

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

In the Matter of	)	
	)	
	)	
Infinity Broadcasting Operations, Inc.	)	File No. EB-02-IH-0109
	)	NAL/Acct. No. 200332080010
Licensee of Station WKRK-FM	)	FRN 0003476074
Detroit, Michigan	)	Facility ID # 9618
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** March 28, 2003

**Released:** April 3, 2003

By the Commission: Commissioner Copsps dissenting and issuing a statement;  
Commissioners Martin and Adelstein issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Infinity Broadcasting Operations, Inc., (“Infinity”), licensee of Station WKRK-FM, Detroit, Michigan apparently violated 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999 by willfully broadcasting indecent language. Based upon our review of the facts and circumstances in this case, we conclude that Infinity is apparently liable for a forfeiture in the amount of twenty-seven thousand five hundred dollars (\$27,500).

**II. BACKGROUND**

2. The Commission received a complaint alleging that WKRK-FM broadcast indecent material during the “Deminski & Doyle Show,” on January 9, 2002 between 4:30 p.m. and 5:00 p.m. The complainant provided a tape of the “Deminski & Doyle Show” containing the allegedly indecent material broadcast. After reviewing the complainant’s tape, the staff of the Enforcement Bureau issued a letter of inquiry to the licensee that included a copy of the tape submitted by the complainant as well as a transcript of a portion of the tape. *See* Attachment A.

3. Infinity submitted a response to the letter of inquiry, and confirms that the program segment that is the subject of the complaint was broadcast. However, Infinity asserts that no enforcement action or administrative penalty can be assessed because the Commission’s generic definition of indecency is unconstitutional. Infinity does not argue that the material broadcast is not indecent under the Commission’s definition.

### III. DISCUSSION

4. It is a violation of federal law to broadcast obscene or indecent programming. Specifically, 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.” Congress has given the Federal Communications Commission the responsibility for administratively enforcing 18 U.S.C. § 1464. In doing so, the Commission may, among other things, impose a monetary forfeiture, pursuant to Section 503(b)(1) of the Communications Act (the “Act”), 47 U.S.C. § 503(b)(1), for broadcast of indecent material in violation of 18 U.S.C. § 1464. Federal courts have upheld Congress’s authority to regulate obscene speech and, to a limited extent, indecent speech. Specifically, the U.S. Supreme Court has determined that obscene speech is not entitled to First Amendment protection. Accordingly, Congress may prohibit the broadcast of obscene speech at any time.<sup>1</sup> In contrast, federal courts have held that indecent speech is protected by the First Amendment.<sup>2</sup> Nonetheless, the federal courts consistently have upheld Congress’s authority to regulate the broadcast of indecent speech, as well as the Commission’s interpretation and implementation of the statute.<sup>3</sup> However, the First Amendment is a critical constitutional limitation that demands we proceed cautiously and with appropriate restraint.<sup>4</sup> Consistent with a subsequent statute and case law,<sup>5</sup> under the Commission’s rules, no radio or television licensee shall broadcast obscene material at any time, or broadcast indecent material during the period 6 a.m. through 10 p.m. *See* 47 C.F.R. § 73.3999.

5. In enforcing its indecency rule, the Commission has defined indecent speech as language that first, in context, depicts or describes sexual organs or activities. Second, the broadcast must be “patently offensive as measured by contemporary community standards for the broadcast medium.” *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.

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<sup>1</sup> *See Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989); *Miller v. California*, 413 U.S. 15 (1973), *rehearing denied*, 414 U.S. 881 (1973).

<sup>2</sup> *Sable Communications of California, Inc. v. FCC*, *supra* note 1, 492 U.S. at 126.

<sup>3</sup> *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*, 112 S.Ct. 1282 (1992) (“ACT II”); *Action for Children’s Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert denied*, 116 S.Ct. 701 (1996) (“ACT III”).

<sup>4</sup> *ACT I*, *supra* note 3, 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 say and hear.”). *See also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813-15 (2000).

<sup>5</sup> Public Telecommunications Act of 1992, Pub. L. No. 356, 102<sup>nd</sup> Cong., 2<sup>nd</sup> Sess. (1992); *ACT III*, *supra* note 3.

726 (1978)). This definition has been specifically upheld by the federal courts.<sup>6</sup> The Commission's authority to restrict the broadcast of indecent material extends to times when there is a reasonable risk that children may be in the audience. *ACT I, supra*. As noted above, current law holds that such times begin at 6 a.m. and conclude at 10 p.m.<sup>7</sup>

6. The Commission's indecency enforcement is based on complaints from the public. Once a complaint is before the Commission, we evaluate the facts of the particular case and apply the standards developed through Commission case law and upheld by the courts. See *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 at 8015, ¶ 24 (2001). "Given the sensitive nature of these cases and the critical role of context in an indecency determination, it is important that the Commission be afforded as full a record as possible to evaluate allegations of indecent programming." *Id.* In evaluating the record to determine whether the complained of material is patently offensive, three factors are particularly relevant: (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. See *Indecency Policy Statement, supra*, 16 FCC Rcd at 8003 ¶ 10.

7. There is no question that the complained of material broadcast on the "Deminski & Doyle Show" as set forth in Attachment A, which concerns a discussion of sexual techniques and practices, in context, refers to sexual and excretory organs and activities. Thus, the material warrants scrutiny. Moreover, as discussed below, based on the nature of the material in question, it is not surprising that Infinity does not argue that the complained of broadcast is not indecent. We find that the complained of material, in context, is patently offensive when considered under the three factors set out in the *Indecency Policy Statement*.

8. The inquiry under the first key factor relevant to a determination of patent offensiveness is whether the sexual and excretory references are graphic or explicit. The complained of broadcast of the "Deminski & Doyle Show" invited listeners to call in to discuss sexual practices. There were separate discussions with nine individuals who called the show to talk about sexual activities. Callers and the show's hosts described in detail how specifically named sexual acts are performed. The broadcast included explicit and graphic sexual references, including references to anal and oral sex, as well as explicit and graphic references to sexual practices that involve excretory activities.

9. With respect to the second factor, the complained of material dwelled on sexual and excretory organs and activities and the sexual and excretory references were repeated. Thus, the sexual and excretory references cannot be considered fleeting. Under the third factor, we find that the graphic and explicit descriptions of the sexual practices at issue in the broadcast, which were identified in descriptive, non-clinical terms, and the comments of the on-air personalities demonstrate that the material, in context, appears to have been used to pander, titillate and shock. The tone of the material broadcast is extremely vulgar and extremely lewd, and is similar to other programming that has been found to be indecent or

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<sup>6</sup> In *FCC v. Pacifica Foundation*, the Court quoted the Commission's definition of indecency with apparent approval. *FCC v. Pacifica Foundation, supra* note 3, 438 U.S. at 732. In addition, the D.C. Circuit Court of Appeals upheld the definition against constitutional challenges. *ACT I, supra* note 3, 852 F.2d at 1339; *ACT II, supra* note 3, 932 F.2d at 1508; *ACT III, supra* note 3, 58 F.3d at 657.

<sup>7</sup> *ACT III, supra* note 3.

apparently indecent.<sup>8</sup>

10. Given our application of established standards that have been repeatedly affirmed by the courts as constitutional, we also reject Infinity's arguments that our indecency definition is unconstitutionally vague and overbroad. The Commission has rejected similar constitutional challenges to our broadcast indecency standards, including constitutional challenges based on *Reno v. ACLU*, a case which Infinity cites and which invalidated an indecency standard for the Internet. *See, e.g., Infinity Broadcasting Corporation of Los Angeles (KROQ-FM)*, 17 FCC Rcd 9892 (2002); *WQAM License Limited Partnership, supra*, 15 FCC Rcd at 2518 (noting that the Court indicated that broadcast indecency regulations were justified based on significant differences between the Internet and the broadcast medium and between the standard in the statute at issue and the Commission's broadcast indecency standard). Moreover, we disagree with Infinity's assertion that our indecency definition is constitutionally invalid because no causal link has been demonstrated between the broadcast of indecent material and harm to children.<sup>9</sup>

11. Infinity does not claim that any of the complained of material was broadcast outside the 6 a.m. to 10 p.m. time frame relevant to an indecency determination. Thus, there was a reasonable risk that children may have been in the audience at the time that the material at issue was broadcast on January 9, 2002 and, therefore, the material broadcast is legally actionable. By broadcasting this material, WKRK-FM apparently violated the prohibitions in the Act and the Commission's rules against broadcast indecency.

12. Section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(a) of the Commission's rules, 47 C.F.R § 1.80, both state that any person who willfully or repeatedly fails to comply with the provisions

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<sup>8</sup> *See, e.g., WQAM License Limited Partnership (WQAM(AM))* 15 FCC Rcd 2518 (2000), *aff'd* 15 FCC Rcd 13549 (2000)(segment consisting of a telephone conversation discussing anal sex); *Emmis Radio License Corporation*, 17 FCC Rcd 5263 (EB 2002), *aff'd* 17 FCC Rcd 21697 (EB 2002)(Forfeiture Order)(discussions concerning sexual practices by female cast member and women guests); *Capstar TX Limited Partnership (KTXQ(FM))*, 15 FCC Rcd 19615 (EB 2000)(radio show hosts discuss sexual techniques with a caller); *Communicast Consultants, Inc., (KRXK(AM))*, 15 FCC Rcd 18730 (EB 2000), *aff'd* 15 FCC Rcd 19697 (EB 2000)(Forfeiture Order)(complained of material includes graphic description of sexual activities and organs); *Southern Nevada Radio, Inc. D.I.P.(KKLZ(FM))*, 13 FCC Rcd 2787 (MMB 1998)(radio show hosts solicit "men are pigs" stories and discuss with a caller the sexual and excretory activities performed by the caller's ex-husband); *Rich Communications Corporation (WGRF(FM))*, 10 FCC Rcd 5149 (MMB 1995)(radio show hosts solicit women callers to relate "the strangest intimate story" confided to them by a girlfriend and then discuss the details of such stories with callers).

<sup>9</sup> Infinity cites language from *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002), a case invalidating provisions of the Child Pornography Prevention Act of 1996 ("CPPA"), which criminalized non-obscene "virtual" child pornography. The CPPA extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children. In the text cited, the Court distinguished provisions of the CPPA related to "virtual" child pornography from constitutionally valid statutory provisions banning actual child pornography. Protecting children from exposure to indecent material is a compelling governmental interest and courts have not questioned or expected proof on the issue of harm. *See Sable Communications, supra* note 1, 492 U.S. at 126-27. However, to withstand constitutional scrutiny, government regulations aimed at promoting this compelling interest must be narrowly drawn so as not to unnecessarily interfere with First Amendment freedoms. The D.C. Circuit has concluded that a 10 p.m. to 6 a.m. "safe harbor" period, during which indecent speech may be legally broadcast, is justified as a properly tailored means of vindicating the government's compelling interest in the welfare of children. *See ACT III, supra* note 3.

of the Act or the rules shall be liable for a forfeiture penalty. For purposes of section 503(b) of the Act, the term “willful” means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.<sup>10</sup> Based on the material before us, it appears that Infinity willfully violated 18 U.S.C. § 1464 and section 73.3999 of the Commission’s rules, by airing indecent programming on WKRK-FM on January 9, 2002. We also take this opportunity to note that we could have found Infinity to have engaged in apparent repeated violations. The statute prohibits the broadcast of indecent “utter[ances].” While the Commission has traditionally viewed all of the utterances in one program to be a single utterance and thus a single violation, such an approach is not legally required. Here, for example, there were several distinct conversations, each of which could be viewed as a separate indecent utterance, and thus a separate violation. For purposes of this proceeding, we will use our traditional per-program approach. We hereby make clear that, in the future, we may treat situations like this as multiple, repeated violations with the accompanying increase in forfeitures.

13. The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for transmission of indecent or obscene materials.<sup>11</sup> 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.”<sup>12</sup> Based upon our review of the entire record, we believe that imposition of a forfeiture that is higher than the base amount is warranted. The violation was egregious in that the indecent material was extensive, and included discussions with nine callers. We therefore believe that an upward adjustment of the forfeiture amount to the statutory maximum of \$27,500 is warranted in this case for the apparent broadcast of indecent material. *Forfeiture Policy Statement, supra*.<sup>13</sup> We take this opportunity to note that given the egregiousness of this violation, additional serious violations by Infinity may well lead to the initiation of a revocation proceeding. Moreover, other broadcasters are on notice that the Commission will not hesitate to adopt strong enforcement actions in the future, including the potential initiation of revocation proceedings. *See, e.g.*, 47 U.S.C. § 312(a).

#### IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission’s rules,<sup>14</sup> that Infinity Broadcasting Operations Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE

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<sup>10</sup> *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> *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).

<sup>12</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17110.

<sup>13</sup> *See* 47 C.F.R. § 1.80. The Commission recently 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 Order*, “In the Matter of Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation.” 15 FCC Rcd 18221 (2000).

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

in the amount of twenty-seven thousand five hundred dollars (\$27,500) for willfully violating 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules.

15. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Infinity SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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 Number (FRN) referenced above and also should note the NAL/Acct. No. referenced above.

17. The response, if any, must be mailed to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

18. 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.

19. 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.<sup>15</sup>

20. 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 you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. Your certification should indicate whether you, including your 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. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment B, please contact OCBO at (202) 418-0990.

21. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Stephen A. Hildebrandt, Vice President, Infinity Broadcasting Operations, Inc., 2000 K Street, N.W., Suite 725, Washington, D.C., 20006.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>15</sup> See 47 C.F.R. § 1.1914.

Marlene H. Dortch  
Secretary

**ATTACHMENT A**

EB-02-IH-0109

Radio Station:

WKRK-FM, Detroit, Michigan

Date/Time of Broadcast:

January 9, 2002 between 4:30 p.m. and 5:00 p.m.

Material Broadcast:

Deminski & Doyle Show

**MV1:** Male Cast member

**MV2:** Male Cast member

**MV3:** Male Cast member

**MC1:** First caller

**MC2:** Second caller

**MC3:** Third caller

**MC4:** Fourth caller

**MC5:** Fifth caller

**MC6:** Sixth caller

**MC7:** Seventh caller

**MC8:** Eighth caller

**MC9:** Ninth caller

**MV1:** 4:37 on a Wednesday. So listen to this. Former Baywatch babe Yasmine Bleeth was in court today in our area in Wayne county, you know for that drug charge. She just got 2 years probation. She's gotta do the substance abuse screening and all that. Ah Rudy's the only one I did not show this photograph to in the new story. Do you remember Yasmine Bleeth?

**MV2:** Oh yeah, she's hot or was hot.

**MV1:** Okay, well I think she still is. I guess you can tell the drugs took a toll but she's got a little even bigger in the boobs there. Look how big her boobs look now. Look at the size of those Bleeths.

**MV2:** Oh man, yeah! She looks like she put on some weight. She doesn't look like Baywatch.

**MV1:** So you'd like to Yasmine all over those Bleeths, wouldn't you?

**MV2:** Damn right I would, hell yeah! I'd buy that for a dollar.



**MV1:** What does that mean? You'd buy that for a dollar?

**MV2:** It's an inside joke, from "Robocop."

**MV1:** Okay.

**MV3:** Okay, that was so inside Rudy's the only one who knows what he's talking about.

**MV2:** There was a line in "Robocop" where the guy.... Forget it.

**MV1:** No, you gotta tell 'em.

**MV2:** There's some old man who keeps going "I"... It was a game show on a television that was inside a window in a department store and the guy kept going "I'll buy that for a dollar."

**MV3:** Was that the horsey game at the casino he was playing?

**MV2:** No.

**MV1:** To whom was that an inside joke?

**MV2:** It was for me. (laughter) It was one of those things where I was saying in my head I was thinking I'd buy that for a dollar.

**MV1:** That's not usually what an inside joke normally means. It's when only a few others get it. But you gotta have those few others.

**MV2:** Exactly. You got it. Humor me.

**MV1:** Our phone is 248-559-9797 so again I was saying no children are to be listening to this next segment or so and ladies you probably don't wanna hear this crap either 'cause this is really foul. Now we talked about this only one other time on the show and not that long ago but this is why this cracked me up so much. You know those weird funky uh made up sex techniques or sex positions or sex maneuvers that guys have their whole websites full of this stuff now and they have all these clever names assigned to them?

**MV3:** They all seem like urban legends.

**MV1:** Right, right. Well, I'm watching TV last night and there's a brand new TV show, brand new sitcom. I'm not even saying it was all that good. I didn't even watch the whole thing, but it's that Hank Azaria show. Hank Azaria has been on different things, he's a lot of the voices on "The Simpsons" actually. So he's got his own show now where like his imagination goes running wild with crap. So part of the plot was that they're going to a therapist and they're trying to work on their sex life, he and his wife. And um, she is telling him that he could have anything that he wants. This one night he could have anything he wants. He's like "anything?" She's like "anything you want." And so he comes up with the term "okay how about a 'Cleveland tornado?'" And this is something that apparently he had done to her in the past because she's like "a Cleveland Tornado?" "You're not doing that to me again!" And they had both been really drunk this night when they had done the "Cleveland Tornado." And she gets horribly

offended on the show last night. And he's like "oh no, no, I don't know why I said it." "I don't know what I was thinking," blah, blah, blah."

**MV3:** Well, what is it?

**MV1:** That's just it. They never say. Or well, I didn't see the end of it but I don't think they ever explained it 'cause it's a sitcom so they couldn't ... Rudy what is it?

**MV2:** Don't know. Never heard of that one before.

**MV1:** Now try to describe carefully what a "Cleveland Steamer" would be.

**MV2:** Now the "Cleveland Steamer" is when... I'm pretty sure it's when...

**MV1:** Now you don't even know what a "Dirty Sanchez" was by the way, so I'm not even so sure if you're accurate about this.

**MV2:** They're all different. I think a "Cleveland Steamer" is when you take a poop like on the girl's chest area.

**MV1:** And this is romantic to whom? This improves your sex life?

**MV2:** And then, hold on. So you take a poop on her chest area,...

**MV1:** Oh, the romantic part is coming up apparently...

**MV2:** ...her breasts and then you supposedly sit on it and make the noise of a steamboat.

**MV1:** So you Yasmine on her Bleeth's and then you ... (laughing). Have you ever performed any of this Rudy?

**MV2:** I've never done any of these techniques except "The Stranger."

**MV1:** Have you ever asked a woman if you could do them?

**MV2:** No I have not.

**MV3:** You gotta tell what "The Stranger" is again for those that don't follow every day.

**MV2:** "The Stranger" is when...

**MV1:** And he's done this!!! This is the sad part, Rudy's done it. Go ahead...

**MV2:** "The Stranger" is when you sit on your hand to cut off the circulation; the hand that you use to masturbate with and you cut off the circulation until it's numb and you can't feel it and then uh, you pleasure yourself with that hand. So it feels like someone else, therefore "The Stranger."

**MV1:** (Laughing) This is so sad, when did you first develop your interest in these strange sex techniques?

**MV2:** You know what? I have no idea to be honest with you. Let it be known that this sitcom is jocking the Deminski & Doyle Show. 'Cause we have brought these into the mainstream.

**MV1:** Well, see, I don't know who's brought them into the mainstream, but if it was in prime time then naturally they didn't describe what it was but it was obviously something really disgusting and kinky but if they're starting to talk about "Cleveland Tornados" in prime time I'm thinking yeah yeah there's gotta be all sorts of websites and jokes about this kinda thing. So I just wanted to bring this up what sorts of things like this have you heard of and try to, you know, carefully within reason describe it as best as you can what these strange sex techniques are. 248-559-9797.

**MV3:** And I would like to make a challenge to anyone who's actually done one; 'cause I mean we've all heard these, but they're all urban myths.

**MV2:** I would like to say the last two of my favorite ones lately is "The Shocker" which I'm sure somebody will call that one in. I don't want to say that. And uh what was the other one?

**MV1:** So just give us the title without telling us what it means.

**MV3:** What's "The Shocker?"

**MV2:** That's when... It's with the fingers, two in the orifices. I can't really say. Can't do it careful enough.

**MV1:** Oh one... Oh... Look, we already warned people no children and no women, so...

**MV2:** Two in the pink, one in the stink.

**MV1:** Okay now I was gonna see, I was gonna say "vagina" and "rectum." But hey, you know...

**MV3:** Have you performed that one?

**MV2:** No.

**MV3:** And that's called a "Shocker."

**MV2:** "The Shocker," it takes them by surprise.

**MV3:** He only performed the one finger on himself.

**MV2:** And the other one which was called in awhile ago not when we were talking about this but the "Rusty Trombone."

**MV1:** Oh that one I know!

**MV2:** That one's gross.

**MV3:** Yeah, once again one that had not been actually done.

**MV1:** The “Rusty Trombone” you know that I think that is the oldest of all these sickening things uh, ‘cause I heard that one years and years and years ago.

**MV3:** I’ve never heard of it until that guy brought it up on the show.

**MV1:** Really? For some reason I heard of that a long time ago.

**MV3:** Be honest I’ve never heard of any of these.

**MV1:** “Rusty Trombone,” and again please, no kids, no women. “Rusty Trombone” I believe that’s when you’re having anal sex with a girl and then right afterwards you make her perform uh, oral sex on you.

**MV3:** That’s the way the man described it. Yes.

**MV1:** Without washing up first. That’s just disgusting.

**MV3:** She is referred to as playing the “Rusty Trombone.”

**MV1:** So if anyone has had the balls or was stupid enough or and/ or to actually try one of these on a girlfriend, wife, concubine, whatever that’s about the only person you’ll get away with it. If you got a hooker somewhere...

**MV3:** She’ll probably kick your ass.

**MV1:** She’ll have her driver kill you. So tell us if you were ever dumb enough to try one of these on a girl and even if not just what sort of strange sex techniques have you heard of. 248-559-9797.

**MV3:** Billy from Southfield you’re on 97.1 FM talk.

**MC1:** How’re you guys doin’ today?

**MV3:** Okay Billy.

**MC1:** Yeah, the “David Copperfield.”

**MV1:** I heard of this but I can’t remember how it goes.

**MC1:** Um, I think it’s when you’re having sex with a girl from behind...

**MV1:** Oh yeah.

**MC1:** and then you spit on her back.

**MV1:** Oh yeah, okay you pretend by spitting that you’ve just finished.

**MC1:** Right and then when you turn around you Yasmine on her.... It’s an illusion.

**MV1:** (Laughing) You Yasmine on her face.

**MC1:** Right.

**MV1:** And Billy have you actually performed this?

**MC1:** I believe I have once, but I was really drunk.

**MV1:** What do you mean “you believe you have?” You’re not sure you did?

**MC1:** Well, I’m sure about the first part but the second part’s a little fuzzy.

**MV1:** You may have missed?

**MC1:** Yeah. Right.

**MV1:** But you definitely did the spitting on the back?

**MC1:** Yeah, I tried it.

**MV1:** Okay now but to perform a “David Copperfield” though doesn’t one have to not spit just once you have to sorta you know “puph, puph, puph” (simulates a spitting noise) get a couple spits out there in a rhythmic fashion?

**MC1:** You know I never claimed to be a professional at it. (Laughter).

**MV1:** You’re just in it for the love of the game. Okay, alright Billy, thanks for your call. Oh my God we’re being told, Frank in Belleville. Hey Frank?

**MC2:** Yes?

**MV1:** We got a note here that says you actually know what a “Cleveland Tornado” is supposed to be?

**MC2:** I know what the “Cleveland Tornado” is. Are you ready?

**MV1:** I just thought it was something they made up just to put on the show.

**MC2:** Oh no, no, no. A “Cleveland Tornado” is ... You have to have a sex swing. What you do is you lay down and you have to lower the girl. You have to...

**MV1:** Wait, wait, I’m sorry. Who is in the swing?

**MC2:** Oh, a girl okay?

**MV1:** And you’re on the bed?

**MC2:** You’re on the bed or floor preferably, okay and you have to penetrate her rectum and...

**MV1:** Yeah?

**MC2:** ...you turn her around and supposedly she is supposed to have ate something that is going to make her defecate all over you.

**MV1:** Oh God!!!!

**MC2:** While you're spinning around.

**MV1:** That's beautiful, that's like a dream wedding night (laughing).

**MC2:** Why anybody would do this I don't know but I heard.... Yeah.

**MV2:** Who would want that?

**MV3:** I don't know...

**MV1:** What guy would want the girl to crap on her [him]? (laughing) I don't know. What's fun about any of these? That makes the show last night even funnier because that's what they were referring to. The thing is you gotta have the sex swing and the plot of the show was something they just sorta tried one night. You know you gotta have the swing! Alright strange sex techniques you've heard of 248-559-9797.

**MV3:** Alan in Garden City you're on 97.1 FM talk.

**MC3:** Alright the one I know of is called the "Chili Dog."

**MV1:** Well of course it is.

**MC3:** And it's kinda like the "Cleveland Steamer" the way you started out except for you do the Hershey squirts on her chest. And then you add the hot dog which would be your member.

**MV1:** You add it. You just put it there?

**MC3:** You put it there and, yeah.

**MV1:** Okay, wait a minute... so it starts off like the "Cleveland Steamer"...

**MC3:** Yeah, you're using Hershey squirts instead of just defecating. And then you add the hot dog and the bun there... So the chili's already there.

**MV1:** So you put your unit in your own feces?

**MC3:** Yeah, in between her breasts.

**MV1:** So Alan, how many times have you tried this?

**MC3:** Absolutely none.

**MV1:** That sounds like a real good maneuver.

**MV2:** Well once you find the right girl. Why would you wanna put your unit in your own poop?

(laughing)

**MV1:** Josh, you're on 97.1 FM talk.

**MC4:** Hey guys

**MV1:** Hey Josh.

**MC4:** I got one for you, have you ever heard of a "Tony Danza?"

**MV1:** Oh, this is a brand new one, so I'm glad, no I have not.

**MC4:** A "Tony Danza's" when you grab her by the hair, throw her down on the bed, smack her around a little bit and tell her who's the boss.

**MV1:** Aww. That's it?! Aww, otherwise know as a domestic violence move. Yeah I think that's known as a former Senator David Jay move. Brian in Milford you're on 97.1 FM talk.

**MC5:** Hey, what's up guys?

**MV1:** Hey Brian.

**MC5:** I have done the "Rusty Trombone."

**MV1:** Aw, for God's sakes.

**MV2:** You must've really loved her.

**MC5:** No it was a girl I picked up when I was vacationing down in Hilton Head, South Carolina.

**MV1:** Okay and you're back.

**MC5:** She wanted me to do it.

**MV1:** Now, you're in the hotel room?

**MC5:** No, we were in a condo.

**MV1:** Okay so you're in this condo and it's just you and the girl, it's not a threesome or anything?

**MC5:** No. It was just me and the girl, my buddy was sleeping in the other bedroom.

**MV1:** And uh, when you say she wanted you to do it, I mean, what happens, like you start having anal sex with her?

**MC5:** Yeah, and I was approaching the finish line and she says...

**MV1:** She says, "Finish in my mouth?"

**MC5:** Yes, yes.

**MV1:** No kiddin'? Wasn't that kinda disgusting?

**MC5:** It was bizzare when it happened.

**MV1:** Didn't it kind of gross you out?

**MC5:** Yeah, but uh, it was a story, you know.

**MV1:** Oh yeah, it is a good story. What does the girl do immediately after? Does she go to the bathroom and use a bunch of Listerine or what?

**MC5:** No she tried to kiss me and that wasn't happenin.' (Laughter).

**MV1:** No way!! Oh man, now was she offended that you would not kiss her?

**MC5:** Yeah, she was.

**MV1:** Yeah, I mean, I guess she would be, 'cause hey look what she did for you.

**MV2:** Yeah but so what!

**MV1:** Oh no, I agree, it's just that it's inevitable that she's gonna be offended you know? Brian, thanks for your call. Oh yeah, if you actually tried these with anybody for God sakes get on a phone we'll talk about this just for the next segment...

**MV2:** I still think about 99 percent of them are urban legend.

**MV1:** Oh yeah, they've never actually been performed. I just think that guys, I think that guys bein' sick just tryin' to come up with just the most disgusting turn-off they can and then just pretend like oh yeah, this is what I did with somebody. So strange sex techniques you've heard of, no children no women 248-559-9797.

97.1 FM Talk. D&D Talk That Rocks In Detroit.

COMMERCIAL BREAK

Deminski (Deminski) and Doyle (Doyle). It's like seeing nude photos of your sister. (Sound of a spring snapping back "boing"). Sure it's creepy, but there's just something about it (Woah). 97.1 FM Talk.

**MV1:** It's 4:55 with Deminski and Doyle and by the way Rudy somebody e-mailed and was laughing their ass off when you said "I'd buy that for a dollar" 'cause he says it all the time too. So another "RoboCop" fan out there.

**MV2:** Oh so it was an inside joke.

**MV3:** Between Rudy and a listener.



**MV1:** Another guy who lives in the basement somewhere just like Rudy. Oh, oh, hey, real quick-- hot girl upstairs any update?! You still haven't talked to the hot girl upstairs? No "Cleveland Tornado?" Nothing? Okay. Just getting the update. So again no women no children we'll drop this after five, strange sex techniques. 'Cause this is making the main stream. Last night on that Hank Azaria brand new sitcom they were using the term "Cleveland Tornado." 248-559-9797. Scott from Grand Bluff!

**MC6:** Yeah hi guys, how ya doing?

**MV1:** Hi Scott.

**MC6:** You guys are classic. This is classic radio right here. I love it.

**MV1:** Yeah.

**MC6:** You know I didn't know this was so mainstream. I was telling my buddies about all these acts a couple months ago and they didn't believe me. So God bless you guys. Nevertheless I have one that's an offshoot of the "Cleveland Steamer" and it's called the "Manhattan Hot Platter."

**MV1:** Okay, carefully now tell us what happens.

**MC6:** It's the same thing but it's not done on the chest it's done in the mouth.

**MV1:** Oh God! So you're telling me you get a girl and you, you crap in her mouth?

**MC6:** Exactly.

**MV1:** And then what? That's it?

**MC6:** That's it.

**MV1:** Okay Scott, have you ever done this?

**MC6:** And the "Copperfield" is also known as the "Houdini."

**MV1:** No you gotta tell us, have you ever done this?

**MC6:** No. Goodness no.

**MV1:** Do you honestly believe anybody has ever done any of these things?

**MC6:** You know I've seen the "Manhattan Hot Platter" on the Internet. I have seen it in an e-mail.

**MV1:** It's gotta be a model.

**MC6:** No it's not

**MV1:** Somebody's getting paid.

**MC6:** I swear it's not; it's very disgusting.

**MV1:** No, no Bill's saying it's a real person; it's gotta be a porno actress that gets paid to get demeaned.

**MC6:** I watched it several times.

**MV2:** Gotta be pretty low on the porno scale too. You start off with the "Manhattan Hot Platter," whatever.

**MV1:** I think that's the 90 days before you make your health insurance.

**MV2:** And what does that even have to do with sex?

**MV1:** (Laughing) I don't know.

**MV2:** There's no sex involved. You poop in somebody's mouth. (hoots).

**MV1:** Some guys are thinking "Yeah; she wants that; she enjoys it." From Auburn Hills, Tim. Hey Tim, you're on 97.1 FM Talk.

**MC7:** Hey you guys, how ya doin'? I listen every day. My personal favorite is the "Frothy Walrus." (Laughing)

**MV1:** What's a... I may have heard this but I forget. What's a "Frothy Walrus?"

**MC7:** Well, that's where you have a girl perform oral on you, you complete the act and then you finish it off by punching her in the stomach so it comes outta her nose. (Laughing)

**MV1:** Oh God. Another abuse one. If we ever talk about this again 'cause I swear there's so many of these and guys have jammed the phone lines, we gotta get all sorts of romantic music to play underneath this. Tom in Sterling Heights you're on 97.1 FM Talk.

**MC8:** Hey guys this is great. This is actually kind of like the last one, its called the "Strawberry Swirl." You get the girl to pleasure you, get it on her face, punch her in the nose and smear it all around.

**MV1:** Have you ever done this one Tom?

**MC8:** Oh no, no, no.

**MV1:** Would you ever consider doing this?

**MC8:** No, I'm not that violent.

**MV1:** So yeah, you gotta get her bloody nose mixed in with everything else.

**MC8:** Yeah, gotcha.

**MV2:** That's charming, another a wedding night memory. Let's just take one more.

**MV1:** Alright, Tom in Sterling Heights, you're on 97.1 FM Talk.

**MV2:** Another Tom.

**MC9:** Hey guys. Hey, I'd like to call in a blumpkin.

**MV1:** A blumpkin?

**MC9:** Blumpkin, yeah. It's you're receiving. The cow's being serviced while you're on the can.

**MV1:** Okay. A blumpkin is where she's giving you oral sex while you're on the...while you're moving your bowels?

**MC9:** Absolutely.

**MV1:** What's fun about that?

**MC9:** It's just dirty that's all.

**MV1:** Have you had a blumpkin?

**MC9:** Absolutely not.

**MV1:** What would you think of a guy who had a blumpkin?

**MC9:** I don't know.

**MV1:** 'Cause you know what Tom? My dad had a blumpkin.

**MC9:** Oh no way!! (Laughing).

**MV1:** Yeah, swear to God. He didn't know it was called a blumpkin but my dad had this kinky girlfriend for about a year. Did all this weird stuff, and and this was her idea. She wanted to give my dad and enema. This was like a longtime fantasy of hers, and then when the enema kicks in she wanted to blumpkin him. And she did and my dad for some reason my dad told me about this.

**MV2:** That's even worse. I mean it's bad enough he's got a blumpkin but then he shares it with his son. That's priceless.

**MV1:** I wonder if when you die you really do just gain all the knowledge that's out there in the universe; meaning that at this point now that my dad has passed now maybe he knows that that was a blumpkin. Alright we're gonna stop, so men you can find your women and children and allow them back to the radio. 97.1 FM Talk. It's 5:00.

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.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
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.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<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	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
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	
<i>Mass Media Services</i>	
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 – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
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 - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> 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 - <b>Small Business</b> 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	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> 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	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> 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) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> 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 – <b>Small Business</b> 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) <b>Very Small Business</b> 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	<b>Small Business</b> 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) <b>Very Small Business</b> 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
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)

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

*Re: Infinity Broadcasting Operations Inc., licensee of WKRK-FM, Detroit Michigan, Notice of Apparent Liability for Forfeiture*

In this case, WKRK-FM in Detroit aired some of the most vulgar and disgusting indecency that I have had the misfortune to examine since I joined the Commission. The station presented graphic descriptions of violent sexual acts against women as entertainment at a time when children likely composed a significant portion of the audience. The extreme nature of this broadcast – among the worst we have faced in the Commission’s history – and the fact that it was broadcast in the middle of the day, gives the FCC the responsibility to take serious action. I dissent from the majority’s decision because I believe that a financial slap on the wrist does not adequately reflect the seriousness of the station’s actions. To fulfill our duty under the law, we should initiate a hearing to determine whether the WKRK-FM license should be revoked.

I am deeply disappointed that the majority proposes a mere \$27,500 fine against this station. Such a fine will easily be absorbed by the station as a “cost of doing business.” While I am encouraged that the Commission has at least, and at last, found such programming to be indecent, I am discouraged that it does so little about it.

Would anyone who reads the transcript of this program argue that the United States should subsidize such material by giving WKRK-FM free spectrum through their broadcast license? Can anyone read the indecency law that Congress has given us and conclude that any station could broadcast such material on the public’s airwaves consistent with the law? The majority admits that WKRK-FM appears to have violated egregiously and extensively the statutory ban on the broadcast of indecent material. The majority presumably recognizes the seriousness of the offense. And, importantly, this Commission has agreed for the first time that it may revoke the license of a station owner that broadcasts indecent material. But the Commission does not take this step.

Our tepid action today will not dissuade these types of broadcasts in the future. The message to licensees is clear: Even egregious violations will not result in revocation of a license. The majority does warn Infinity that another similar action could result in a revocation hearing, but it fails to mention that this is not the first action against a station owned by Infinity. Infinity stations were fined \$1.7 million by a previous Commission 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. But more complaints involving other broadcasts followed. Last August, for example, another Infinity station aired the “Opie & Anthony” program allegedly involving sex acts performed in or near St. Patrick’s Cathedral. That investigation is still pending without action by the Commission.

The majority may say that this is the largest fine we are allowed to impose under our guidelines. But fines are not the only tool Congress gave us to enforce the law. The Commission would be more credible by moving immediately to a hearing to determine whether the station’s license should be revoked. We would be well within our statutory authority to do this under Section 312(a)(6) of the Communications Act, which specifically provides such a remedy.

I wonder when this Commission will finally take a firm stand against broadcast’s “race to the bottom” as the level of discourse on the public’s airwaves gets progressively coarser and more violent. The time has come for this Commission to send a message that it is serious about enforcing its indecency



rules. Our enforcement actions should convince broadcasters that they cannot ignore their responsibility to serve the public interest and to protect children. The FCC's actions today fail to do so.

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

*Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan, Notice of Apparent Liability for Forfeiture*

I support this Notice's finding that the licensee apparently violated our rule against the broadcast of indecent content, but I would have proposed a higher fine. For instance, we could have found that each time the show's hosts solicited a new call on an indecent topic, the ensuing conversation constituted a separate violation. As the Notice acknowledges, we have the discretion to consider each indecent utterance a separate violation.<sup>16</sup>

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<sup>16</sup> See Notice at ¶ 12. See also 18 U.S.C. § 1864 ("Broadcasting obscene language. 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.")

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN ADELSTEIN**

*Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan, Notice of Apparent Liability for Forfeiture*

I strongly support this Notice and the message it sends to Infinity and other broadcasters that violate our indecency rules. The Commission has now given fair notice that it can and will avail itself of a range of enforcement sanctions, including the initiation of revocation proceedings. Moreover, the Commission will, in the future, consider finding broadcasters liable for multiple violations that occur in a single program where statements can be viewed as separate indecent utterances. Such an approach could result in substantially higher forfeiture amounts.