. When asked to do so by the host, Ned, with increasing drum beat rhythms as an accompaniment, reenacts masturbating and reaching orgasm. Despite the use of euphemisms such as “wax[ing] your carrot” when referring to masturbation, and “sparky” when referring to a penis, the sexual references in the segment are unmistakable and sufficiently explicit to satisfy the first criteria of our contextual analysis. The entire segment dwells at length on

³⁰ See Attachment A at 3-5.

³¹ See Attachment A at 5-7.

masturbation. Thus, the second criterion of our contextual analysis is also satisfied. Finally, the participants' discussions of masturbating styles and techniques, and Ned's simulation of such a sex act, make it apparent that the segment was used to titillate and shock the program's listeners. In doing so, this segment satisfies the third criterion of our contextual analysis. Accordingly, we find that this segment appears to be patently offensive and indecent.

Segment 4 (November 19, 2001, between 8:00 and 9:00 a.m.): In this segment,³² three males interview a female caller about her sexual exploits with "Spider," another man. They discuss the length of Spider's penis, the length of time their sexual encounter lasted, and the sexual techniques they used. After the caller indicated that she had given Spider oral sex, one host responded that he hoped Spider had not given her oral sex because heavier women, like her, have "some cheese down there." The hosts then began ridiculing the caller about her size and asked "Are you like a Ball Park Plank -- Frank, you p[l]ump when we bang ya?" The conversation between the hosts and the caller was sufficiently explicit and graphic to convey unmistakably the sexual meaning of the euphemisms they used and to satisfy the first criterion of our contextual analysis. The participants talked at length about sexual and excretory activities and organs. It was apparent that the purpose of the call was to discuss the sexual organs and activities of the caller and Spider. As a consequence, the discussion dwelled upon the subjects of sexual organs and activities, and, thus, satisfies the second criterion of our contextual analysis. Finally, it is apparent that the discussion was titillating and shocking with respect to the audience. Thus, this segment meets the third and final criterion of our contextual analysis. As a consequence, we find that the segment appears to be patently offensive and indecent.

Segment 5 (November 26, 2001, between 7:00 and 9:00 a.m.): In this segment,³³ a male host and two male cohorts interview or talk with two female studio guests who are participants in a contest to win breast implant surgery. The host takes pictures of the women and directs and describes their poses, e.g., directing one to let him "get a little more ass," in the picture and, later, to pose so that he can take a "front panty shot." A discussion of oral sex begins when the host tells Hillary, one of the women, that long fingernails like hers "feel so good on my boys," and that his genital area is shaved. In response, Hillary states, "That's good. No -- no hairs in the teeth and stuff." She then discusses her preference for giving, rather than getting, oral sex and declares herself to be a "big oral queen" who could "go a half-hour solid," before her "cheeks would hurt." She discusses her sexual escapades with two men, her inability to reach orgasm and her frequent masturbation. During the ensuing discussion the host encourages Hillary to masturbate on air while he watches and gives a "play by play." To encourage her to cooperate, he tells her that masturbating on air would increase her chances of winning breast implants and, when she continues to refuse, he proposes that he or the other female guest give her manual sex during the broadcast.

The graphic and explicit descriptions of sexual or excretory organs and activities contained in this segment satisfy the first criterion of our contextual analysis. The repetition of these descriptions and other sexual references throughout the segment satisfy the second criterion of our contextual analysis. The continued and repeated explicit and graphic sexual

³² See Attachment A at 7-9.

³³ See Attachment A at 9-21.

references clearly demonstrate the shocking and titillating nature of the material, thus satisfying the third criterion of our contextual analysis. Consequently, we find that this segment appears to be patently offensive and indecent.

Segment 6 (November 27, 2001, between 7:30 and 9:00 a.m.): In this segment,³⁴ a male host and a co-host interview two female studio guests who are participants in the "Twelve Boobs of Christmas" contest to win breast implant surgery. The segment begins with the host taking pictures of the contestants' "boobs" in order to "facilitate you on some new boobies, baby." He then begins asking about their sexual activities and is impressed that one of the women, when giving "oral sex," does not "recycle," or "waste a drop." This segment is sufficiently explicit and graphic to meet criteria one of our contextual analysis. Because the sexual descriptions and references are repeated throughout the segment, criterion two of our contextual analysis is also satisfied. Finally, these sexual references and discussions appear to be inserted only to titillate the audience. Thus, criterion three of our contextual analysis is also met. Consequently, we find that this segment appears to be patently offensive and indecent.

Segment 7 (December 27, 2001, between 8:00 and 9:00 a.m.): In this segment,³⁵ Bubba and two male co-hosts discuss the abnormally large size of his "balls," while a singer and chorus sing about his testicles in explicit and graphic detail. The euphemism, "balls," is a common one, generally known to mean testicles, a sexual organ. Descriptions, such as those stating that Bubba's "balls," which are the size of "cantaloupes" or "coconuts," are "firm and meaty" with "ingrown hairs," are sufficiently graphic to meet the first contextual criteria. Such descriptions are repeated at length during the entire segment, satisfying the second contextual criterion. Finally, the material satisfies the third criterion of our contextual analysis because it is pandering, titillating and shocking to the program's listeners. Thus, we find that this segment appears to be patently offensive and indecent.

10. Based on the foregoing, we find that the material that was broadcast in these seven segments satisfies the second prong of our two-part test and, thus, appear patently offensive, as measured by contemporary community standards for the broadcast medium. Because we have found these seven segments to have apparently satisfied both prongs of our two part test, we conclude that the material contained apparently indecent speech.

11. Each of the segments was broadcast between 6 a.m. to 10 p.m., at a time of day when the broadcast of indecent material is explicitly prohibited by Section 73.3999 of the Commission's rules. Because these segments appear to have contained indecent speech and were broadcast at times of the day when indecent speech is proscribed, each of the broadcasts appears to be legally actionable.³⁶ We find, therefore, that three of the captioned stations (Stations WXTB(FM), WRLX(FM) and WPLA(FM)) each broadcast seven apparently indecent segments,³⁷ in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the

³⁴ See Attachment A at 21-25.

³⁵ See Attachment A at 26-28.

³⁶ See *ACT III*, 58 F.3d at 660-63.

³⁷ See *supra* ¶ 4.

Commission's rules. In addition, the fourth captioned station (Station WCKT(FM)), which began carrying the "Bubba the Love Sponge" program subsequent to the other stations, broadcast five of the apparently indecent segments (Segments 3, 4, 5, 6 and 7),³⁸ also in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.³⁹

B. Public Inspection File

12. Section 73.3526(e)(10) of the Commission's rules requires broadcast licensees to maintain a public inspection file containing specific types of information. Section 73.3526(e)(10) specifies that, among the documents that must be included in the file, is "material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC . . ."⁴⁰ Such material must be retained in a station's public inspection file pending written notification that it may be discarded.⁴¹ Where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁴²

13. It is beyond dispute that, on August 22, 2001, each of the four captioned stations failed to include copies of documents relating to Mr. Vanderlaan's *First Complaint* in its public inspection file. In declarations accompanying the *Second Complaint*, Mr. Vanderlaan, Dr. David D. Swanson, Kathy Taunton and Sally Oesch each states that, on that date, he or she visited one of the captioned stations during normal business hours, reviewed its public inspection file, and determined that the file did not contain a copy of the *First Complaint* or any documents related to it.⁴³ Although Clear Channel does not dispute these allegations, it argues that Station WXTB(FM) should be relieved of liability for its failure to have maintained the *First Complaint* in its public inspection file because a copy of the document was located elsewhere in the station after the requester had specifically identified and requested it.⁴⁴ This argument lacks merit. The Commission requires that such documents be maintained in the public inspection file.⁴⁵ The obvious intent of the rule is to facilitate public access to such documents. To require an individual

³⁸ *Id.*

³⁹ The *First Complaint* also included allegations of indecency with respect to three other broadcast segments. We conclude that these broadcasts were not sufficiently graphic and/or sustained to be considered indecent and are denying the *First Complaint* with respect to these segments.

⁴⁰ 47 C.F.R. § 73.3526(e)(10).

⁴¹ *Id.*

⁴² See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992) ("*Surrey*").

⁴³ *Second Complaint* at Exhibits 1, 4. In the Declaration of Ms. Taunton, who attempted to inspect the WXTB(FM) public file, she states that, after specifically asking to see the *First Complaint*, "[a] copy of the Complaint was subsequently found in the station manager's office and made available for my review." *Id.* at Exhibit 3. However, it is clear that, had Ms. Taunton not been aware of that document, she would not have learned of it from her inspection of the file, the purpose behind the requirement that it be included in the file.

⁴⁴ *Third LOI Response* at 2.

⁴⁵ 47 C.F.R. § 73.3526(e)(10).

member of the public to examine a station's public inspection file and then identify for station personnel what is missing from it clearly is inconsistent with the intent of the rule section.

14. Based on the information before us, we find that the captioned licensees at each of their respective captioned stations failed to maintain certain required documents in their respective public inspection files, in apparent willful violation of Section 73.3526(e)(10) of the Commission's rules.

C. Other Allegations

15. In his *First Complaint*, Mr. Vanderlaan alleges that Clear Channel engaged in intimidating and abusive conduct after he had filed his *First Complaint* with the Commission, by threatening him with legal action and complaining to his employer.⁴⁶ A finding of "[i]ntimidation or harassment of witnesses requires threats of reprisals or some other unnecessary and abusive conduct reasonably calculated to dissuade a witness from continuing his or her involvement in a proceeding."⁴⁷ In this case, Mr. Vanderlaan presents no evidence to corroborate his claim that Clear Channel contacted his employer and provides only a copy of his attorney's response to a letter purportedly from the attorney for Todd "Bubba" Clem (the host of the program) to corroborate his allegation that he was threatened with legal action by Clear Channel. In fact, Mr. Vanderlaan presents no evidence that the captioned licensees or Clear Channel made, or were even aware of, the contacts about which he complains. Consequently, there is insufficient evidence to support a finding that Clear Channel or the captioned licensees engaged in intimidation or abuse. Accordingly, we find no merit to this allegation.

16. In both his *First Complaint* and *Third Complaint and Supplement*, Mr. Vanderlaan alleges that Clear Channel promotes the use of illegal drugs.⁴⁸ Consistent with the Commission's limited role overseeing programming content mandated by the First Amendment and Section 326 of the Act,⁴⁹ there is no rule or statutory provision barring a licensee from airing material referencing drug use.⁵⁰ Thus, the allegations concerning this material do not warrant enforcement action.

IV. PROPOSED FORFEITURE

17. Having determined that the captioned licensees apparently willfully and/or repeatedly violated 18 U.S.C. § 1464 and Sections 73.3999 and 73.3526(e)(10) of the Commission's rules, we turn to an analysis of whether, and to what extent, we should propose

⁴⁶ See *First Complaint* at 15-16.

⁴⁷ See *Isothermal Community College*, DA 03-3638, 2003 WL 22682096 (Enf. Bur. November 14, 2003) (citing *Kaye-Smith Enterprises*, 98 FCC 2d 675, 682 (1984)); *Hoffart v. FCC*, 787 F.2d 675 (D.C. Cir. 1986) (citing *Chronicle Broadcasting Co.*, 19 FCC 2d 240, 244 (1969)).

⁴⁸ See also *Second Vanderlaan Reply*.

⁴⁹ 47 U.S.C. § 326.

⁵⁰ See, e.g., *Licensee Responsibility to Review Records Before Their Broadcast*, Notice, 28 FCC 2d 409 (1971), modified, Memorandum Opinion and Order, 31 FCC 2d 377 (1971), *aff'd sub nom*, *Yale Broadcasting Co. v. FCC*, 478 F.2d 594 (D.C. Cir. 1973), cert. denied, 414 U.S. 914 (1973).

sanctions in this instance. Under Section 503(b)(1) of the Act,⁵¹ any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵² In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁵³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule, regulation or order.⁵⁴

18. In the instant case, we have determined that three of the captioned stations (Stations WXTB(FM), WRLX(FM) and WPLA(FM)) each broadcast seven apparently indecent segments of the "Bubba the Love Sponge" program, in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules, and that the remaining captioned station (Station WCKT(FM)), which began carrying the "Bubba the Love Sponge" program after the other stations, broadcast five apparently indecent segments, in apparent willful and repeated violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules. Stated otherwise, we conclude that the captioned licensees apparently violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules on a total of 26 separate occasions. Consequently, based upon our review of the record in this case, we conclude that Clear Channel, as the parent of each licensee, is apparently liable for forfeitures based upon 26 willful and repeated violations of our indecency rules.⁵⁵

19. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for the transmission of indecent material.⁵⁶ The *Forfeiture Policy Statement* also specifies

⁵¹ 47 U.S.C. § 503(b)(1).

⁵² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

⁵³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁵⁴ See, e.g., *SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁵⁵ 7 broadcasts x 3 stations (WXTB(FM), WRLX(FM) and WPLA(FM)) = 21 violations + 5 broadcasts by WCKT(FM) = 26 violations.

⁵⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b). The Commission has amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. The new rates apply to violations that occur or continue after November 13, 2000. See *Amendment of Section 1.80(b) of the*

that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵⁷

20. Based upon our review of the record before us, we believe that an upward adjustment to the statutory maximum of \$27,500 for each of the 26 apparent indecency violations is warranted. The large number of apparent violations here, combined with Clear Channel’s repeated broadcasts in the past of apparently indecent material over multiple stations licensed to its subsidiaries, evidences a pattern of violations that justifies a proposed forfeiture of the statutory maximum.⁵⁸

21. Because we find that Clear Channel, through its subsidiary captioned licensee companies, apparently violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission’s rules on 26 separate occasions, and that each such violation is subject to an apparent forfeiture in the amount of \$27,500, we conclude that Clear Channel is apparently liable for a forfeiture in the amount of \$715,000 for willfully and repeatedly broadcasting indecent material during various segments of the “Bubba the Love Sponge” program over the captioned stations. Particularly in light of Clear Channel’s history of violations of the indecency rules, we also take this opportunity to reiterate our recent admonition (which took place after the behavior at issue here) that serious multiple violations of our indecency rule by broadcasters may well lead to the commencement of license revocation proceedings.⁵⁹ We expect Clear Channel in particular to take this admonition seriously.

22. We also have previously determined that the four captioned stations failed to maintain certain required documents in their respective public inspection files, in apparent willful violation of Section 73.3526(e)(10) of the Commission’s rules. Based upon the factors articulated in Section 503(b)(2)(D) of the Act and the base forfeiture amount specified in the *Forfeiture Policy Statement* for violations of the our public inspection file rules, we conclude that a proposed forfeiture is warranted in the base forfeiture amount of \$10,000 for each of the four apparent willful violations of Section 73.3526(e)(10) of the Commission’s rules, for a total of \$40,000.

Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, 15 FCC Rcd 18221 (2000).

⁵⁷ The maximum forfeiture amount for a single violation for the broadcast of apparently indecent material is \$27,500. 47 C.F.R. § 1.80(b)(1).

⁵⁸ See, e.g., *AMFM Radio Licenses, LLC (WWDC(FM))*, Notice of Apparent Liability for Forfeiture, FCC 03-233 (rel. Oct. 2, 2003) (forfeiture paid); *Citicasters Co. (KEGL(FM))*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 7546 (Enf. Bur. 2001) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, Forfeiture Order, 15 FCC Rcd 25453 (2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 19095 (Enf. Bur. 2000) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 19091 (Enf. Bur. 2000) (forfeiture paid); *Citicasters Co. (WXTB(FM))*, Forfeiture Order, 15 FCC Rcd 11906 (2000) (forfeiture paid).

⁵⁹ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, Forfeiture Order, 18 FCC Rcd 6915, 6919, ¶ 13 (2003); see also *AMFM Radio Licenses LLC (WWDC-FM)*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19917, ¶16 (2003) (forfeiture paid); *Infinity Broadcasting Operations, Inc. (WNEW(FM))*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19954, ¶ 19 (2003) (response pending).

V. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules,⁶⁰ that Clear Channel Communications, Inc., the parent company of each of the above-captioned licensees, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of Seven Hundred Fifty-Five Thousand Dollars (\$755,000), for willfully violating 18 U.S.C. § 1464 and Sections 73.3999 and 73.3526(e)(10) of the Commission's rules.⁶¹

24. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, Clear Channel Communications, Inc. SHALL PAY the full amount of the proposed forfeiture against it or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Numbers ("FRN") referenced above and also should note the NAL/Account Number referenced above.

26. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington D.C. 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

28. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁶²

29. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If Clear Channel qualifies as a small entity and if it wishes to be treated as a small entity for tracking purposes, it should so certify to us within thirty (30) days of

⁶⁰ 47 C.F.R. § 1.80.

⁶¹ Station WXTB(FM), Station WRLX(FM) and Station WPLA(FM) shall each be allocated the sum of Two Hundred Two Thousand Five Hundred Dollars (\$202,500.00) for six indecency violations and one public inspection file violation (6 x \$27,500 = \$192,500 + \$10,000 = \$202,500). The sum of One Hundred Forty-Seven Thousand Five Hundred Dollars (\$147,500.00) is allocated to Station WCKT(FM) for five violations of the Commission's indecency rules and one violation of the Commission's public inspection file rule [5 x \$27,500 = \$137,500 + \$10,000 = \$147,500].

⁶² See 47 C.F.R. § 1.1914.

this NAL, either in its response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. The certification should indicate whether Clear Channel, including its parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment B of this Notice of Apparent Liability. This information will be used for tracking purposes only. Clear Channel's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to Section 503(b) of the Communications Act. If Clear Channel has questions regarding any of the information contained in Attachment B, it should contact OCBO at (202) 418-0990.

30. Accordingly, IT IS ORDERED, that the *First Complaint, Second Complaint and Third Complaint and Supplement* filed by Douglas Vanderlaan ARE GRANTED to the extent indicated herein, AND ARE OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.

31. IT IS FURTHER ORDERED, that copies of this *Notice of Apparent Liability For Forfeiture* shall be sent, by Certified Mail Return Receipt Requested, to Mr. Kenneth E. Wyker, Senior Vice President & General Counsel, Clear Channel Communications, Inc., c/o Clear Channel Worldwide, 200 East Basse Road, San Antonio, Texas 78209-8328, with a copy to Clear Channel's counsel, John M. Burgett, Esq., at Wiley, Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C., 20006, and to Mr. Douglas Vanderlaan, 8114 Parkridge Circle South, Jacksonville, Florida 32211, with a copy to his counsel, Arthur V. Belendiuk, Esq., at Smithwick & Belendiuk P.C., 5028 Wisconsin Avenue, N.W., #301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Attachment A

*Excerpts From WPLA(FM) Program Transcript
Provided As Exhibit 2 to April 3, 2002,
Complaint of Douglas Vanderlaan*

Attachment A

**BUBBA THE LOVE SPONGE
TRANSCRIPT**

Radio Station: WPLA-FM, Callahan, Florida
Material Broadcast: The Bubba The Love Sponge Morning Show

SEGMENT 1: July 19, 2001, 6:30-8:30 AM

Male Announcer: MA
Shaggy Voice: SV
Scooby Doo Voice: SD
Fat Albert Voice: FA
Male Friend Voice: MF
George Jetson Voice: GJ
Chipmunk Voices: CV
Alvin Chipmunk: AC

Inaudible. Music begins playing. Spoof commercial weaves in.

MA ..thought cartoons are just for kids. Well you need to check out Cartoon Network on Friday nights. Provocative adult cartoons to help you get your freak on.

Music - Theme from 'Scooby Doo' cartoon. "Scoobedy Doo, Hey Scooby, Where are you?"

SV Hey Scoob, I don't know about you, but I'm jonesin' for something real bad.

SD A Scooby Snack?

SV No Scoob, I was thinking something a little better than a Scooby Snack.

SD A crack rock?

SV Oh yeah Scoob, a crack rock sounds like, totally awesome right now. But like, I don't have any dough for the dope.

SD You could ru(inaudible)f (inaudible)ck.

SV What are you saying Scoob?

SD Ru(inaudible) (inaudible)ick.

SV We could ru(bleep)ck d(bleep)ick for crack rock. Scooby, you're a genius!

SD Whoa hoo hee...

MA *(To music)* That's right, put the kids to bed. These cartoons are for grown-ups. Isn't that right Fat Albert?

MF What's up Fat Albert?

Attachment A

FA Don't call me Fat Albert anymore. From now on, I'm Phat-(*whoop sound*) Diddy-Daddy.

MF What makes you so bad, Phat Diddy-Daddy?

FA Well, for your information (*whoop sound*), last night, Jennifer Lopez was s(bleep)ing Diddy-Daddy's (bleep)ck.

MF Look-ba-out Fat Ba-Albert?

FA I told you, that's Phat Diddy-Daddy.

MF Look-ba-out Phat Ba-Diddy Ba-Daddy. Puff Ba-Daddy's dubing a-ba driv-a-by.
Sounds of shots firing and cars in background.

MF Oh-ba no-bai P-Ba-Diddy killed Phat-Ba-Diddy Ba-Daddy.
Unclear jingle.

MA Cartoon network's Friday nights. Adult cartoons with adult desires.
Music - Theme from 'The Jetsons' cartoon. "Meet George Jetson."

GJ Great news Jane. I don't need Viagra anymore. I got a Spacey Sprocket (bleep)ck ring. Just one flip of a switch (*stink sound effect*)... (*inaudible sound effects*)... Help, Jane! Cut this crazy thing!

MA (*Music returns*) Cartoons after-hours on Friday nights.

CV Alvin, why do you look so frustrated?

AC I haven't been laid in almost six weeks.

CV Well, you know what the problem is?

AC What?

CV It's that s(bleep)cking pussy music we play.

AC What do you mean?

CV If we wanna get the bitches, we have to play more kick ass music.

AC Like what?

CV Check this sh(bleep) out, Alvin.

CV (*To music*) Suck on my (*inaudible*) Chipmunk (bleep)s. Put 'em in your mouth and (bleep)uck 'em, filthy chipmunk-whore. Suck on my (*inaudible*) Chipmunk (bleep)s. They taste like pistachios. They're warm and fuzzy. Suck my (bleep).

MA (*Music returns*) Cartoons with balls. Every Friday night at 10 o'clock on Cartoon Network.
Cut to disc jockey, in background.

MH (*Inaudible*) just told me there's some asshole on line...(*breaks to music*)
Recording jumps.

Attachment A

SEGMENT 2:

Announcer: AN
 Answering Machine: FM (female)
 Model Caller: MC (male)
 Receptionist: FR (female)

AN (To music) (inaudible) get your cry-baby whiny ass (inaudible), this is the Bubba Radio Network.
Phone ringing.

FM (On machine). Hi you have reached Kate with Structure underwear model-search hotline. I'm sorry I can't take your call right now, but if you leave your name, number and a brief message, I'll get back to you as soon as I can. Thank you (machine beep).

MC Hello? Eh, pick up. Somebody pick up. Hello. Hello, Kate. Can I speak to Kate, please, this is urgent.

FR Structure Model Search, Jennifer speaking, can I help you?

MC Yes, I was uh, trying to get a hold of Kate. I saw this thing in the paper that you're conducting an underwear model search and, and I would—I need to find out how to enter, 'cause I am definitely your man.

FR Well I can help you, sir. What information do you need — just how to enter?

MC Well, yes, cause, I mean, I've done a lot of nude modeling and underwear modeling, and I've gotta tell you, the response I get — its just phenomenal.

FR So, uh, sir, give me some details about yourself.

MC Well-uh, I have a pretty good body, you know. I'm toned, slightly muscular, tan, wash-board stomach, all that. But frankly, my best attribute is—is my penis.

FR Mm hmm.

MC I mean, I don't wanna sound like an ego-maniac, but my d(bleep)ck is a work of art.

FR Um...

MC I mean, its like the hand of God came down and--

FR Mm hmm...

MC and molded the perfect d(bleep)ck outta clay and stuck it on my body. You catch my drift here?

FR Uh-I-I do. Eh, however, it's not nude modeling. Its an underwear, uh, its an underwear-uh, modeling show.

MC I mean my d(bleep)ck should be hanging in the f(bleep)cking Louvre —

FR Oh heh. .

MC right next to the Mona Lisa.

FR Well —

Attachment A

MC It is my firm belief that every person in the world should be able to see my d(bleep)ck.

FR Sir, I don't really need to hear that.

MC As a matter of fact, I have an 8 by 10 glossy of my penis.

FR Uh huh.

MC I could fax that to you --

FR No. No. You don't need to do that sir. You can just send us, uh, if you have um uh another, uh, just a shot of, uh, just your body clothed, that'll do.

MC Well you don't seem to grasp the magnitude of--

FR Mm hmm.

MC of my penis's gorgeousness.

FR Well --

MC I mean, I--uh, it's the perfect penis.

FR Mm hmm.

MC Every inch, every, every f(bleep)ing, every -- every ounce of f(bleep)cking co(bleep) purple (inaudible) of it.

FR Um, yeah. Sir, that's way too much information, and that's not appropriate.

MC Its like a Van Gogh or a Picasso, I mean--

FR Sir, I'm sure it is.

MC Imagine what it would look like in a pair of Structure underwear.

FR Mm hmm. Glorious, I'm sure, but --

MC I mean, I could start a f(bleep)cking cult with this (bleep). Billions of people worshipping my penis. The Reverend Sung Yung Moon didn't have a d(bleep)ck like this, I'll tell you that right now.

FR You know what sir, I (inaudible) that much information. I--I think that, you know--

MC You know, we could probably just wrap this thing up right now. Just give me the job. I mean, I'm your man.

FR Mm hmm. Well, you just need to send in the proper information, not the information that you're telling me.

MC Well, now look sweetie pie. Did you think there's another man in America who can lift a 25-pound weight with his penis.

FR (Laughing)

MC I can tie a 25-pound (inaudible) plate to my (bleep) and do 13 reps.

FR Mm hmm.

MC Do you understand, uh -- do you understand what I'm saying? I got--I got fu(bleep)cking muscles in my c(bleep)ck.

Attachment A

FR Oh my God.
 MC Do you know anybody else who's got muscles down there?
 FR No, no I don't. And --
 MC I mean if I flex my penis I can split my fu(bleep)cking pants like the Incredible Hulk.
 FR (Laugh) You know what, I—I think that's really great information. But again, we're not gonna need that.
 MC Well, I'll do it right now. I'll put the phone between my jeans. I'm gonna flex my d(bleep)ck like Arnold Schwarzenegger, okay, then you -- hello? Hello?
 MH (Laugh) 8:14 at the Bubba Radio Network.
 Break in recording.

SEGMENT 3: November 14, 2001, 7:00-9:00 AM

Male Host: MH
 Second Male: SM
 Third Male: TM
 Female Caller: FC
 "NED:" ND

Tape cuts in on talking.

MH (Inaudible) on the jizzack shizzack of the p(inaudible) or the pa(inaudible) pizifficat...
 SM (Laughing) I'd like to see how that's written in law. Or uh, in the books.
 TM Yeah.
 MH I wouldn't wanna get elbowed. I mean—you know, the guy's got some RPM's going and all of a sudden -- WACK!
 TM (Laughing)
 SM Again, 179 dollars—get a five disc (inaudible) Toshiba DVD player—
 MH Right.
 SM You can sit at home, and uh (inaudible) to your heart's content.
 MH Yeah, wax that carrot all day long.
 SM (Laughing)
 MH Let me ask you a question. Now, when you're in the general population, you're not—you're not in a private booth, but instead you're in one of those—uh, you know—you're in the theatre portion, with of course, uh—the complimentary seat between you. I mean uh, do people-uh, start doing it there too?

Attachment A

FC Oh well, uh—yeah. Yeah.
ND Yes.
FC Oh yeah.
MH Oh well hold on now.
SM (Laughing) Oh ho... uh...
MH What's going on here?
SM Say it isn't so?
MH Ned, tell me you don't go to the (inaudible).
ND I've been there on occasion. I prefer the theatre to the booth
MH Why? For the voyeurism aspect?
ND Uuh-yes. Yeah, sometimes I can get a-round of applause from another patron,
so—you know, ky-uh—kind of a show off thing.
MH You mean a guy—like another guy will put you over?
ND Oh yeah. The (inaudible) have to stop what their doing and just get--
SM Whoa.
MH Well—based on volume or based on distance?
ND Just on—uh—style.
SM Performance?
ND Performance.
SM Presentation?
ND Facial expressions.
SM Style?
ND Oh, you know, its—you know, everyone's got their own style.
MH Well—hold on now. Plus Ned puts himself over, when Ned's doing it, Ned
does (inaudible), you know, most people... Ned, Ned - ooh ooh.
SM Oooh.
ND Convulsion (inaudible).
MH Mmm hum. There's—there's quiet mas—you know, masturbators, and then
there's—you know, loud masturbators—
ND Yes.
MH And Ned happened to be the latter.
ND Looks like I'm having a grand mal seizure.
MH Give us an example, like—you know, maybe just the words you use—
maybe—go like "oh god."
SM (Laughing)
ND Well—its uh—you just—you always start off slowly--

Attachment A

MH Well—I'll—I'll give you the—*(starts a drumming rhythm)*
 ND *(Acting out)* Oh yeah... oh man...
 MH *(Still drumming)* Now you'll beat—you'll say that?
 ND Oh God... Yeah. People—you know, that's what those guys are there for anyway. They wanna see a show.
 MH *(Drumming gets faster)*
 ND Oh—it's coming Oh man. Oh yeah. Oh—come on. RPM's going—Oh God. Ooooh... *(inaudible)*... Ooooh. Ooooh—it's coming. Ooooh—man. Ooooh—*(inaudible)*... concentration...
 SV Sweet Jesus.
 ND Oh—you know, gotta *(inaudible)*. Hmmm. *(inaudible)* Yecah. What do you say there, sparky, what's up? Aah, ooh yeah, oh God. Here I go again! Ooooh yeah, I'm gonna go—oh oh oh oh *(increasing volume and drumming rhythm)* aahh *(screaming)*—ooooh Whew. Aahoooo.
 MH Crazy ass Ned.
 SV God.
 MH Five in front of the top of the hour.

SEGMENT 4: November 19, 2001, 8:00-9:00 AM

Male Host: MH
 Second Male Voice: SM *(sometimes indistinguishable)*
 Third Male Voice: TM *(sometimes indistinguishable)*
 Female Caller: FC

(Recording begins amidst discussion)

FC --sleep with Spider. And see I can tell you anything you wanna know about him.
 MH How long's his penis?
 FC Uuh, about six inches.
 MH Is it—er it's medium?
 FC It's medium, yeah.
 MH At best. And what—what position did you guys sleep in.
 FC Um, let me just tell you this, he's a jack-rabbit, that's all he is.
 MH Is--
 SM *(giggling)*
 FC Hop-on, hop-off.
 SM *(laughing)*
 MH So it wasn't very long?

Attachment A

FC No, um, he said something about having prostate infections or something--
Uproar of laughter.

MH Get Spider—get Spider on the phone and ask him--

SM He change—he changed his phone number. We don't even have it.

MH Oh man.

SM (Laugh) (inaudible over others)

MH So how long—and —and—and—when he banged ya, how long did it last?

FC 'Bout two minutes.

MH You're kidding me?

FC I'm not joking.

MH What position, from behind?

FC No, first it was missionary. After I gave him, um--

MH Right, oral

FC You know. Yeah.

MH You—you gave him oral?

FC See and then, like--

MH Did he give you oral? God I hope not.

SM (Muddled—laugh) Oh...

FC What do you mean you hope not?

MH It's just not good going down on a heavier set chick on oral. There's some
cheese down there.

FC You know what, he didn't even tell you the whole story on why I'm heavy.
And he didn't tell you that I am losing weight now.
Break in tape.
Recording resumes.

MH I was heavy because of my illness. It was called an eating disorder.

SM Yeah, eating disorders are an illness (inaudible).

FC No, no, no.

MH It was called (inaudible—chewing) Buffet three times a day, with a side order
of Wendy's friss.

FC Spider was trying to make sure that I ate every day.
Laughing.

SM He did a—he obviously did a good job.

MH He was trying—he was trying to pump you up a little bit?

SM/TM (Laughing)

MH He was like, fatten that turkey for Thanksgiving.

Attachment A

Uproar of laughter.

FC (Amidst the laughing) You guys don't understand.

MH I'm gonna get this breast nice and— Can somebody check Brent, he's having a convulsion over here?

Continuous laughter.

MH Somebody check Brent, he's having a convulsion.

Deep inhale.

TM Easy, Brent

Laughing, inhales, snorting, etc.

MH Why—was he trying to pump you up a little bit?

SM/TM (laughing)

MH Are you like a Ball Park Plank—Frank you pump when we bang ya?

TM Flump when you bang her?

MH It's a Ball Park Frank—is, you pump when you bang her. How big are you?

FC What does it matter?

MH Well, cause I—I just wanna get a (inaudible)—

Unknown Male She's big, I've seen her.

SM (Laughing)

MH How big would you say, Spice?

TM Uh, I'd say about 250, 260.

MH Okay, so she's a big girl. Yeah.

TM That's not too bad.

SM (Laughing) What?

MH Hm. What—

SM What are you talking about (inaudible)?

TM I'm saying she—she needs to lose is a hundred pounds.

MH Yeah, no big deal.

SM A hundred pounds, man.

TM That's not too bad.

MH Alright, stand by, mo—more of this—more of this—

FC (In background, crying) I'm sorry ..(beeping sound)... and I just want you to know that I...

End of tape.

Attachment A

SEGMENT 5: November 26, 2001, 7:00-9:00 AM

Male Host: MH
 Second Male Voice: SM (sometimes indistinguishable)
 Third Male Voice: TM (sometimes indistinguishable)
 Female "Hilary": FH
 Female "Sarah": FS

(Recording begins amidst discussion)

SM That is a nice booty
 MH -- that--that's points against you. I'm gonna be honest with you.
 FH Okay, okay.
 SM Nooo.
 MH Unless you're letting me call--unless we're having phone sex later tonight. You know, you're--you're solidly in like tenth place right now.
 FH Laugh.
 MH Alright, c-o-can ya get I get a little bit more of the ass. Oh right there, yeah, yeah.
 MH Now can I get a front shot, because the front shot (inaudible). Yeah right there. Oh man. Whoa.
 SM See Hilary, we're professionals.
 FH Fair enough.
 SM See We're like the ice-men. We've seen it before.
 FH That's true.
 MH This does nothing for me, Hilary. You don't understand, you know--I mean this is--I mean, you know. Not like I wanna go home and take these pictures and masturbate off to you.
 FH No, yeah, sure.
 SM No, no that would be totally out of the question.
 FH (Laughing)
 SM (Laughing) Not you.
 MH See I wanna--I wanna get a front party shot from you Hilary.
 FH You know why I haven't done front--front party shots?
 MH Uh--by the way, I love your finger nails. Oh bu--they--They feel so good on my boys, by the way.
 FH Oh yeah.
 SM Good God, (laugh).
 MH / SM Yeah. (inaudible), chill out. (inaudible), you're throwing a wet blanket on (inaudible).

Attachment A

SM / MH No, I (inaudible).
FH (Laughing)
MH (Inaudible), they would. I mean, that—that's one of my favorites.
SM The nails on the boys?
MH Oh yeah, nails on the boys.
SM Exactly.
MH Exactly. See—she knows.
SM Oh, you're done baby. You could--
FH (Talking, in background, muffled)
SM What's that?
FH (Inaudible) shaved right?
MH Oh yeah. I'm gonna—(inaudible) my boys, yeah.
FH (Talking, in background, muffled)
MH Does he—does he shave 'em?
FH Oh yeah.
SM Have you seen shaved boys before?
FH Yeah. (muffled —) oh yeah.
MH My boys are—my whole deal down there is shaved. I got the cleanest presentation in town. (inaudible)
FH That's good. That's good. No—no hairs in the teeth and stuff.
SM (Moaning) Right, right.
MH So why are you—why are you—why—are you—are you good at oral? Are you a big oral queen?
FH Yeah, I'm a big oral queen. I used to have my tongue pierced. And then I took that out but—yeah. I like giving. I don't really enjoy gettin' though.
MH Really?
FH Yeah.
MH You'd rather just give and give and give?
FH I'd—I'd rather give—yeah
SM For like an hour—an hour nonstop. Can you--
MH Can you go—can you go a half-hour solid?
FH Yeah but my cheeks would hurt.
MH Right.
FH They start hurting up in here you know
SM Mmm hmm.
MH I'll—I'll give you a little bit of rest.

Attachment A

SM: Wow. That's my style. God that's nice.
FH: Yeah.
MH: We can—we can go for oral or -- I—we can do like a half-hour intercourse (inaudible).
SM: Yeah but she's definitely (inaudible) more and more (inaudible).
FH: (Inaudible)
TM: She's (inaudible)—she's (inaudible) more and more (inaudible)
SM: She doesn't like getting it, but she likes giving it
TM: (Inaudible) I like that.
FH: (Laughing)
MH: I got first dibs on her by the way, okay? I just want everybody to know that I got first dibs on her Brent so don't you be calling her today.
FH: (Laugh)
MH: If Brent calls you before I do, hang up on him, okay?
FH: Yeah (laughing), will do.
SM: That's really funny.
SM: It's me, Brent...
MH: Make sure you you—yeah Brent and—don't try to be Bubba either.
SM: Can I come over and (inaudible).
MH: Be Bubba.
SM: (Mimicking) Hello, it's Bubba. How you doing?
FH: (Laughing)
SM: (Still mimicking) (inaudible)
MH: So—you don't—(inaudible).
FH: (Laughing)
Conversation fades out. Break.
Recording begins amidst conversation.
FH: Yeah.
SM: (Inaudible), tell the truth.
MH: I can bring George in here for truth in broadcasting (inaudible).
SM: Did you experiment in high school?
FH: Not in high school, about six months ago.
MH: Oh, okay, not in high school.
TM: Yeah--(inaudible)
SM: Have you—have you ever ex--experimented with a chick before?

Attachment A

FH Not with a chick, no.
MH What do you mean, not with a chick? I mean, obviously you've experimented with guys before.
FH With guys yeah.
TM There's—there's—there's two equations—
FH With a couple guys, yeah.
MH (Inaudible)
SM Oh you've had two guys before? Let's talk about that...
FH Yeah.
MH Wa—wait hold on, you've had two guys before?
FH At one time, yeah.
MH Ya did?
FH Yeah
TM/SM Hmmm. / Ooooh.
MH Can we talk about that?
FH Yeah we can kinda talk about that.
MH/SM Where—when did it happen? How long ago?
FH I was eighteen. I was a freshman in college...
MH Right. And you banged two guys together at once?
SM What school did you—what school did you go to?
FH Well I—nooah... I lived in Hickory, North Carolina, and then I went to college in Greensboro.
MH Right. Right. So anyway (inaudible)--
FH So I went to UNC Greensboro.
MH Was it your boyfriend and one of his friends? Was that what it was?
FH No, it wasn't a boyfriend, neither one of them.
MH Two stron—two strange guys?
FH Well one of them I'd kinda been banging for a while, you know.
MH Right.
FH And then the other one was just kind of a random that got thrown into the mix that night.
MH How—how did that happen?
FH I don't know.
MH Are you telling the truth, or are you making this up?
FH No, I swear. No, no, I really swear.
SM Were they—were they doing it at the same time? Or did they take turns?

Attachment A

MH Yeah, absolutely!

FH They'd take turns.

MH No! It was the same time on you. I know it was.

FH No—no it really wasn't! It was—

MH It wasn't one from the front, one from the back?

FH No! I'd probably explode.

MH Isn't that what you wanted?

FH What—both of them at the same time?

MH Right.

FH Um, kind of.

MH Were you drunk?

FH Yes, I was drunk.

MH Absolutely. Of course you're going to hide behind that (inaudible)...but I don't believe that (inaudible).

SM Uuh...that's okay... So they took turns huh?

MH Right?

FH Yeah.

MH How—how long did it last? Was it a pretty—an all night orgy (inaudible)?

FH Um, it was a good hour at least.

MH How many orgasms did you have?

FH You know, I've never had an orgasm during sex.

SM WHAT?

MH Well—now hold on. That's—that's almost a challenge for me now.

FE (Laugh)

SM You've never had an orgasm from sex.

FH I swear.

MH You've never had an orgasm before?

FH And it makes me so damn mad.

MH You've never—have you ever had one through oral?

FH No.

MH No.

SM Well yeah, she doesn't like oral.

MH Well—yes—she fo—yeah she—she hates oral.

SM/TM Wow.

MH So you—you never—you know why? Because you've never had a guy properly stimulate your g-spot. That's why.

Attachment A

FH I mean, that could be.
SM Yeah.
SM/TM That's—no, no—that's not--
FS But I think its cause I masturbate too much.
MH How—how often do you masturbate?
FH Usually--
MH Be honest.
SM She looks like a masturbator.
FH Usually once a day. Yeah -- I'm a masturbator.
SM Uoh man.
MH Now—now do you do it with a vibrator? Or do you use just your fingers?
SM/TM (inaudible amongst selves) (laugh)
FH Just my hands.
MH Really?
SM Water—do you use the water trick?
MH Yeah, do you use--
FH No.
MH A lot of women do the water deal now-a-days. That's—it tends to be very popular.
FH No... no.
FS See, I don't—I don't see that at all. I'd rather use a toy.
SM (inaudible)
MH Wow.
FH I'd rather use my hand.
MH How—how bout you, Sarah? How often do you masturbate?
FS Um, not very often, because, I--I get a lot of booty.
MH Ob—obviously you got George around. (inaudible), right?
FS Yes, exactly. But I—I do have two toys, so...
MH Right.
FS So, I do, when he's not around.
MH Now, Hilary are you uh— do you use a toy at all?
FH I have a toy. But I don't really enjoy it.
SM She—she's a hand masturbator.
MH Right.
FH Yeah. I'm a hand masturbator.
SM She—she's a hand queen.

Attachment A

MH Wow. Now see—and you do it about every day?
FH Yeah.
SM You say you do it about every day?
FH And sometimes I get going one day and I might go several times that day.
SM Mmm ooh. (sighing)
MH What's the most times, recently that you masturbated in one day?
FH Oh maybe like, seven or eight.
MH In one day?
FS Yeah. . (sighing).
SM Whoa (laugh).
FH Yeah.
MH Now, can you have an orgasm every time?
FH Yeah.
SM Huh—see that's the beauty of being a chick. This is—uh—
MH See us guys, we can't—there's no way we could do seven or eight times (inaudible—talking over one another).
SM Yeah, we can't (inaudible). Three would be—uh—the most.
TM Right.
FH I mean I can do, like thirty seconds in between em.
MH Can you do one right now—can you do one right now?
FH No. (inaudible)
MH Well, you could—you could, but you won't.
FH Well I could, but I won't. Exactly.
MH Why won't you?
FH Cause I'm too nervous.
MH Come on.
FH I've never done it in front of other people.
MH How bout we—how bout we, uh, close the studio and it'd just be and you in here.
FH No. (laugh)
MH Well—how bout we put you in a room by yourself—
SM In whose room?
MH O—over the telephone, and you do it?
FH (Laughing) I don't know if I could do that.
MH Now see that would be—but that would be landmark. (inaudible)
FH That would be!
MH Okay then. I mean—and—

Attachment A

SM We could put you in Bubba's office...

MH I could—I could put you in my office. You've been in my office. I could shut--

FH I've been in there.

MH Okay I can--

FH I love the carpet, by the way.

MH Thank you very much. And you're back could be hitting that carpet here soon.

FH (Laughing)

MH But what I'm saying is—that you can get on my couch. You can call me over the telephone. I'll lock the door. You know there's no windows or anything in there?

FH Right.

MH And you can—you know... After all honey, if you wouldn't have thrown me the bone in saying you masturbate a lot, how—would I even have asked it of you? No.

SM Right.

FH That's true.

MH You offered the information.

FH I did.

MH So, would there be any way I could put you in there?

FH I don't know. Does it increase my chances of getting boobs?

MH Well—I think so, it does, yeah.

FH You think so?

MH I think—I think it's a fine equation as to who wins and who doesn't win.

FH Yeah, we have to work out a deal on that.

MH Uh, well, possibly, yeah.

FH Oh, okay.

MH So, I mean, would you do that for me? I mean, and you know what (inaudible)-

FH Perhaps.

MH I've been doing this for a long long time, and I'll be able to tell if it's fake or not. Cause I've been doing this for a long long time.

FH Yeah.

MH I know--

FH But I'm not noisy when I do it.

MH Not at all?

Attachment A

FH No, I mean there's no—there's no—
Deep breathing from unknown source.

FH Well no, not really. It's more like I hold my breath until it happens, and then, you know.

MH Well—okay, when it finally—when it finally—when it finally happens what do you do? I mean—

FH I just lay there and breathe.

MH So it'd be—you're trying to say we wouldn't get anything out of it at all?

FH You might—no, no. Cause there's no need to be vocal when there's—

MH See that's—see that's why you'd have to do it in the studio where I could watch. Cause I could—I could give play by play then.

FH Well, (laughing)

SM Aah, see she—she thought she could get out of it (inaudible).

FH (laughing), no—I wasn't—I wasn't trying to get out of it, I'm just saying.

MH I'm just saying Hilary, I mean you know, the bottom line is—Maybe Sarah can do it for you?

FH (Laughing)

MH I mean, she's bi--

SM (Inaudible)

FH But I'm not, no.

SM Yeah (inaudible) into this trap.

MH Would you be willing to do that or no?

FH No. (laughing)

SM You gotta—, keep—keep going in this line...

MH How bout I do it? How bout I do it?

FH (Still laughing), no. No way.

MH How bout I do it for you?

FH No can do.

MH Why not?

SM (Inaudible)

MH Now see, you're single?

SM (Inaudible)

FH I'm single.

MH Right?

FH Yeah.

MH (Inaudible) Right. And you know—obviously, you know. You're attracted to me. I can tell—a little sparkle in your eye.

Attachment A

FH (Laugh)
MH You like a—you like a strong man like me
FH Right.
MH Nice wager and earner.
FH Exactly.
MH Large penis.
FH Exactly.
MH Clean shaven.
FH Right.
MH Solid, rugged, tan.
FH Mmm hm. (laugh)
SM (Laughing)
MH I—I could do it for you almost.
FH Almost.
MH Well I mean—I—have you—is it beyond the—is it beyond the realm of having a guy masturbate you wha—when you like him? Has it ever happened? You gotta come at orgasm...
SM Yeah.
FH Right.
MH (Inaudible) the orgasm.
FH No, no orgasm.
MH So, you—you can't—even a MAN trying to masturbate you, you can not orgasm.
FH No.
SM Wow.
MH There's a first time for everything isn't there.
FS That's crazy.
FH I know, isn't that weird?
FE (Inaudible)
MH You know, I gave (inaudible) oral on the radio.
FH Really?
MH Yeah and you say you don't like it—but ya—maybe the reason you don't like it is because you haven't gotten it correctly.
SM Yeah, that is true.
FH Well, you know what, I mean—that could be.
MH Right. So if you wanna luke yourself up over here and you know, I could show ya--

Attachment A

FH (Laughing)
MH --the proper way to do it.
FH (Laugh) I appreciate the offer.
MH Okay. Was that a solid no?
FH That's a solid no.
MH Fantastic
FH&FS (Laughing)
MH (Inaudible), I tried—I tried all my bag of tricks, I've exhausted them all.
SM Yeah.
MH I was trying to take it to the—(inaudible)—
SM But you made a good run at it though.
MH Let me show you my four—my four—my four—you know, I got so many different bag of tricks. I went from her doing herself in private...
SM Right.
FH&FS (Laughing)
MH To her doing it here and with me coaching and giving play by play...
FH/FS (Laughing)
SM Clear in the studio.
FH (Laugh)
MH To Sarah doing it,
FH or FS Okay...
MH To—to me doing it! And I struck out all four—four strikes and you're—you're solidly out Brent.
SM Yeah.
TM Right.
SM And you didn't even foul one off man.
MH No, I didn't even foul one off.
FH&FS (Laughing)
MH I—I got Bruce Spri—I got Bruce (inaudible) and Fernando Venezuela (inaudible).
FH&FS (Laughing)
MH Well thank you for being—for being so non-accommodating today though, Hilary.
FH I'm sorry.
MH You—you throw me all these emotional bones, and you're expecting I'm gonna bite on several, and I did—and then you're not able to facilitate any of them.
FH I tried.

Attachment A

SM Right.
FH I tried.

SEGMENT 6: November 27, 2001, 7:30-9:00 AM

Male Host: MH
Male Co-host: SH
Female Guest: FG [1-2]

FG1 No, we work in a, its like a (inaudible) office.
MH Right.
FG1 Off-site. But it's like near it so...
FG2 Yeah.
MH Right, right.
MH Well, you know ladies, we're gotta take a picture of your boobs now. Are you
- are you embarrassed?
FG1 (Laughing)
FG2 Very. (laugh) Very.
MH Tell the ladies that are listening to the show and are possibly gonna be part of
the 12 boobs of Christmas, its not that bad.
FG1 No, its not.
MH We're trying to make it comfortable for you lovely ladies. I, you know, I
would be embarrassed too, if I had to go to a --
FG2 (Laughing)
MH in a room full of a bunch of girls and show my small penis.
FG1&2 (Laughing)
MH Inevitably that's what you're doing, right. I mean - although - my boobs and
your - your boobs and and --
SH I think boobs and penis are way different.
MH Yeah, I mean, you know --
SH You—you can get a boob enlargement--
MH (Talking over second host) one's just (inaudible) and the other one's just --
add-ons, you know?
FG1&2 Yeah, but still, its (inaudible).
MH Yeah it is sexual but you guys are sexy. You know what I'm saying? It ain't
like you some block-rocking road whores You guys are hot.
FG1&2 (Laugh)

Attachment A

MH You guys are hot. I mean, you know what I'm saying? And - you know, the only thing you guys are missing is a real nice set of boobies.

FG1or2 (Mumbling) yeah (inaudible).

MH Alright, well, lets get some pictures here. We'll go with you first though, Lisa. Are you Lisa or Vanessa?

FG1 Vanessa.

MH Okay Vanessa.

FG1 Alright, do I take it all the way off or--

SH No no no, (inaudible)... get on my--

MH You gotta get on my booster chair here though.

FG1&2 (Laughing)

SH Are you guys married? You guys married?

FG1 No.

FG2 I'm recently single.

MH Oh, you're recently single? And how 'bout you. You single or are you married?

FG1 Yeah, I have a boyfriend. He's actually listening in the car (laugh) right now.

MH Who--What's his name?

FG1 Brandon.

MH What's he do for a living?

FG1 He is a maintenance supervisor.

MH Right.

SH Janitor?

FG1 (Laughing) No-o.

ME That means he changes oil.

SH (Laughing)

FG1 (Laughing) No

MH (Snuttering - inaudible) When was the last time you and Brandon screwed? Be honest.

FG1 Last night.

MH You guys screwed last night?

FG1 Mmm hum.

MH How was it?

FG1 It was good.

MH What position is your favorite? Like, last night, what'd you guys end up --

FG2 (Laughing)

Attachment A

FG1 Its actually just—with him on top. Cause I had surgery so I can't do it a lot of different ways.

MH Really, what kind of surgery? Like a—like a ovarian kinda deal?

FG1 Mmm hmmm. I had my right one removed.

MH Oh, are you gonna be okay on that deal?

FG1 Yeah.

MH Are you sure?

FG1 Yes.

MH Right, so that—that kinda hinders like the doggie and the (inaudible)—

FG1 Yeah.

MH Right.

FG1 Yeah.

SH Does that mean you can't have kids at all or, how, I mean, does that affect you?

FG1 It's just limited. It's like, cause you only have one ovary now.

MH Right, instead of two.

FG1 Right.

MH You only got one goalie, instead of two goalie's blocking out the (inaudible)

FG1 Right (laughing).

MH (Still talking, inaudible).

FG1 Right.

MH Alright, so you—did you give him oral last night?

FG1 No.

MH Why not?

FG1 Cause.

MH You don't like that.

FG1 No, I do it often.

MH Well you frowned it up, like possibly you had a big oral (inaudible). And, I mean, that's very important for us guys, to be honest with you.

FG1 Well he actually gets it a lot.

MH He gets a lot of oral.

FG1 Just not last night (laughing) um...

MH Really, how often does Brandon get oral from—from your hot self?

FG1 Usually...

MH Once a day?

FG1 Yeah.

Attachment A

MH Really.
FG1 (Inaudible)
MH I mean, that's a lot.
SH Yeah. That's pretty—that's nice odds. That uh, pretty good.
MH Do you uh—do you uh—do you, let me see, do you recycle or do you--
FG1 (Laughing)
MH You uh—you uh—you don't waste a drop? (inaudible) right?
FG1 Right.
SH You do that too?
FG1 Hmm hmm.
MH Wow you little sleazy (inaudible).
SH When you look at her you wouldn't even, you wouldn't even believe it.
MH God, you're so—you are so conservative and school-teacher-like, but yet you know--
FG1 (Laughing)
MH you give oral sex, you don't waste a drop, God. Wow!
FG1 (Laughing)
MH Alright, well get on my booster—see that little booster chair over there? My shady boss—And you gotta tattoo—
SH She's gotta little tattoo—
MH On the belly button (inaudible)... Now Brent's (inaudible)
SH Oh yeah. She's a freak. (inaudible)
MH Are you a freak?
SH It is official.
FG1 Well—
MH It's official. Brent's (inaudible) on it.
FG1 (Laughing)
SH Right.
MH Are you a freak? I mean, you know like when you're getting' laid are you vocal, --
FG1 Mmm Hmm
MH Do you tell Brandon, "harder, harder, and f- me harder," the whole nine yards?
FG1 Yeah. You can't just lay there.
MH Right. Wow. Okay, cool. Well, lets—lets get you on my shady, uh little booster chair here.

Attachment A

MH Brent, I'm gonna give you like ten dollars and see if you can get one of the producers to buy me a new shady chair. I'm afraid that some—one of these ladies with the high heels are gonna poke through that little hole, you know what I'm saying?

SH Take 'em off. You can take--

MH Yeah, there you go.

MH Look at you. Well—what are you like a size 5, a size 1? Alright, get on the chair there. Oh—no, just s—no stand, stand. Don't sit, just stand. You can keep your—you can keep your heels on baby. I'm sure you're coo(inaudible). There you go. Wow, look at you.

FG1 (Giggling)

MH Just (inaudible)—don't be—don't be nervous, sweetie.

FG1 (In background, inaudible)

MH Hold on, you're boyfriend isn't gonna see your boobs? Cause you're that conscious of them? But I wanna help facilitate you on some new boobies, baby.

FG1 (In background) okay..

MH I hope I can too, I really do. I--

FG1 (Giggling)

SH Wow.

MH I hope (inaudible) picks you.

SH Brandon's gonna be pissed, man. Here we are checking out her--

MH Yeah, here we are checking out her titties, and he never--

SH And he never even sees them

MH Because you know, I can look now.

SH We'll describe them to you, Brandon.

FG1 (Laugh)

MH Yeah but I would--

Tape ends.

Attachment A

SEGMENT 7: December 27, 2001, 8:00-9:00 AM

Male Host: MH
 Second Male: SM
 Third Male: TM (sometimes indistinguishable)
 Singer: SI
 Chorus: CH

(Recording breaks in amidst discussion)

MH -I knew that I had big ones but, I guess I got big ones. I--never have been told that, guys - that my testicles were ab-abnormally large.
Music begins in the background.

SM The first time I've ever seen 'em--testicles that big. Pornos or anything.
 TM Seriously.
 SM Yeah.
 MH Seriously.
 SM Yeah.
 TM You could break 'em into (inaudible) *(garbled mumbling)*.
 SM Yeah.
 TM *(Laugh)*
 SM I think you might have genital elephantitis, I'm serious. You better get those things checked out.
 TM You got abnormal sized boys...
 Unknown Male Yeah - they're huge.
All laughing. Song fades over discussion.

SI *(To music)* Well he's the big fat king of thock jock inappropriety.
 MH I got big ones
 SI And Bubba's ba(bleep)lls are of the coconut-size variety.
 SM & TM They were hanging.
 SI And he wore extra-large size diapers when he was very small. In fact, his ba(bleep)lls were so damn big that Bubba couldn't even crawl. *(Chorus of music begins)* Oh Bubba's got big ba(bleep)lls.
 SM Oh you do.
 TM Seriously.
 SI Giam big ba(bleep)lls.
 MH They're testimonious.

Attachment A

SI They're shaped like beach balls. And they're stinky big ba(bleep)lls. Oh Ned has big ba(bleep)lls, and Spice Boy, he's got big ba(bleep)lls.

SM/TM Yeah—huge. (Inaudible)

SI But Bubba's got the biggest--

Unknown Huge (laughing).

SI (With chorus) Ba(bleep)lls of them all!

SI Bubba's ba(bleep)lls are always itching and they're full of little crabs. And Brent likes to bounce them up and down upon his chin.

SM I mean, God.

TM Ooh.

SI And if you claim that yours are bigger, then you are just a fu(bleep)cking liar. Bubba's ba(bleep)lls could heat Alaska if they ever caught on fire.

SJ Bubba's ba(bleep)lls bounce on the floor every time he gets undressed.

SM Jesus.

SI And those things would be a D-cup if you stuck them on your chest.

MH I got big ones.

SI Bubba's ba(bleep)lls are firm and meaty and they never ever droop. One time I even saw a black man try to dunk one through a hoop. (Chorus of music begins) Oh Bubba's got big ba(bleep)lls.

SM That's huge.

SI Giant big ba(bleep)lls.

TM Soft balls.

SI They're shaped like beach balls. And they're stinky big ba(bleep)lls.

MH Hanging.

SI Yes Ned has big ba(bleep)lls, and oh, Spice Boy's got big ba(bleep)lls.

SI (With chorus) But Bubba's got the biggest--

Unknown That's huge.

SI (With chorus) Ba(bleep)lls of them all!

CH (In background) Oh—he's got big balls. He's got big balls. He's got big balls (continues repeating).

TM You got some cantaloupes down there.

SI And he's just itching to tell you about them.

MH Do they look big from the sides?

SI Ad nauseum.

MH I think it would look fairly impressive if I would show it to you guys

SM/TM Eeeuh.

Attachment A

CH *(Still repeating in background)* Oh—he's got big balls. He's got big balls.
He's got big balls *(continuing)*.

SI In-grown hairs.

MH Got big ones.

CH *(Continuing in background)* —he's got big balls. He's got big balls *(still repeating)*.

SI Pimples.

SM/TM Eeuh, God.

SI Cottage cheese.

CH *(In background still repeating, then chorus)* But Bubba's got the biggest—

TM Yeah, you need to start thumping *(thumping noise)* on them like the produce.

CH *(In background)* Balls of them all!

SI Chaffing.

SM Jesus.

CH *(In background)* Oh—he's got big balls. He's got big balls *(repeating)*.

SI Salmonella.

Attachment B

FCC List of Small Entities

October 2002

ATTACHMENT B

FCC List of Small Entities

As described below, a "small entity" may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	

Fixed Satellite Transmit/Receive Earth Stations	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHz Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A

Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida; WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida.

Seven broadcasts, twenty-six indecency violations, four public file violations and fines equaling \$755,000. By today's action, we provide yet another example of this Commission's commitment to enforce its rules and regulations—especially as it relates to indecent programming engulfing our broadcast airwaves.

As the Commission with the strongest enforcement record in decades, it should come as little surprise that this Commission's indecency enforcement has dwarfed its predecessors. I am proud of the fact that over the past three years, we have proposed nearly twice the dollar amount of indecency fines than the previous two Commissions combined (over seven years) and ten times the amount of fines proposed by the last Commission.

Now is not, however, a time to rest on our laurels and no broadcaster should believe that we will. Indeed, due to the leadership on this issue from Commissioner Martin, the Commission will soon begin considering fines for each separate utterance found indecent in a broadcast. In addition, we will continue to look to Congress to dramatically increase the enforcement penalties available to us to prosecute clear indecency violations. I applaud Chairman Upton, Chairman Tauzin, Congressmen Dingell and Markey, Chairman McCain, Senator Hollings and the many others on both sides of the aisle in Congress for providing vital leadership on this issue.

As the Commission continues the challenging task of balancing the protections of the First Amendment with the need to protect our young, these increased enforcement actions will allow the Commission to turn what is now a "cost of doing business" into a significant "cost for doing indecent business."

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Stations WPLA(FM), Callahan, Florida, and WCKT(FM), Port Charlotte, Florida (Formerly Station WRLR(FM)); Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

In this case, four Clear Channel stations aired on several occasions graphic and explicit sexual content as entertainment. The extreme nature of these broadcasts and the fact that the show at issue has been the subject of repeated indecency actions gives the FCC the obligation to take serious action. Instead, the majority proposes a mere \$27,500 fine for each incident. Such a fine will be easily absorbed as a "cost of doing business" and fails to send a message that the Commission is serious about enforcing the nation's indecency laws. "Cost of doing business fines" are never going to stop the media's slide to the bottom.

To fulfill our duty under the law, I believe the Commission should have designated these cases for a hearing on the revocation of these stations' licenses, as provided for by Section 312(a)(6) of the Communications Act. I am discouraged that my colleagues would not join me in taking a firm stand against indecency on the airwaves.

If the Commission can't bring itself to go to a revocation hearing, at least the Commission should have used its current statutory authority to impose a higher and meaningful fine. The Commission could have proposed a fine for each separate "utterance" that was indecent, rather than one fine for each lengthy segment. As Commissioner Martin points out, such an approach would have led to a significantly higher fine.

Here, four Clear Channel stations ran several segments of the "Bubba the Love Sponge" show which contained graphic and explicit sexual content. The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material numerous times. But then the majority inexplicably determines that the appropriate recourse for this filth is a \$27,500 fine for each violation.

The majority states that, in light of Clear Channel's history of violations of the indecency rules, other serious multiple violations "may well lead to license revocation proceedings." The majority fails to acknowledge that not just Clear Channel, but the "Bubba the Love Sponge" show, has been the subject of at least three previous fines for violating our nation's indecency laws. This is not even "three strikes and you are out" enforcement. How many strikes are we going to give them?

This case may well lead broadcasters to believe that this Commission will never use the enforcement authority it currently has available to it. The message to licensees is clear. Even egregious repeated violations will not result in revocation of a license. Rather, they will result only in a financial penalty that is merely a cost of doing business.

The time has come for this Commission to take a firm stand against the "race to the bottom" as the level of discourse on the public's airwaves gets progressively coarser and more violent. Our enforcement actions should convince broadcasters that they cannot ignore their

responsibility to serve the public interest and to protect children. The FCC's action today fails to do so.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Clear Channel Broadcasting Licenses, Inc., Licensee of Station WPLA(FM), Callahan, Florida, WCKT(FM), Port Charlotte, Florida; Citicasters Licenses, L.P., Licensee of Station WXTB(FM), Clearwater, Florida; Capstar TX Limited Partnership, Licensee of Station WRLX(FM), West Palm Beach, Florida, Notice of Apparent Liability for Forfeiture

I agree with this Notice's conclusion that the licensees at issue apparently violated our indecency rule and public file requirements.

I write separately to emphasize again that we could, and should, be placing higher fines on those who broadcast indecent programming during the hours when children may be watching or listening, in violation of our rules and statute. The governing statute targets "whoever utters" indecent or profane language, and the Commission should not continue to treat an entire program full of indecent "utterances" as just one violation.¹ We should not continue to give a broadcaster who violates our indecency rule at the beginning of a program a "free pass" for the next two hours.

In this case, I would have found numerous violations, for a total indecency fine significantly higher than that proposed (it appears there were at least 49 indecency violations, for a total forfeiture exceeding \$1,000,000).

¹ See 18 U.S.C. § 1864 ("Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both"), 47 C.F.R. § 73.3999 ("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").

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Clear Channel Broadcasting Licenses, Inc., Notice of Apparent Liability for Forfeiture

The Commission has a duty to enforce statutory and regulatory provisions restricting broadcast indecency. The material broadcast by these four Clear Channel radio stations is undeniably graphic and explicit in its sexual content and clearly intended to shock listeners. Clear Channel and, indeed, this particular "Bubba the Love Sponge" program have been the subject of repeated Commission indecency actions in the past. Given the explicit nature of the broadcast material and the history of prior offenses, this is the type of serious repeated behavior that I believe would warrant initiation of license revocation hearings.

In fairness, however, this material was broadcast in 2001. The Commission clarified in an April 2003 order that it was broadening its range of enforcement approaches and tools to combat indecency on our nation's public airwaves. For this reason, I approve of today's Order as legally appropriate. The egregious nature of the material clearly warrants the statutory maximum \$27,500 fine per violation. While the Commission at all times has the authority to initiate license revocation hearings or sanction for multiple indecent utterances in a given program segment, it can be argued that the Commission was not employing these approaches at the time this material was broadcast. Nonetheless, as we made clear last year, broadcasters are now aware that the Commission will not hesitate to use its full range of enforcement sanctions for indecent material broadcast after April 2003.

I also acknowledge the importance of broadcasters adhering to the public inspection file rules. Documents pertaining to an FCC investigation are clearly within the scope of the information that must be maintained in a manner accessible to the listening public. In this case, each of the stations inexplicably failed to include complaints related to the airing of this material in their public files.

A broadcast license is a public privilege. In return, broadcasters have a responsibility to serve the public. This public interest responsibility clearly encompasses protecting children from indecency on the airwaves and facilitating public access to documentation through which the station can remain accountable to its local community and listening public. These stations exhibited a blatant disregard for both.

EXHIBIT 3

AMFM Radio Licenses, LLC, 18 FCC Rcd 19917 (2003)

("Elliott in the Morning" broadcasts of May 7 and 8, 2002 on
Station WWDC-FM, Washington, D.C.)

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
)	
AMFM RADIO LICENSES, LLC	)	File Nos. EB-02-IH-0472
	)	EB-02-IH-0494
	)	NAL/Acct. No.200432080003
Licensee of Station WWDC-FM	)	FRN 0003720935
Washington, DC	)	Facility ID No. 8682
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 30, 2003

Released: October 2, 2003

By the Commission: Commissioner Martin concurring and issuing a separate statement; Commissioner Adelstein issuing a separate statement; Commissioner Copps dissenting and issuing a separate statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), issued pursuant to section 503 of the Communications Act of 1934, as amended (the "Act") and section 1.80 of the Commission's rules,¹ we grant complaints from Reverend Michael G. Taylor and from Catherine P. Henry² and find that AMFM Radio Licenses, LLC ("AMFM"), licensee of Station WWDC-FM, Washington, DC, apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, by willfully and repeatedly airing indecent material over the station during its May 7 and 8, 2002, broadcasts of the "Elliott in the Morning" program. Based upon our review of the facts and circumstances in this case, we conclude that AMFM is apparently liable for a monetary forfeiture in the amount of Fifty-Five Thousand Dollars (\$55,000.00).

II. BACKGROUND

2. The Commission received complaints that Station WWDC-FM broadcast indecent material on May 7 and 8, 2002, at or about 8:00 a.m. during the "Elliot in the Morning" program. The complaints seek Commission redress for the broadcasts' alleged use of "crude language, explicit sexual references" and "blatant attempt to mock" the Bishop Denis J. O'Connell High School ("Bishop O'Connell High School") community, generally, and the Bishop O'Connell High School students,

¹ 47 U.S.C. § 503(b)(2002); 47 C.F.R. § 1.80(2002).

² See Letter from Reverend Michael G. Taylor, Chaplain, Assistant Principal, Bishop O'Connell High School, to Commissioner Michael J. Copps, Federal Communications Commission, dated May 23, 2002 ("Reverend Taylor Letter"); Letter from Catherine P. Henry to Enforcement Bureau, Federal Communications Commission, Enforcement Bureau, dated May 8, 2002 (complaining about the broadcasts and additionally enclosing 73 letters from Bishop O'Connell students, who complained that the broadcasts denigrated Bishop O'Connell High School's principal and student body).

administration and principal, particularly.³ In support of his complaint, Reverend Taylor submitted an audio tape of both broadcasts.⁴

3. The portion of the May 7 broadcast in question involved a station-sponsored promotion, during which two female students called in for the opportunity to audition to dance in a cage at an upcoming rock music concert.⁵ At the prompting of the program hosts, the two callers identified themselves as students at Bishop O'Connell High School, described their physical attributes in terms of "both [being] pretty hot,"⁶ provided their bra sizes,⁷ and otherwise engaged in sexual banter with the program hosts.⁸ The program hosts continued to probe by asking the two female students leading questions, such as whether they were "kind of like an exhibitionist,"⁹ "flash[ed] from time to time," did occasional "little show[s] at parties" together with their "boobies out,"¹⁰ "at school lined like two or three guys up against the lockers,"¹¹ and had sexual encounters in the school's stairwells and closets.¹² The program hosts also asked the two female students whether they had "ever hooked up" or "made out with a teacher."¹³ During their interview with the two female students, the program hosts repeatedly returned to the subject of their "lining up" boys "against their lockers,"¹⁴ and interjected loud sucking and slurping sounds.¹⁵

4. The portion of the May 8 broadcast in question related to the two female students' suspension from Bishop O'Connell High School, the consequence of their interview during the May 7 broadcast. The program hosts continued their repeated references to oral sex during this broadcast, commencing the segment by reading from the Bishop O'Connell High School's website's stated school mission of "pursuit of excellence of the whole person" and interjecting, "and then you go down."¹⁶ Noting the website's stated objective of "a healthy lifestyle" for the school's students, speaking as if his mouth was full and with loud sucking and slurping sounds in the background, one program host made reference to "healthful protein."¹⁷ The program hosts also criticized the girls' suspension from school by remarking that "if they're blowing guys at the school, that's not their fault . . . the school needs to do a better job policing," and "some of the priests would ask if they had brothers."¹⁸ Referring to the high school administration's apparent concern about the school's reputation, the program hosts further stated that "people spend a lot of money to get that [Bishop O'Connell High School's] image," and "people

³ Reverend Taylor Letter at 1.

⁴ See Program transcript, Attachment A.

⁵ *Id.* at 10-15

⁶ *Id.* at 14.

⁷ *Id.* at 11, 14.

⁸ *Id.* at 10-12, 14-15.

⁹ *Id.* at 11.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 12.

¹² *Id.* at 15.

¹³ *Id.* at 14-15.

¹⁴ *Id.* at 12, 14-17.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 17-18.

¹⁸ *Id.* at 20.

spend a lot of money to go to college [and] it ain't like people ain't screwing there."¹⁹ The program hosts also took calls from several other Bishop O'Connell High School students, asking one male student if he "was one of the guys that [the two female callers] blew in the hallways,"²⁰ and another if he "ever had [his] back up against a locker."²¹ Finally, the program hosts asked one student caller if, after the May 7 broadcast, the Bishop O'Connell High School principal "actually g[ot] on the P.A. system and talk[ed] about how they [the two female caller students] were giving blowjobs in the hallway," speculated that the principal probably had "never gotten a blowjob from his wife," and said that they "hear [the principal] told [one of the female caller students] she's gotta give up semen for Lent."²²

5. After reviewing the complaints and the audio tape, the staff issued a letter of inquiry to AMFM, with which we enclosed a copy of the tape.²³ Clear Channel Communications, Inc. ("Clear Channel"), corporate parent of AMFM, responded to the letter of inquiry.²⁴ Clear Channel did not dispute that WWDC-FM had broadcast the material contained in the tape, at the dates and times set forth in the complaints, but claimed that, because the tape appeared to contain some omissions, it was not an accurate record of the entire broadcasts. Clear Channel also asserted that the material is not actionably indecent under the Commission's established policies. In response to a further letter of inquiry,²⁵ Clear Channel advised that it aired the material in question only on WWDC-FM.²⁶

III. DISCUSSION

6. The Federal Communications Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. The Commission's role in overseeing program content is very limited. The First Amendment to the United States Constitution and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression.²⁷ The Commission does, however, have the authority to enforce statutory and regulatory provisions restricting indecency. Title 18 of the United States Code, Section 1464 prohibits the utterance of "any obscene, indecent or profane language by means of radio communication."²⁸ In addition, section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast indecent material during the period 6 a.m. through 10 p.m.

¹⁹ *Id.* at 23.

²⁰ *Id.* at 24.

²¹ *Id.* at 26.

²² *Id.* at 23-24, 26.

²³ See Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to AMFM Radio Licenses, LLC, dated November 15, 2002.

²⁴ See Letter from Kenneth E. Wyker, Senior Vice President and General Counsel, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 16, 2002 ("Clear Channel Response to Inquiry").

²⁵ See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to AMFM Radio Licenses, LLC, dated July 2, 2003. We note that the staff appropriately now routinely asks, in letters of inquiry issued in response to indecency complaints, whether the licensee (or co-owned stations) broadcast the complained-of material on other stations.

²⁶ See Letter from Richard W. Wolf, Vice President, Clear Channel Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 7, 2003.

²⁷ See 47 U.S.C. § 326(2002).

²⁸ See 18 U.S.C. § 1464.

7. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.²⁹ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³⁰ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.³¹ As we set forth in greater detail below, we conclude under this standard that AMFM is apparently liable for a forfeiture for its apparent willful and repeated violations of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

A. Indecency Analysis

8. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment to the United States Constitution. The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent speech, as well the Commission's interpretation and implementation of the governing statute.³² Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.³³

9. The Commission defines indecent speech as language that, in context, depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium.³⁴

²⁹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³¹ See, e.g., *SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

³² Title 18 of the United States Code, section 1464 (18 U.S.C. § 1464), prohibits the utterance of "any obscene, indecent or profane language by means of radio communication." *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). See also *Action for Children's Television v. FCC*, 852 F.2d 1332, 1339 (D.C. Cir. 1988) ("*ACT I*"); *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert. denied*, 503 U.S. 914 (1992) ("*ACT II*"); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1043 (1996) ("*ACT III*").

³³ *ACT I*, 852 F.2d at 1344 ("Broadcast material that is indecent but not obscene is protected by the First Amendment; the FCC may regulate such material only with due respect for the high value our Constitution places on freedom and choice in what people may say and hear.") See also *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

³⁴ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. . . . Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium.³⁵

As an initial matter, Clear Channel does not dispute that it aired material describing or depicting sexual activities. Although, in its response to the staff's inquiry letter, Clear Channel maintains that, because the tape "has obviously been heavily edited," it "is not a complete and accurate record of the entire broadcast on the dates in question," Clear Channel does not dispute that it did, in fact, broadcast the material on the tape, conceding that "the tape contains material broadcast by WWDC-FM, on or about May 7 or 8, 2002."³⁶ The principal focus of the program segments was the sexual practices of the two May 7 student callers and of other students at Bishop O'Connell High School. That material, therefore, warrants further scrutiny to determine whether or not it was patently offensive as measured by contemporary community standards for the broadcast medium.³⁷

10. In our assessment of whether broadcast material is patently offensive, "the *full context* in which the material appeared is critically important."³⁸ Three principal factors are significant to this contextual analysis: (1) the explicitness or graphic nature of the description; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.³⁹ In examining these three factors, we must weigh and balance them to determine whether the broadcast material is patently offensive because "[e]ach indecency case presents its own particular mix of these, and possibly, other factors."⁴⁰ In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,⁴¹ or, alternatively, removing the broadcast material from the realm of indecency.⁴² We turn now to our analysis of the three principal factors in our decision.

11. First, the comments made by the program hosts during the broadcasts contained graphic and explicit references to sexual activities, including repeated references to "blow jobs."⁴³ In addition to these references and consistent with that tone, the hosts both simulated the act of oral sex, by repeatedly

³⁵ *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency ("Indecency Policy Statement")*, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) (emphasis in original).

³⁶ Clear Channel Response to Inquiry at 1.

³⁷ The "contemporary standards for the broadcast medium" criterion is that of an average broadcast listener and with respect to Commission decisions, does not encompass any particular geographic area. *See id.* at ¶ 8 and n. 15.

³⁸ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original). In this regard, in order for us to be in a position to judge the context of particular material, once a complainant makes a *prima facie* case, it is appropriate for the staff to seek from the licensee a tape or transcript not only of the relevant material, but also of a reasonable amount of preceding and subsequent material.

³⁹ *Id.* at 8002-15, ¶¶ 8-23.

⁴⁰ *Id.* at 8003, ¶ 10.

⁴¹ *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same)).

⁴² *Id.* at 8010, ¶ 20 ("the manner and purpose of a presentation may well preclude an indecency determination even though other factors, such as explicitness, might weigh in favor of an indecency finding").

⁴³ *See* notes 18, 20 and 22, and accompanying text, *supra*.

making loud sucking and slurping sounds, and relied upon colloquial terms, by repeatedly referring to locker line-ups and interjecting remarks such as "giv[ing] up semen for Lent," "go[ing] down," and taking in "healthful protein."⁴⁴ To the extent that the sound effects or colloquial terms that the program hosts used to describe sexual activities could be described as innuendo rather than as direct references, they are nonetheless sufficient to render the material actionably indecent because the sexual import of those sounds and terms was "unmistakable."⁴⁵ Given the explicit references and the graphic manner in which the broadcasts described the activities of the Bishop O'Connell High School students, there is no non-sexual meaning that a listener could possibly have attributed to these terms.⁴⁶ Therefore, we find that the broadcasts at issue described sexual activities through the use of direct references, simulation, and/or innuendo that were sufficiently explicit or graphic to be deemed patently offensive as measured by contemporary community standards for the broadcast medium.

12. Second, the program hosts, in their dialogue between each other and with callers, continuously focused on the sexual activities of the two initial female callers and other students at Bishop O'Connell High School. The sexual discussion and references were not fleeting or isolated. Rather, discussions about and references to sexual activity pervaded, and were the subject of, both the May 7 and 8 broadcasts. Thus, the sexual discussions and references were more than sufficiently dwelled upon and repeated to constitute patently offensive material as measured by contemporary standards.

13. Finally, and perhaps most significantly, several characteristics of the manner in which the station presented this material establish that AMFM intended that both broadcasts pander and shock listeners. As an initial matter, the program hosts' continued and repeated references to the Bishop O'Connell High School students' sexual activities and comments about the school's administrators and their sexual practices clearly evince such an intent with regard to the listening audience. During the May 7 broadcast, the program hosts geared their questions to the two female student callers to elicit information from them regarding their sexual practices, focusing on the topic of oral sex in the hallways of the school.⁴⁷ On May 8, they turned their attention to seeking similar information from their other student callers because the girls, in response to the program hosts' encouragement, claimed they had performed oral sex on other students at the school. The program hosts were not chastened by the notoriety with young listeners that the May 7 broadcast engendered; rather, they continued their pandering in interviews with other student callers and continued their efforts to shock listeners by focusing on sexual activities in a school setting. Both broadcasts occurred at or about 8 a.m., when there was a reasonable risk that children would be in the audience, on their way to or getting ready for school. Indeed, in light of the number of student callers to the programs, that risk became reality. The WWDC-FM broadcasts targeted the very segment of the population - - children, including teenagers under the age of 18 -- whom the government has a recognized and compelling interest to shield from indecent material.⁴⁸ By goading these teenagers to discuss their sexual activities in a titillating and offensive manner, the program hosts set out to pander and to shock listeners. In this regard, the program hosts' use of loud sucking and slurping sounds when referring to oral sex demonstrates that, in context, this program was not simply a non-pandering discussion of contemporary high school sexual behavior. For these reasons, we find that the May 7 and 8 broadcasts were patently offensive as measured by contemporary community standards for the broadcast medium.

⁴⁴ See notes 11, 15, 16, 17, 19 and 22, and accompanying text, *supra*.

⁴⁵ See *Indecency Policy Statement*, 16 FCC Rcd at 8003-04, ¶ 12 (2002); see also *Telemundo of Puerto Rico License Corp. (WKAQ-TV)*, 16 FCC Rcd 7157 (EB 2001) (forfeiture paid); *Citcasters Co. (KEGL(FM))*, 15 FCC Rcd 19091 (EB 2000) (forfeiture paid).

⁴⁶ See *Sagittarius Broadcast Corporation*, 7 FCC Rcd 6873, 6874 (1972) (subsequent history omitted).

⁴⁷ See notes 11 through 14, *supra*.

⁴⁸ See *ACT III*, 58 F.3d at 660-63.

14. Clear Channel's claims notwithstanding, the material presented in the May 7 and 8 broadcasts is similar to other material concerning sexual activities involving teenagers that the Bureau has found to be apparently indecent.⁴⁹

15. In sum, by broadcasting this material on May 7 and 8, 2002, within the 6 a.m. to 10 p.m. time period relevant to an indecency determination under section 73.3999 of the Commission's rules, AMFM apparently violated 18 U.S.C. § 1464 and the Commission's rules against broadcast indecency.

B. Proposed Forfeiture

16. Based upon our review of the record in this case, we conclude that AMFM is apparently liable for forfeitures for two willful and repeated violations of our rules, one for each of the broadcasts at issue here. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000.00 for transmission of indecent materials.⁵² The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵³ In this case, taking all of these factors into consideration, we find that AMFM is apparently liable for a forfeiture of \$55,000.00, reflecting the proposed imposition of the maximum forfeiture amount for the broadcast of apparently indecent material on two separate occasions (2 x \$27,500.00). Based upon our review of the entire record, we believe that this upward adjustment to the statutory maximum is warranted. The continued and repeated references to sexual activities of the Bishop O'Connell High School students and administrators were calculated to engender notoriety and were targeted toward children, including teenagers under the age of 18. Moreover, the material broadcast on two consecutive days was extensive. Accordingly, we believe the egregious nature of the violations and the degree of culpability justifies an increase to the full amount. Additionally, there is a recent history of indecent broadcasts on stations controlled by Clear Channel Communications, Inc., AMFM's corporate parent, which justifies imposition of the maximum forfeiture amount.⁵⁴ We reiterate our recent statement that multiple serious violations of our indecency rule by broadcasters may well lead to

⁴⁹ See, e.g., *Citicasters Co. (KEGL(FM))*, 16 FCC Rcd 7546 (EB 2001) (forfeiture paid) (finding a station apparently liable for broadcasting a dialogue between program hosts and a female teenage caller in which she engaged in sexual banter with the hosts, responded to their probing questions and described her masturbating activities); *Infinity Broadcasting Operations, Inc. (WNEW(FM))*, 17 FCC Rcd 10665 (EB 2002)(response pending)(finding a station apparently liable for airing a segment, during the program's promoted "Teen Week," in which the program hosts gave detailed instructions to and encouraged a teenage girl caller to masturbate by rubbing a telephone across her pubic area).

⁵² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

⁵³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.

⁵⁴ *Citicasters Co. (KEGL(FM))*, 16 FCC Rcd 7546 (EB 2001) (forfeiture paid); *Citicasters Co. (KSJO(FM))*, 15 FCC Rcd 19095 (EB 2000)(forfeiture paid); *Citicasters Co. (KSJO(FM))*, 15 FCC Rcd 19091 (EB 2000)(forfeiture paid).

license revocation proceedings.⁵⁵

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules, that AMFM Radio Licenses, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Fifty-Five Thousand Dollars (\$55,000.00) for willfully and repeatedly violating 18 U.S.C. § 1464 and 73.3999 of the Commission's rules.

18. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of this Notice, AMFM Radio Licenses, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above and also must note the NAL/Acct. Number referenced above.

20. The response, if any, must be mailed to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. Number referenced above.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

22. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.⁵⁶

23. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If AMFM qualifies as a small entity and if it wishes to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in its response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. Its certification should indicate whether AMFM, including its parent entity and its subsidiaries, meets one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment B of this Notice of Apparent Liability. This information will be used for tracking purposes only. AMFM's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to section 503(b) of the Communications Act. If AMFM has

⁵⁵ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, 18 FCC Rcd 6915, 6919, ¶ 13 (2003)(response pending).

⁵⁶ 47 C.F.R. § 1.1914 (2002).

questions regarding any of the information contained in Attachment B, it should contact OCBO at (202) 418-0990.

24. Accordingly, IT IS ORDERED, that the complaints filed against Station WWDC-FM's broadcast of the "Elliott in the Morning" program on May 7 and 8, 2002, ARE GRANTED, and the complaint proceeding IS HEREBY TERMINATED.⁵⁷

25. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability For Forfeiture* shall be sent, by Certified Mail Return Receipt Requested, to AMFM Radio Licenses, LLC, Kenneth E. Wyker, Esq., Senior Vice President and General Counsel, Clear Channel Communications, Inc., 200 E. Basse Road, San Antonio, Texas 78209; to counsel for AMFM, Evan S. Henschel, Esq., Wiley, Rein & Fielding, LLP, 1776 K Street, NW, Washington, D.C. 20006; to Reverend Michael G. Taylor; and to Catherine P. Henry.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ Consistent with section 503(b) of the Act and Commission practice, for the purposes of the forfeiture proceeding initiated by this NAL, AMFM shall be the only party to this proceeding.

ATTACHMENT A**Program Transcript**

Radio Station: WWDC-FM, Washington, DC
Dates/Time of Broadcasts: May 7, 2002 and May 8, 2002, between 6 a.m. and 10 p.m.
Material Broadcast: The Elliot in the Morning Show

May 7, 2002

E: Elliot

D: Diane

2M: Dan

FC1: First Female Student Caller

FC2: Second Female Student Caller

F: Flounder

E: Hi. DC101.

FC1: Hi.

E: Who is this?

FC1: It's [first female student caller].

E: Hi [first female student caller]. How are you?

FC1: I'm good. How are you?

E: I'm doing well. You sound very chipper today, [first female student caller].

FC1: I'm in a good mood.

E: Yeah, how old are you?

FC1: I'm 18.

E: Mmm. I like that. I think you're our first 18 year-old.

FC1: [Giggling] I have been listening all morning, so.

D: You'd be the youngest.

E: You get the advantage going in.

FC1: Yes, I'm the youngest.

E: Right, and ah, where do you live [first female student caller]?

FC1: Alexandria.

E: Are you in school?

FC1: Ah, I should be in school right now, but I've been waiting to talk to you guys.

E: High school?

FC1: Yeah.

E: Oh, God bless.

D: Where?

FC1: Ah, Bishop O'Connell.

E: ExcellEnt.

D: Oh, private school girl.

E: Any prom dates? [Laughter from E]

FC1: Ah, no [unintelligible] prom already.

E: As if the Catholic Church doesn't have enough problems right now.

FC1: That's true.

E: Alright. So, [first female student caller] are you a senior?

FC1: Yeah.

E: Ah, do ah do ah everybody there at school find uh you irresistibly hot?

FC1: Ah, I'd like to say so.

E: Yeah. You a popular girl at school?

FC1: Uh, decently popular.

2M: Now are you going to Ivy League next year?

FC1: No.

E: [Laughter from 2M] Who cares? Are you kind of like an exhibitionist?

FC1: Yeah. Some people say so.

E: And you want to flash from time to time?

FC1: I've been known to do that.

E: Yes, of course you have. I gotta ask you what size bra?

FC1: Ummm, 34-C.

E: Really?

FC1: Yeah.

E: For a senior, that's excellEnt. [Laughter from FC1]

D: For a senior.

E: That's good. Ahhh alright.

2M: How well do you know the football team? [Laughter from D]

FC1: Pretty well.

2M: Awesome.

E: You've never lined like four or five guys up against lockers have you?

FC1: Not four or five.

E: One or two?

FC1: Two or three. [Laughter from E, D and 2M]

E: Really?

D: I think Dan just won the lottery. [Laughter from E, D and 2M]

E: So Dan's quitting his job. [Laughter from E, D and 2M]

SM: That's the Powerball right there.

E: So wait a minute. So at school you've lined like two or three guys up against the lockers and like ahhh. [Loud sucking sounds from E]

FC1: [Laughter] Ahhh. Like yeah.

E: Really?

FC1: Yeah. I'm here with my friend [second female student caller]. She wants to dance too.

E: I'll get to [second female student caller] in a moment. [Laughter from E, D and 2M] Really.

FC1: Yeah. We want to dance with you.

E: Oh, uh not a problem honey.

[Break in the audio-tape]

FC1: Um, probably about 8 or 9.

- E:** Hm. Hm. Hm. Hm. Alright. And you can be here on Thursday. Well, what about school on Thursday?
- D:** Yeah.
- FC1:** Ah, well. I don't go to school quite as often as I should. [Laughter from E, D and 2M]
- D:** Quite as often as you should.
- E:** Hey, do you know my next door neighbor? [Laughter from E, D and 2M]
- D:** Well, [first female student caller] you're already accepted to the college of your choice right?
- FC1:** Yes I am. [Laughter from E]
- D:** Where you gonna go?
- FC1:** I'm gonna go to VCU.
- D:** VCU.
- E:** Very good.
- 2M:** So that's okay, but not the Ivy League question.
- E:** Yeah. No, VCU's fine. No, that's good.
- D:** She's an artist.
- E:** You should check out Radford. [Laughter from E]
- 2M:** She could get all A's there. [Laughter from E]
- E:** Alright. Very good, [first female student caller]. Yes, you hold on one second and Flounder's gonna get some information from you, okay?
- FC1:** Okay, no problem.
- E:** Alright. Very good. Hold on one second.
- 2M:** What about her friend? Did you talk to her friend?
- D:** [Second female student caller].
- E:** Oh, you know what put [second female student caller] on real quick.
- FC1:** Okay, here. Just a sec.
- FC2:** Hello
- E:** Hi [second female student caller].

FC2: Hi. How are you?

E: I'm well. Thank you. [Second female student caller] are you also 18?

FC2: Yes, I am.

E: And you also go to Bishop O'Connell?

FC2: Yes, I do.

E: Uh-huh. Let me ask you, you better looking than [first female student caller]?

FC2: Um, I don't know. I think we're both pretty hot.

E: Right.

E: Have you two ever hooked up?

FC2: No, but we've been known to do our little show at parties and what not.

E: Uh, what do you mean your little show?

FC2: Like we dance together, you know?

D: Yeah.

2M: Hmm.

E: Like with your boobies out?

FC2: Ah, it all depends on who's there. I mean I'm not gonna just. Yeah.

D: Right.

E: Well, I mean like on Thursday like maybe I'll have you two dance together?

FC2: Yes, of course.

E: Okay. ExcellEnt. [Laughter from D] Are you also a 34-C?

FC2: I'm actually a 36-D. Full D.

2M: Full D.

FC2: And my nickname with all my friends is "J-Lo" so I got the booty to go with it.

E: Oh, you got a little butt back there.

FC2: Yeah.

E: Oh, that's fine. 36-D. J-Lo. [Laughter from E, D and 2M]. Thank God for the hormones in milk. [Laughter from E, D and 2M] Have you ever done the uh locker lineup at school?

FC2: Um, a little bit of that. I'm more like in the secluded area.

E: Stairwell.

FC2: Yes.

E: Really.

D: Janitor's closet.

E: More than with the janitor. [Laughter from D] [Knocking sound]

2M: Awesome.

E: [Impersonating a janitor with a Mexican accent] Need to be coming on in please. Wet spill in my pants please. [Laughter from E, D and 2M].

D: Oh God. [Laughter from D]

E: [Laughter from E] Have you ever made out with a teacher?

FC2: No. [Laughter]

E: No.

2M: Naw, please.

E: Um, more than eight or nine times in school?

FC2: Ah, no I wouldn't go that far.

2M: No.

E: You don't think badly of [first female student caller] because she has, do you?

FC2: No, I love [first female student caller].

E: In God's way.

D: Uh-huh.

FC2: Truly in God's way.

E: Uh-hm. [Laughter from FC2] Alright. Very good. And um missing school on Thursday would be nothing new for you.

FC2: Nothing new.

E: Alright, very good. Hold on one second and ah Flounder will get both of your information. We'll see you on Thursday.

- FC2:** Okay. Thank you.
- E:** Alright, very good.
- D:** Flounder will get your information. Hopefully we'll see it.
- E:** Yes.
- 2M:** Man, we're looking for Chinese finger ties. [Laughter from E, D and 2M]
- E:** Alright, now let me say this. [Laughter from E, D and 2M] Don't send me your goddamn emails about being angry that we're doing these two ah high school kids.
- D:** They're 18.
- E:** They're 18 years-old. This is their own deal. Alright, so save the e-mails.
- D:** They're not going to school anyway.
- E:** Save the e-mails.
- D:** [Laughter from E, D and 2M] It's not like they're studying for the SATs.
- E:** Save the you're corrupting the youth of America. Please. Nobody. I didn't hold a gun to anybody's head to line up nine guys against a locker. [Laughter from 2M] Alright. Diane, we didn't do anything wrong.
- D:** [Laughter from D] Hey, she was free with the information.
- 2M:** That private school's gonna love you though.
- E:** That's Bishop O'Connell.
- 2M:** Yeah, they're very proud today.
- E:** They should be.
- D:** Hey, you pay money to go to that school. [Laughter from D and 2M]
- E:** You know what, at least it's not one of the priests.
- 2M:** Yes.
- E:** Save the hate e-mail. Okay. We did nothing wrong, right Flounder?
- F:** I agree. [Laughter from E, D and 2M]
- 2M:** We're doin' that school a service. You know how many kids they're gonna' get now? They're thinking about stalking Bishop O'Connell.
- E:** Right now everybody at [Unintelligible] council is going, "Goddamn it [Unintelligible] not at our school." [Laughter from E, D and 2M] Alright, very good, alright. So good, I feel like we're

starting to put together a very nice list. We'll either revisit that again before we get off the air today, maybe after school starts, [Laughter from 2M] or we will get some more contestants tomorrow. So, Thursday morning we'll have everybody in here dancing and uh four will be selected to dance for Kid Rock on Saturday night at the Patriot Center. I think I speak for all of us when I can't thank Kid Rock enough for choosing us to do this promotion. [Laughter from 2M] [Unintelligible].

[Break in the audio-tape]

May 8, 2002

E: Elliot
D: Diane
BD: Buddy
MC: Male Student Caller
MC2: Second Male Student Caller
MC3: Third Male Student Caller
MC4: Fourth Male Student Caller
MC5: Fifth Male Student Caller
FC3: Third Female Student Caller

E: Before we get into the news, Diane.

D: Yeah.

E: We had a little interest in Bishop O'Connell High School. [Laughter from E]

D: Yeah. I went to the website. [Laughter from E] I was looking at the mission statement. [Laughter from E] "Our mission is to provide the students an education rooted in the life of Christ [unintelligible] pursuit of excellence of the whole person." And then you go down. [Laughter from E] The desired learning results. [Laughter from E] Kinda' take on a new meaning. [Laughter from E and 2M] "Students practice a moral code based on gospel values as found in our Catholic faith and worship." [Laughter from E and 2M] "Express Christian values through participation in community service projects."

E: Take him and drink for him. [Laughter from E]

D: "Develop creative and critical thinking skills." [Laughter from D] "Use those skills in successfully solving problems."

E: There you go, [first female student caller] and [second female student caller].

D: Mmm [Impersonating a young girl's voice] What should I do? [Laughter from E] "Learning to work with others cooperatively."

E: [Spoken as if E's mouth was full] May peace be with you and also with you.

D: "Develop and maintain"

E: [Loud sucking sounds from E]

D: "Develop and maintain positive self worth through a healthy lifestyle."

E: [Spoken as if E's mouth was full] This healthful [unintelligible] of protein. [Loud sucking sounds from E][Laughter from E, D and 2M] [Spoken as if E's mouth was full] Hey, what do you think will be going on at Bishop O'Connell High School today? [Laughter from E, D and 2M]

D: Talk in the office.

E: More guys have signed up for this school in the last half hour. [Laughter from E and 2M] We done a service. [Laughter from E and 2M] Alright, very good. So Thursday morning.

D: "Our student body of 1,470 reflects the diversity of our community and neighborhoods."

E: [Spoken as if E's mouth was full] I'm part of the community. [Loud sucking sounds from E] [Unintelligible] Oh no. [Laughter from 2M and D] They'll be in here. I love that. What are you kidding me?

D: They're not going to be at school that day. [Laughter from E and 2M]

E: Alright. 8:15, dear God. Ah, what have we got going on here? We're busy as hell. We got some [unintelligible] tickets to give away. Oh

[Break in the audio-tape]

E: Let me get Buddy on the phone. Buddy.

BD: Hey.

E: How are you, sir?

BD: Good. How are?

E: Good, I understand we caught you shaving.

BD: Yeah, I'm about half way done. [Laughter from BD]

E: I say just leave it.

BD: Leave half of it?

E: Yeah, just leave half of it. Ah, yesterday while we were going through our qualifying I guess sometime around 7:45 we heard from [first female student caller] and [second female student caller]. [First female student caller] and [second female student caller], two 18 year-olds, they just so happen to go to Bishop O'Connell High School. And what I thought was a very nice conversation with them yesterday. They informed as to some things they do at school. [Laughter from BD] But they're 18 years-old. They're adults. They're allowed to do what they want. And then um I guess we heard very early this morning that both [second female student caller] and [first female student caller] had been suspended from school. Now, Buddy, did the, I know, principal call the station, true or false?

BD: That is, that is true.

- E:** Right. Did you ah speak to um Bishop O'Connell? [Laughter from BD and 2M]
- BD:** No. The Bishop did not speak. We ah traded messages. But I think the thing that he was concerned about was the story that he got was that you coerced or badgered or otherwise convinced these people or these two young ladies to say things that weren't true.
- E:** Now, correct me if I'm wrong. I don't feel like I badgered them in any way at all.
- D:** You asked them a question and they answered.
- E:** Yeah.
- BD:** Well, like I said the principal apparently couldn't have been nicer and ah was just following what what he was told, so.
- E:** Right. Now, see we heard this morning I guess that ah Bishop O'Connell's daughter, I don't know the guy's name. What's his name?
- BD:** Uh, you know I don't remember. It's on my desk.
- E:** You lying sack. [Laughter from BD] No, come on. What's his name?
- BD:** I honestly don't remember.
- E:** Alright. Hey, Mack, see if you could find me someone from Bishop O'Connell real quick. Line 2? Fine, perfect. Tell him I'll be there in a second. So anyway, what we did here was ah the principal called [first female student caller] and [second female student caller] in to their office, into his office. I'm assuming it's a man.
- BD:** Right.
- E:** And um I guess had a conversation with them and then suspended them and then got on the PA system at the school and talked about what a bunch of heathens we are. I may be paraphrasing. [Laughter from BD]
- BD:** I didn't hear that part.
- E:** Yeah, so apparently he uh he does not like your radio station, Buddy Riser.
- BD:** Wow.
- E:** Yeah.
- BD:** Well yeah this is before I had a chance to really discuss it with him.
- E:** This is the work of the devil right here. [Laughter from BD] So you didn't you didn't touch base with him?
- BD:** No, we we traded phone messages yesterday so.
- E:** What was his message to you?

- BD:** He he was he couldn't have been nicer. I mean basically he's just, he was just trying to figure out exactly from our side. I mean obviously he had heard only their side of the story.
- E:** Right. Why did he suspend them though? That doesn't seem right to me.
- BD:** Now that I don't know. I I didn't know that he had done that.
- E:** Yeah. See that doesn't seem right. That that part kinda pisses me off.
- BD:** Yeah.
- E:** I'm thinking we have a Support [second female student caller] and [first female student caller] Concert at the school with [unintelligible]. [Laughter from E, D and 2M] But I don't understand why they got suspended. Hey listen if they're blowing guys at the school, that's not their fault, that's the school. The school needs to do a better job policing.
- D:** They should get counseling not suspension.
- E:** That's right. Jesus wouldn't just toss them aside. [Laughter from BD] Jesus would welcome them in.
- 2M:** Yes, he would.
- E:** Some of the priests at the school would ask if they had brothers. [Laughter from BD]
- BD:** Have we talked to the girls today?
- E:** No. I have a feeling they won't be calling today. No, Jesus took away their phone privileges. [Laughter from BD] Alright, Buddy, alright. I was wondering if you got to touch base with them.
- BD:** No.
- E:** With the principal or whatever his face is.
- BD:** No.
- E:** Alright, very good. Thank you very much, Buddy. See you in a bit. Finish cleaning up over there.
- E:** Hi. Who's this? Hello?
- MC:** Yeah.
- E:** Yeah, who's this?
- MC:** Uh, I won't give my name out.
- E:** Yeah, I don't blame you. You know if I went to Bishop O'Connell I wouldn't give my name either. That's how you people get in trouble.
- MC:** Ah yeah definitely.

E: Alright. So what happened at school yesterday?

MC: Uh well um. First of all, at around 8:10 I was uh driving down with some friends before school and uh we were listening to your station and uh we hear these two girls call up. They go off about some stuff and uh. First of all, we want to find out who it is and uh. I wouldn't let you put these girls on the stage with uh bikinis on.

E: Wait, say again. You what?

MC: I wouldn't let you put these girls on stage with bikinis, first of all.

E: I did get some e-mails saying that they were pretty hot.

MC: Ah, really? [Laughter from 2M]

E: Well, I can tell some people have different taste. Anyway, go ahead.

MC: And uh we get to school and there's a big ordeal about it. And uh I guess they just suspended hard core because of it.

[Break in the audio-tape]

E: Yeah. But you're kinda' out of loop.

[Break in the audio-tape]

E: Hi. DC101.

MC2: Hey, what's up?

E: Hey, who's this?

MC2: This is [second male student caller].

E: [Second male student caller]. You go to Bishop O'Connell?

MC2: Yeah.

E: Yeah. So now tell me what happened yesterday?

MC2: All I heard was that these girls called in and our principal came in on like 8th period and he was basically told us everything that happened.

E: Oh really. That's very interesting to me. What did he say over the PA system that happened?

MC2: I don't know. I can't remember exactly what he said.

E: Right. Well, first of all, how did they break in with that announcement? What's the principal's name there?

MC2: Um, Burch.

E: Principal Burch.

MC2: Yeah.

E: Alright so Principal Burch gets on the uh PA and says, you know, excuse me Bishop O'Connell students I have an announcement to make?

MC2: Yeah. He just wanted to clarify if there were like any rumors going on like really what happened.

E: Oh, so what did he say really happened?

MC2: Nah, He uh. Once again I don't want to say exactly what he said.

E: No, go ahead. [Laughter from MC2] No you can say what exactly he said. [Laughter from MC2] No, because honestly I want to know what he said.

MC2: Well, honestly, I don't really remember. But basically he just said that two girls called in and said, uh, I don't know. Honest?

E: But what did he say they did?

MC2: Um. Yeah, he said uh that. I don't know. [Laughter]

2M: Come on now, dude.

E: Come on dude.

D: [Second male student caller]'s worried that he's gonna get suspended.

MC2: I'm definitely am. But it's not a biggy. [Laughter]

E: Who's your buddy in the car?

MC2: Ah, [third male student caller].

E: Yeah, put [third male student caller] on.

MC2: Ah, here's [third male student caller].

E: Yeah. [Third male student caller]'s got a set of balls on him. [Laughter from 2M]

2M: Yeah, here take [third male student caller].

MC3: Hey, what's up fellas?

E: Hey [third male student caller]. Now you go to school there also?

MC3: Yes, I do.

- E:** Alright. What did, uh, what did Burch say?
- MC3:** Well, he uh just said some of the stuff that the girls said on your show.
- E:** Really? So did Principal Burch actually get on the PA system and talk about how they were giving blowjobs in the hallway?
- MC3:** Well, let me, hold on for a second. Naw, he didn't say that. He was very nice about it, you know. He's. In a Catholic school so you gotta be nice about it.
- D:** Right.
- E:** Right. So but now, so he ended up. Why did, why did, they get suspended? That's what I don't understand.
- MC3:** You gotta have the mindset that this is a Catholic school and, you know, anything out of the school really should have some moral binding.
- E:** Yeah.
- MC3:** He's just worried about the school's reputation.
- 2M:** The image.
- MC3:** Yeah.
- 2M:** I mean people spend a lot of money to get that image.
- D:** Yeah, they do.
- E:** Yeah, but I mean, okay.
- 2M:** Well, that's, I guess, the basis.
- E:** People spend a lot of money to go to college. It ain't like people ain't screwing there.
- MC3:** Yeah, that's true. But, he wants to have like, you know, the mindset of him being a good, you know, person that gives these children moral teachings, that kind of stuff.
- E:** Is Burch married?
- MC3:** Yes.
- E:** Anybody willing to bet he's never gotten a blowjob from his wife?
- MC3:** [Laughter] Ah, I don't want to think about it. [Laughter from E] He's a very nice guy. I like him a lot. He's really nice.
- D:** Of course you do. [Laughter from 2M]
- E:** Very good, [third male student caller]. [Laughter from D] You're very smart kid. [Laughter from D] I like you.

MC3: ExcelLent. ExcelLent.

2M: Do you know his daughter?

MC3: I, uh.

E: Yeah. His daughter is apparently the one that called, that little rat.

D: Is she older?

MC3: I don't. Burch's?

E: Yeah, Burch's daughter. Does she go to school there?

MC3: No, no.

E: Oh, so she's already out.

MC3: I've I've never met her.

E: Right. But Burch is a pretty cool guy who obviously has a little issue with us.

MC3: Yeah. Well he just wants to look out for, you know, his students.

E: Did he mention us by name?

MC3: No.

E: What do you mean no? What did he say like "a local radio station?"

MC3: He said "DC101," but he didn't

E: ExcelLent.

2M: Oh, we got press. [Clapping]

E: That's good, that's good. At least let 'em let 'em know what they should be listening to Burch.
[Laughter from D]

MC3: ExcelLent. ExcelLent.

E: Alright [third male student caller].

D: [Third male student caller]'s very nervous right now.

E: No, [third male student caller] you're fine. You're fine.

MC4: Hi Diane.

D: Hi.

- E:** [Unintelligible] [Laughter from D and MC3] Hey, [third male student caller], let me ask you, you weren't one of the guys that [first female student caller] and [second female student caller] blew in the hallways, were you?
- MC3:** Ah naw, naw, naw
- E:** No naw naw naw.
- MC3:** I don't think I'd let them.
- E:** Okay, alright, very good, very good. You'd give it a couple of years though.
- MC3:** I just want to say Hi to Diane.
- D:** Thanks, [third male student caller]. Have a nice day at school.
- MC3, MC4:** Bye, see ya later, bye. [Unintelligible] [Laughter from MC3, MC4, E, D and 2M]
- E:** We got a phone number for, ah, the school?
- D:** The main number.
- E:** Yeah, I'll take that. Hi, DC101.
- MC5:** Hi Elliot. This is, this is, ah, [fifth male student caller].
- E:** Yes, of course it is.
- 2M:** Sure.
- E, 2M:** Hi [fifth male student caller].
- MC5:** Yeah. I go to O'Connell.
- E:** Right.
- MC5:** And, uh, I just want to let you know that the girls are not 18. They're only 17.
- E:** But that's not my fault though. Listen.
- MC5:** No dude, no dude. I know exactly like what happened. You didn't manipulate them at all. But when they went into the office yesterday they were like "Oh, yeah, well he manipulated us into saying these bad things." And Mr. Burch gets on. Would you turn that off?
- E:** Yeah, please.
- MC5:** Mr. Burch gets on and goes, ah, yeah they are all remorseful for what happened and they want to let everyone know that, like, they were manipulated or whatever or something like that. And I, like, they knew exactly what they were doing.
- E:** Yeah. And first of all, I think we asked twice how old they were. Both of them said they were 18. You know what, if they lied, they lied. That's not my problem.

MC5: Yeah, dude. It's like, it's like their fault and they just made. I feel bad because they made the school look like a bunch of sluts or whatever and we're really not.

E: Well, listen you gotta have some kind of pride in something. [Laughter from D] But the, ah, you know, we didn't badger them. We didn't manipulate them. You heard the show yesterday.

MC5: Yeah. I was listening to it. I thought it was kind of funny because then I knew exactly who it was. [Laughter from E, D and 2M]

E: See so um, you know I can't really say I fault [first female student caller] and [second female student caller] 'cause listen they know they're getting thrown out of school. I'd say that too.

MC5: They're coming back.

E: Well, how long did they get suspended for?

MC5: Um, I think like maybe two days or whatever.

E: Right.

MC5: It's almost like a good deal.

E: Well, yeah exactly. Well, at least they're free to come in tomorrow.

D: What are their parents doing though?

MC5: I don't know. I think they're probably in trouble with them too.

E: Oh really.

D: I would think so.

E: I hear Burch told [first female student caller] she's gotta give up semen for Lent last year.

2M: Agh.

D: Jesus Christ.

2M: Do you know them very well?

MC5: Yeah, I'm pretty close them. At least one of them.

E: Really? Have you ever been lined up, have you ever had your back up against a locker?
[Laughter from D]

MC5: No. Actually they don't do that kind of stuff at school.

E: At school.

2M: No. They save that.

MC5: Actually, I hope I just don't wanna know about it. They can do whatever they want. I just don't want to know about it.

E: Alright, very good. Well, listen I'm sorry about the big uproar at your school yesterday.

MC5: Ah, it was kind of amusing.

E: Good. [Laughter from 2M] Good, alright, dude, [fifth male student caller]. Thank you very much for calling.

MC5: Thank you, you're welcome.

E: You're gonna need to hand me the handset and let me just call them. [Dial tone, dialing] Oops, that's not good. [Dial tone, dialing] Agh. [Dial tone] Because I hate this phone system. [Dialing] Because now it's a fight. Uh-huh. [Sound of phone ringing] Uh, uh, hands free. They gotta be in the office by now.

2M: Yeah.

D: 7:30.

2M: The administration should be.

D: I was looking at the.

E: Maybe Jesus will answer.

D: The class schedule. Home room.

E: What time does home room start? Hi, Bishop O'Connell. Um, who am I speaking with? Hi, Mrs. Minyet. You're not on the air. This is Elliott calling from DC101. I'm trying to find Principal Burch, please. Hello. Hello. I don't know if I'm on hold or if I'm uh talking to Mr. Click.

2M: Really.

D: Maybe you'll find out in a second.

E: Hello. They don't say, "Hold."

2M: They never even said "please hold" or?

E: No.

2M: Hang on?

E: First bell's at 7:55. You know what. [Dial tone, sound of tone buttons, ringing] [Laughter from 2M] Shhh. Come on. They're afraid to touch the phone. Ahh, come on now I get an answering machine. Hi DC101.

FC3: Hey, what's up Elliot?

- E: Hey, who is this?
- FC3: Let's see, what can you call me? I'm scared too now like all the other [unintelligible]
- E: Ah, don't be scared.
- FC3: [Laughter] You can call me, you can call me [third female student caller]. How about that?
- E: Okay, [third female student caller]. Yes.
- FC3: You can call me [third female student caller]. Well, I go to O'Connell like all the rest of them. Those are all my friends that were calling earlier. And I just wanted to say that it was like the reason that they all got suspended wasn't because, you know, like, about anything, because it was immoral or anything what they were gonna do. Because I don't even think they were really gonna come in because they were lying, like, they weren't 18 or anything else. They were a bunch of sophomores. But there's a
- E: Oh, God. I wish they would come in.
- 2M: So they're 16.
- E: Anyway, go ahead.
- FC3: There's a rule in the student handbook that says that if you do anything, like, in the name, like, using O'Connell's name or, like, in O'Connell uniform that you can be suspended because that's slander towards the school.
- E: Oh, that's, uh, you're impugning the reputation.
- FC3: Yeah, so when you went on the website and everything that's when Mr. Burch freaked out and was, like, oh, blah blah blah, this makes my school look horrible.
- E: Hey, Burch, don't put up a website then, you jackass.
- D: What I I was just, I was just reading the, uh, the beliefs and mission and philosophy of the school.
- 2M: Yeah, if anything
- D: I know.
- E: We gave them some positive publications here.
- 2M: Yeah.
- FC3: And also I wanted to say that I'm really sorry cause there were a lot of really hot girls, including myself, that were gonna come in.
- E: Oh, godamnit.
- FC3: And we were gonna audition tomorrow morning.

E: Alright.

FC3: We really wanted to do it.

E: Yeah. I wish you would have.

FC3: I'm sorry.

E: Alright. Well, Burch had to go F it up for everybody.

D: Bye [third female student caller].

E: Let me try one more time and then I'll take a break. And then we'll get into some real qualifying. Uh, I'll just dial here. [Dialing tones] You think they won't answer at Bishop when I call cause a big sign that goes off "Jew is calling." [Laughter D and 2M] [Impersonating a female voice] Yes, Principal Burch, please? What do you mean he's not available? Oh, don't hang up. F you. [Laughter from 2M]

2M: They know what matters [unintelligible].

E: What a bitch she is.

D: What she say?

2M: I can't believe she doesn't even say anything to you.

E: [In a mocking voice] "He's not available." Click. I bet he's available. He's probably standing right there listening to the goddamn show.

D: I guess they have to go tend to the pro-life memorial. [Laughter from E] that I was just reading about.

E: Come on Burch you big pussy, call. You know he's sitting in there listening to it. Speak to a Jew. [Laughter from D] Goddamnit. Alright, alright. You know what, let's move on then. Ah, 202-432-1101, toll free 1-800-33DC101. Ah, we need qualifiers for, ah, Saturday night. If you want to dance in the cage with Kid Rock up on stage 202-432-1101, toll free 1-800-33DC101. We'll sign up last day for qualifying and then tomorrow's the big audition, tomorrow around 7:30. And then four women will move on to Saturday night where they'll dance up on stage at the Patriots Center. Kid Rock will pay for the night. 202-432-1101, toll free 1-800-33DC101.

[Commercial for the Kid Rock Dance-in-the-Cage Concert]

ATTACHMENT B**FCC List of Small Entities**

As described below, a "small entity" may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	

International Public Fixed Radio (Public and Control Stations)	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHz Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A

Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes

	affiliates and persons or entities that hold interest in such entity and their affiliates)
<i>Miscellaneous</i>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer

**Statement of Commissioner Michael J. Copps,
Dissenting**

Re: Infinity Broadcasting Operations, Inc., Licensee of Stations WNEW(FM), New York, New York; WYSP(FM), Philadelphia, Pennsylvania; KYCY(AM), San Francisco, California; Infinity Radio Operations, Inc., Licensee of Stations WBUF(FM), Buffalo, New York; KSFN(AM), North Las Vegas, Nevada; WXTM(FM), Cleveland Heights, Ohio; WAZU(FM), Circleville, Ohio; KUPL(AM), Portland, Oregon; Infinity Radio Subsidiary Operations, Inc., Licensee of Station KXOA(FM), Roseville, California; Infinity Broadcasting Corporation of Dallas, Licensee of Station KLLI(FM), Dallas, Texas; Infinity Broadcasting Corporation of Washington, D.C., Licensee of Station WJFK-FM, Manassas, Virginia; Infinity Holdings Corporation, Licensee of Station WCKG(FM), Elmwood park, Illinois; Hemisphere Broadcasting Corporation, Licensee of Station WBCN(FM), Boston, Massachusetts, Notice of Apparent Liability for Forfeiture; AMFM Radio Licenses, Licensee of Station WWDC-FM, Washington, D.C., Notice of Apparent Liability for Forfeiture

I dissent from the Commission's decisions to provide no more than a slap on the wrist to Infinity (owned by Viacom) and Clear Channel rather than take serious action to address indecency on our airwaves. Today, the majority proposes a \$27,500 fine for each incident of airing what the majority agrees appears to be indecent programming at a time when children likely composed a significant portion of the audience.

In the case of Infinity/Viacom, thirteen stations ran the "Opie & Anthony Show" which contained a broadcast of sexual activity at St. Patrick's Cathedral in New York as part of an on-air stunt. In this stunt, called "Sex for Sam," couples received points for having sex in public places. In addition to St. Patrick's Cathedral, the broadcast described sexual activity at restaurants, at the Disney Store and at FAO Schwartz. In the case of Clear Channel, one of its stations, WWDC-FM, broadcast an "Elliot in the Morning" show which included a station-sponsored promotion to which female high school students called in for the opportunity to audition to dance in a cage at an upcoming rock concert. The show's hosts questioned the girls about their sexual activities at their school -- Bishop Denis J. O'Connell High School -- actively solicited other high school students to call, and made repeated and graphic references to oral sex.

Neither of these cases is a difficult call. Both are outrageous and both were run by stations whose owners knew better and whose parent companies have had previous indecent broadcasts brought before this Commission. I believe we should designate these cases for a hearing on the possible revocation of these stations' licenses, as provided for by section 312(a)(6) of the Communications Act.

I am particularly troubled by the decision on the "Opie and Anthony Show." I defy anyone to read the transcript and argue that this broadcast does not violate the statutory prohibition against airing indecent material. And I defy anyone to argue that a \$27,500 fine to each of the stations owned by a multi-billion dollar conglomerate is adequate to address this clear violation of federal law.

Infinity/Viacom could pay this entire fine by tacking just one more commercial onto one of its prime-time TV shows and probably pocket a profit to boot. Some punishment!

The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material. The majority claims further to recognize the seriousness of the offense. And it even concedes that the Commission has the option of the license revocation process. But then it turns timid and decides that the appropriate recourse for this filth is a \$27,500 fine against each station. In other words, the majority determines that these stations deserve yet another chance before the Commission even considers revoking a license. When, I ask, will this end?

This is not the first action against a station owned by Infinity. Infinity stations paid \$1.7 million in 1995 to settle a series of indecency cases. As part of that settlement, Infinity agreed to take steps to prevent further broadcast of indecent material. More complaints involving other Infinity broadcasts followed. Last April, this Commission issued another tepid proposed fine against another station owned by this same company – WKRK-FM in Detroit – which had aired some of the most vulgar and disgusting indecency that I have had the misfortune to examine. In that decision, the majority warned that repeated serious violations by Infinity could result in the revocation of station licenses. The majority repeats that same warning again in this decision.

Yet, two months prior to the airing of “Sex for Sam” on the “Opie and Anthony Show,” this agency cited the same show for three separate apparent violations of the indecency statutes. These shows aired between November 2000 and January 2001. In one instance, a graphic song about a father having oral sex with his young daughter was broadcast. In the second instance, the “Opie and Anthony Show” aired another graphic song by a man seeking girls between the ages of two and three for sex. In the third instance, the show provided detailed instructions to a teenager and then broadcast her rubbing a telephone between her legs.

If this situation does not meet the majority’s test for repeated violators, I fail to understand what would. The message to licensees is clear. Even egregious repeated violations will not result in revocation of a license. Rather, they will result only in a financial penalty that doesn’t even rise to a serious cost of doing business.

I wonder when this Commission will finally take a firm stand against the “race to the bottom” on our airwaves. The time has come for us to send a message that we are serious about enforcing the indecency laws of our country and that we will be especially vigilant about the actions of repeat offenders such as those cases before us here. Instead we turn an apparently incurable deaf ear to millions of Americans who are fed up with the patently offensive programming sent into their homes so regularly. Today’s decision does nothing to discourage such programming.

It all comes down to this: station owners aren’t given licenses to use the public’s airwaves to peddle smut. They are given licenses to serve the public interest.

Separate Statement of Commissioner Kevin J. Martin

Re: AMFM Radio Licenses, LLC, Licensee of Station WWDC-FM, Washington, DC., Notice of Apparent Liability for Forfeiture

I support the finding in this Notice of Apparent Liability that the licensee apparently violated our rule against the broadcast of indecent content, but I would have proposed a higher fine. I am concerned, for example, that the hosts of this show engaged in these on-the-air telephone conversations with minors. As I have said in similar cases, we could have found that each time the show's hosts started talking about an indecent topic or had a separate distinct conversation, the ensuing conversation constituted a separate violation.¹ In prior cases, the Commission has acknowledged that we have the discretion to consider each indecent utterance a separate violation.²

¹ See Separate Statement of Commissioner Kevin J. Martin, *Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 6915 (2003) (*Infinity Detroit NAL*).

² *Infinity Detroit NAL* at para. 13 (clarifying that the Commission could pursue enforcement action for each indecent utterance). See also 18 U.S.C. § 1464 (specifying that "[w]hoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.").

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN**

Re: AMFM Radio Licenses, LLC, Notice of Apparent Liability for Forfeiture

This Notice sends the unmistakable message to Clear Channel and other broadcasters who violate our indecency rules: We are stepping up our enforcement. Once again, we give fair warning that the Commission can and will avail itself of a range of enforcement sanctions, including the initiation of proceedings that could result in the revocation of these stations' licenses. I will not hesitate to consider such revocation proceedings for serious violations that occur after the explicit notice we provided in April in WKRK-FM. Similarly, as broadcasters were explicitly notified in April, I will also support on a going-forward basis an approach that treats each indecent utterance, such as distinct conversations or program segments, as a separate violation under our rules. This will substantially increase our fines, which by statute are capped at an inadequate level, so they will be more commensurate with the offenses.

The Commission reached the obvious conclusion that AMFM Radio Licenses, whose corporate parent is Clear Channel, broadcast indecent material and should be liable for the full statutory maximum forfeiture amount. It took far too long for us to reach this conclusion, and I hope we will act more swiftly in the future to send a clear message.

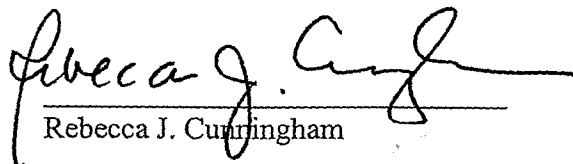
AMFM's actions here were unquestionably willful and egregious. Hosts of the "Elliot in the Morning" program repeatedly probed school students about sexual activity conducted inside a Catholic high school and actively solicited calls from other students to elicit similar information. The hosts amplified their sexual banter by simulating the act of oral sex with numerous sound effects broadcast over the air. Goading school children in a pandering manner to discuss sexual activities of students and administrators in a school setting shows a deliberate attempt to heighten the shock to listeners. The broadcasts clearly offended community standards.

Unfortunately, the statutory constraints on our ability to level fines are currently inadequate, as the low fines can be considered by broadcasters as a cost of doing business and not a serious deterrent. In this case, a fine below the statutory maximum would not accurately reflect the circumstances and AMFM's culpability. I believe strongly that our fines, or other appropriate enforcement actions, should be sufficient to deter broadcasters from broadcasting indecent material on the public's airwaves at a time when children are listening. Today's action, while an important step in that direction, must be followed by more stringent, swifter and stricter enforcement of our statutory obligation to prevent indecent broadcasts over the public airwaves.

CERTIFICATE OF SERVICE

I, Rebecca J. Cunningham, hereby certify that a true copy of the foregoing "Opposition to Petition to Deny" was served by first-class United States mail, postage prepaid, on this 5th day of November, 2004 upon the following:

Dennis J. Kelly
Law Office of Dennis J. Kelly
Post Office Box 41177
Washington, DC 20018-0577



Rebecca J. Cunningham