

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

In the Matter of)
)
)
AMFM RADIO LICENSES, L.L.C.) File No. EB-02-IH-0737
) NAL/Acct. No. 200432080019
Licensee of Station WIHT(FM),) FRN #0001656586
Washington, D.C.) Facility ID # 25080
)
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 20, 2004

Released: June 10, 2004

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that AMFM Radio Licenses, LLC ("AMFM"), licensee of Station WIHT(FM), Washington, D.C., 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 AMFM is apparently liable for a monetary forfeiture in the amount of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00), the applicable statutory maximum.

II. BACKGROUND

2. The Commission received a complaint from listener Douglas Miller alleging that Station WIHT(FM) broadcast indecent material on September 17, 2002, between 9:30 and 9:45 a.m. The complainant alleged that the station aired a contest on its "Hot Morning Mess" program that invited listeners to predict how large a man's penis would become after applying a penile-enlargement device, and that the broadcast was inappropriate for airing during the morning hours. After reviewing the complaint, the staff issued a letter of inquiry to the licensee.

1 See Letter from Douglas Miller to Investigations & Hearings Division, Enforcement Bureau, dated September 17, 2002 ("Complaint Letter").

2 See id.

3 See Letter of the Chief, Investigations & Hearings Division, Enforcement Bureau, to AMFM Radio Licenses, LLC, dated May 27, 2003, revised and resent by Letter of the Chief, Investigations & Hearings Division, Enforcement Bureau, to AMFM Radio Licenses, LLC, dated August 11, 2003 (collectively the "LOI").

3. Clear Channel Communications, Inc. (“Clear Channel”), AMFM’s corporate parent, submitted a response and included a compact disc containing the complained-of program material.⁴ In this regard, Clear Channel states that the material in question “likely aired” between the hours of 9:00 and 10:00 a.m. on September 17, 2002.⁵ Clear Channel argues that the subject matter and the language used in the complained-of broadcasts were not actionably indecent.⁶ Specifically, it contends that the material broadcast, in context, was not patently offensive as measured by contemporary community standards for the broadcast medium.⁷

III. DISCUSSION

4. 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, because any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.⁸ In this regard, both 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.⁹ Thus, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.¹⁰

5. 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

⁴ See *Letter of Clear Channel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission*, dated August 14, 2003 (“*Response*”). (In its *Response*, Clear Channel states that it is the ultimate parent of AMFM Radio Licenses, LLC.) The Bureau’s staff prepared a transcript from the CD recording submitted by Clear Channel, which is set forth at Attachment A. (“*Program Transcript*.”)

⁵ *Response* at 2-3. Clear Channel does not deny airing the contest in question during “Hot Morning Mess” program, which is broadcast from 5:30 to 10:00 a.m., Monday through Friday. Clear Channel represents that it aired the show on Station WIHT(FM) only, and that the show’s producer, Ron Ross, recalls that the contest was scheduled for broadcast at 9:15 a.m., 9:25 a.m., and 9:30 a.m. on September 17, 2002. Clear Channel represents that the show in question “is not syndicated, is not aired on any other station, and that the particular segment at issue was not provided to any other radio station for broadcasting.” *Id.* at 3.

⁶ Clear Channel contends that the station hosts were testing the efficacy of a penile-enlargement device called “Pump Him Up” in the context of a “consumer report.” *Response* at 4.

⁷ *Response* at 3-5.

⁸ U.S. CONST., amend. I; see *Action for Children’s Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) (“*ACT I*”).

⁹ See 47 U.S.C. § 326.

¹⁰ *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 *id.* at 1340, n.14 (“the potential chilling effect of the FCC’s generic definition of indecency will be tempered by the Commission’s restrained enforcement policy.”)

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.”¹¹ In addition, section 73.3999 of the Commission’s rules provides that radio and television stations shall not broadcast obscene material at any time, and shall not broadcast indecent material during the period 6 a.m. through 10 p.m.¹² The 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.¹³

6. 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 forfeiture penalty.¹⁴ 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.¹⁵ 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.¹⁶ 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.

¹¹ 18 U.S.C. § 1464.

¹² See 47 C.F.R. § 73.3999.

¹³ 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*”); *Action for Children’s Television v. FCC*, 58 F. 3d 654 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1043 (1996) (“*ACT III*”).

¹⁴ 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 18 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., (MO&O)*, 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.

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

¹⁶ See, e.g., *SBC Communications, Inc., (NAL) (FO)*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002)(forfeiture paid).

7. 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.¹⁷

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.¹⁸

Clear Channel does not dispute that it aired material describing or depicting a sexual organ.¹⁹ 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.²⁰

8. In our assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”²¹ 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.²² 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.”²³ 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,²⁴ or, alternatively, removing the broadcast material from

¹⁷ *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)).

¹⁸ *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).

¹⁹ AMFM acknowledges that the “product tested on the HMM show involved a sexual organ[.]” *Response* at 4.

²⁰ 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 Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 8 and n. 15.

²¹ *Id.* at ¶ 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.

²² *Id.* at 8002-15, ¶¶ 8-23.

²³ *Id.* at 8003, ¶ 10.

²⁴ *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 (continued....))

the realm of indecency.²⁵ In this case, we have examined all three factors and have determined that each weighs in favor of a finding that the broadcast material was patently offensive. We note that, in particular, the station's presentation of the material in a manner that was pandering, titillating, and shocking weighs heavily in our determination.²⁶ We turn now to our analysis of the three principal factors in our decision.

9. With respect to the *Indecency Policy Statement's* first two factors, we find that the material dwelled on explicit and graphic descriptions of male genitalia. During the broadcasts, the "Hot Morning Mess" show personalities tested the "Pump Him Up" penile-enlargement device on a show sidekick, Tim "Teapot" Coburn, and discussed at length, and in specific detail, whether the product worked effectively in terms of adding length and girth to his penis.²⁷ Specifically, the hosts placed a microphone in the bathroom that Mr. Coburn occupied while attaching the device to, and testing the device on, his penis, thereby permitting the hosts to provide listeners with a running commentary of Mr. Coburn's efforts.²⁸ The hosts also discussed at length how Mr. Coburn was to use a tape measure to determine the size of his penis²⁹ and, at one point, the hosts invited listeners to call in and guess what Mr. Coburn's penile measurements would be after the pump's use.³⁰ Although the word "penis" was not aired, various common euphemisms – some that could easily be understood by children – were used instead.³¹

10. While we do not accept the argument that an isolated or fleeting broadcast could not be indecent, we need not reach that issue here because we find that the hosts' description of the use of a penile-enlargement device on a man's genitalia was prolonged.³² We similarly reject Clear Channel's contention that the hosts' discussions of male genitalia were vague and euphemistic, or, where more specific, factually necessary in the context of a "consumer report."³³ In this case, the sexual import of the references, in context, was inescapable, and would clearly be understood by the listening audience and

(Continued from previous page) _____
references); *EZ New Orleans, Inc. (WEZB(FM))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references).

²⁵ *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").

²⁶ *See id.* at 8010, ¶ 20 (citing *Rusk Corporation (KLOL(FM))*, 5 FCC Rcd 6332 (MMB 1990)(forfeiture paid) (manner of presentation was critical to indecency finding); *Jacor Broadcasting Corporation (WEBN(FM))*, 13 FCC Rcd 4152 (MMB 1997), *aff'd* 13 FCC Rcd 5825 (MMB 1997) (forfeiture paid) (manner of presentation was critical to indecency finding).

²⁷ *Program transcript* at 10-12, *infra*.

²⁸ *See, e.g., program transcript* at 21-22, *infra*.

²⁹ *See, e.g., program transcript* at 10-11, *infra*, wherein the hosts discussed the test-subject's genitalia in graphic and specific terms.

³⁰ *Id.* at 16, *infra*.

³¹ Terms such as "pee-pee," "member," "little spout," "manhood," "unit," and "love muscle" were used. *Response* at n.7; *program transcript* at 10, 11, 14, 15, 16.

³² *Response* at 4.

³³ *Id.*

station callers to have been to the test-subject's sexual organs. Moreover, the use of euphemism or innuendo is not a defense to a finding of indecency.³⁴ We also reject Clear Channel's contention that this material cannot be found indecent because it was no more graphic or less graphic than material in cases where the former Mass Media Bureau did not take enforcement action.³⁵ In support of this argument, Clear Channel cites an unpublished internal staff memorandum and unpublished staff decisions finding that certain material was not actionably indecent.³⁶ Even if those cases could be deemed similar, to the extent that the staff may have erred by determining that the material in those cases was not indecent, these unpublished decisions are not binding on the Commission.³⁷ That is particularly the case here, where published decisions, including those in the *Indecency Policy Statement*, provide guidance indicating that material such as that contained in this case is indecent.³⁸

11. The program hosts' repeated vulgar and lewd references to male genitalia, in the context of explicit discussions of sexual arousal and masturbation while using the penile-enlargement device,³⁹ were pandering, titillating, or used to shock the listening audience. In contrast to Commission precedent where broadcasts were found not indecent because sexual organs or activities were discussed in a clinical, scientific or objective manner, the context of the instant broadcasts was clearly titillating. This is clear from the extensive sarcastic banter employed by the program hosts when discussing the test-subject's genitalia, which did not intend to make a serious or clinical report concerning sexual health issues.⁴⁰ Moreover, the fact that the test-subject's resulting penile measurements, after use of the enlargement device, were made the subject of a call-in contest, belies any claim that the material was intended to be serious, clinical or instructional in nature.⁴¹ These references, in context, are similar to other material that

³⁴ See *San Francisco Century Broadcasting, LP (KMEL(FM))*, 7 FCC Rcd 4857 (1992), *aff'd*, 8 FCC Rcd 498 (1993) (forfeiture paid) (where language is clearly capable of a specific sexual meaning, and the context renders the sexual import inescapable, the use of innuendo is not a bar to a finding of indecency).

³⁵ See *Memo from Thom Winkler to WIOD(AM) Complaint File* (April 21, 1997) (FCC Ref. No. 97010196); *Letter from Norman Goldstein, Chief, Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau, to Mrs. Barbara Onisko (May 15, 1997)* (FCC Ref. No. 94069521); *Letter from Norman Goldstein, Chief, Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau, to R.D. Merkel* (January 23, 1997) (FCC Ref. No. 94110410).

³⁶ *Id.*

³⁷ See, e.g., *Amor Family Broadcasting Group v. FCC*, 918 F. 2d 960, 962 (D.C. Cir. 1990), *citing Homemakers North Shore, Inc. v. Bowen*, 832 F.2d 408, 413 (7th Cir. 1987). See also *Lorenzo Jelks v. FCC*, 146 F.3d 878, 881 (D.C. Cir. 1998).

³⁸ See n. 43, *infra*.

³⁹ See, e.g., n. 28, *supra*.

⁴⁰ Compare *King Broadcasting Co. (KING-TV)*, 5 FCC Rcd 2971 (1990) (where the broadcast of a high-school sex education class was found to be not indecent because the material was clinical and instructional in nature) with *Citicasters Co.*, 15 FCC Rcd 19095 (EB 2000) (forfeiture paid) (where discussion of sexual techniques led by sex therapist, which included comments such as "oh yeah, baby," was found to be pandering and titillating and thus patently offensive).

⁴¹ See *program transcript* at 16-19, *infra*.

has been found to be patently offensive.⁴² In this case, we find that the program hosts' extensive discussion of the penile-enlargement device, and the size of the test-subject's genitalia, when discussed within the context of a contest centering on guessing the size of a man's penis, to be patently offensive as measured by contemporary community standards for the broadcast medium. Accordingly, we find that AMFM apparently aired indecent material on September 17, 2002.

IV. PROPOSED FORFEITURE

12. Based on our review of the record in this case, we conclude that AMFM is apparently liable for the willful violation of 18 U.S.C. § 1464 and section 73.3999 of the Commission's rules, by airing indecent programming on WIHT(FM) on September 17, 2002. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000⁴³ for transmission of indecent/obscene materials.⁴⁴ 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."⁴⁵ In this case, taking all of these factors into consideration, we find that AMFM is apparently liable for the maximum statutory forfeiture amount of \$27,500.00 for the broadcast of indecent material on September 17, 2002. In particular, 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.⁴⁶ We reiterate our recent statement that multiple serious violations of our indecency rule by broadcasters may well lead to license revocation proceedings.⁴⁷

⁴² See, e.g., *Entercom Seattle License, LLC (KNDD(FM))*, Notice of Apparent Liability, 17 FCC Rcd 1672 (EB 2002), *Forfeiture Order*, 17 FCC Rcd 18347 (EB 2002)(application for review pending) (discussion as to the capacity of the male genitalia to pull objects, as well as references to erection, relative penis size and to the anatomical features of the male genitalia was found to be patently offensive); *Independent Group Limited Partnership (WWWE(AM))*, 6 FCC Rcd, 3711, 3712 (MMB 1990)(humorous discussion of a man with a penis on his head, which is a "birth defect"); *Goodrich Broadcasting, Inc. (WVIC-FM)*, 6 FCC Rcd 2178, *aff'd* 6 FCC Rcd 7484 (MMB 1991)(vulgar, repeated and gratuitous references to sexual organs and activities in the context of humorous discussions concerning an allegedly true incident in which a man's testicle was trapped in the drain of a hot tub); *KFI, Inc. (KFI(AM))*, 6 FCC Rcd 3699, 3700 (MMB 1989)(discussion of the size of the genitals of male celebrities and political leaders, including commentary on the size of erect genitals relative to those that are not erect).

⁴³ *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).

⁴⁴ *Id.*

⁴⁵ *Forfeiture Policy Statement*, 12 FCC Rcd at 17110.

⁴⁶ *AMFM Radio Licenses, LLC (WWDC-FM)*, 18 FCC Rcd 19917 (EB 2003) (forfeiture paid); *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).

⁴⁷ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, 18 FCC Rcd 6915, 6919, ¶ 13 (2003) (NAL); 18 FCC Rcd 26360 (2003) (FO)(*pet. for recon. pending*) before we decided the *WKRK-FM* case.

13. We also take this opportunity to note that we could have found AMFM 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 passages and 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.

V. ORDERING CLAUSES

14. 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,⁴⁸ that AMFM Radio Licenses, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Twenty-Seven Thousand Five Hundred dollars (\$27,500.00) 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, AMFM Radio Licenses, L.L.C. 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 must note the NAL/Acct. No. referenced above.

17. 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 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. 20554.⁴⁹

20. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to AMFM Radio Licenses, L.L.C., 2625 S. Memorial Drive, Suite A,

⁴⁸ 47 C.F.R. § 1.80.

⁴⁹ See 47 C.F.R. § 1.1914.

Tulsa, Oklahoma 74129, with a copy to its counsel, Dorann Bunkin, Esq., Wiley, Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT A

Radio Station: **WIHT(FM), Washington, D.C.**

Dates/Time of Broadcasts: September 17, 2002, between
9:15 and 9:45 a.m.

Material Broadcast: The "Hot Morning Mess" Show

Mark -- Mark Kaye
Teapot -- Tim Coburn
Kris -- Kris Gamble

Track #1

Mark: Hi, speaking of greatness, Teapot Tim is about to do another consumer report. Today Teapot what are you testing?

Teapot: Today I'm testing the Pee Pump.

(Laughter)

Mark: The pee-pee pump. We got the male-inflation devise, with extended use or regular use. And it actually enlargens (sic) your member.

Kris: Enlargens (sic).

Mark: Enlargens (sic), enlarges. Exactly enlarges memberism (sic).

Kris: Enlarges your member unit.

Mark: Ah, so Teapot is gonna test this. First of all, I'm gonna take a measurement of him before pumping and then a measurement after.

Teapot: All righty.

Mark: Have you ever measured yourself? Do you know what, what your average inches is?

Teapot: Yes, I do.

Kris: You do.

Mark: You do, what is it?

Teapot: It's about six, six and a half.

Kris: That's aroused, that's not flaccid?

Teapot: I've never measured the girth.

Mark: You've never measured the girth. We have a tape measure, right Kris?

Kris: We certainly do, I made a tape measure.

Mark: Out of duct tape. Truly a tape measure, perfect for Teapot. We've put a microphone in the bathroom.

Teapot: Okay.

Mark: If you'll wander in there, let's get, go ahead and get a preliminary measurement.

Teapot: Okay. You want me to measure it non-excited.

Mark: Right, we're gonna measure it non-excited.

Teapot: Okay.

Mark: Who'll do the regular, run-of-the-mill Teapot, the spout, the unexcited spout?

Kris: Are you gonna be embarrassed to tell us?

Teapot: No.

Mark: This is so no good; no, this is good.

Kris: Why is this not good?

Mark: Teapot, can you hear us?

Teapot: Yeah, I can hear you.

Kris: I think it's important for all men all over the place to know that the average is actually pretty small.

Mark: I'm gonna tell you, if any men are like me and I'm pretty sure a lot of women are too, that didn't sound right, but you're very curious to see what this thing does.

Kris: I'm extremely curious.

Mark: Ever since I saw the first Austin Powers movie, I've been like, ah, boy I wonder what that would be like.

Kris: That's not my bag, baby.

Mark: Okay, Teapot, drop you drawers for us.

Teapot: Okay, here we go.

Mark: It does look just like the one in Austin Powers. Is Leslie there taking pictures?

Teapot: Hey there little guy.

(Laughter from male and female)

Kris: Oh, my God.

Mark: Laughter.

Teapot: [Inaudible.] So you are the one.

Kris: Don't talk to it, it might jump up and bite you.

Mark: Okay, Teapot, let's get a length measurement.

Teapot: Oh, my God, he can't come in, I'm naked.

Kris: I have to take pictures.

Teapot: Okay, we have four inches.

Mark: Okay, you're not pulling on it or tugging on it are you or anything, you're just letting it hang?

Teapot: No.

Mark: Leslie, is he just letting it hang?

Leslie: Yeah.

Mark: Is he measuring from like, his belly button or something?

Leslie: I don't know. Da, uh, da uh, laughter. That sounded kinda low. Are you sure it's four?

Teapot: You wanted me to measure the girth, right?

Mark: No, we want you to measure the length, from tip to tip.

Teapot: Oh.

Mark: That's okay.

Kris: I knew he had something wrong.

Teapot: Three inches.

Mark: Okay, that's more like it.

Kris: That's more like it.

Mark: That's the Teapot we know and love.

[Female laughter]

Mark: Alright, now Teapot, take the tape measure.

[Female laughter]

Teapot: Uh, huh.

Mark: Now wrap it around and measure the width.

[Female laughter.]

Teapot: That's four inches.

Kris: The girth was four; that's the circumference--four.

Mark: Really, he already took the circumference? Wow.

Kris: He's got a fat little thing.

Mark: His thing is three, the width of this is actually [inaudible]. He got Fat Joe and Asshanti. Okay, alright. What we're gonna do now, Teapot?

Kris: Don't crack the door!

Mark: Go ahead, you I have the pump right here, so we're gonna have to give that to you.

Kris: Alright.

Mark: Let's take a quick break. Uh, when we get back, Teapot, Tim will pump him up and we'll see how much farther we can go.

Mark: It's currently three inches, four inches around.

Kris: Right

Mark: [Laughter.]

Kris: It's almost as fat as it is long.

Mark: [Laughter.]

Kris: Is it square?

Mark: You know, it's like when you buy pants and the waist is bigger than the length, it's too embarrassing!

Kris: Ah, that's embarrassing.

Mark: Anyway, like 34, 32.

Kris: Ouch. Oh, God!

Mark: We'll be right back, this is the "Hot Morning Mess" with Mark & Kris.

[Laughter.]

Track #2

Mark: Alright, ladies and gentlemen, we have Teapot Tim in the bathroom. Tim are you there?

Teapot: Yes, I'm here.

Mark: Okay, you just took measurements of this little spout.

Kris: Right, Teapot's spout.

Mark: And it measures three inches long, right?

Teapot: Right.

Mark: And four inches around?

Teapot: Correct.

Mark: Okay, and that's totally unexcited, uninterested. It's like it's been listening to the show all morning.

Kris: Just like our listeners.

Mark: Ah, alright, good. Now what we're gonna do is, we have this pump that we got from our friend Stacy, at Stacy's Treasures.

Kris: Right.

Mark: And we're going to pump Teapot up. We're gonna pump (hands clapped), him up.

Kris: Alright.

Mark: Or he's going to pump himself up. Now this thing supposedly when you stick it on your thingee and start pumping, Teapot pump it in the microphone so we can hear it.

[Sound of pump operating.]

Mark: Yeah.

Kris: Sounds like a little blood pressure thing.

Mark: A stigmomidometer (sic).

Kris: That's right.

Mark: It like, ah, it's got one of those little things on it and a large red tube that, ah, slides over.

Kris: Uh huh.

Mark: Your spout.

Kris: Uh huh.

Mark: Ah, so Teapot's gonna start pumping himself to (a) get him bigger, longer; and (b) with extended use, everyday use, increase the size.

Kris: Right, it's like exercise. You're supposed to do exercise everyday to make things bigger and harder.

Mark: That's exactly right.

Kris: Like your muscles.

Mark: Exactly right.

Kris: Well this is exercise for his little muscle.

Mark: For the "love muscle."

Kris: That's right, for the "love spout."

Mark: Alright now, Teapot?

Teapot: Yeah.

Mark: Have you ever measured yourself before?

Teapot: Yes.

Mark: You have? Okay, so you have a pretty good

Teapot: Yes.

Mark: idea in your head of what's going to happen. . . .[laughter] in your head. Tell you what we're going to do, we're going to turn this into a little contest, 'cause this could be kinda fun. Teapot's gonna pump himself up and we'll see how long and how big around it gets.

Kris: Okay.

Mark: How big will he be. It's "Hot Morning Mess" with Mark and Kris.

[Break in programming.]

Track #3

Mark: Right now ladies and gentlemen, it's back to the bathroom where Teapot Tim is, ah, hanging, ah, about. What's going on Teapot?

Teapot: Yo, yo, yo.

Mark: How's your little spout doing?

Teapot: It's doing alright.

Kris: Are you having stage fright?

Mark: Little bit. Teapot Tim has ah, just measured his manhood, his little spout and what we're gonna do is test out today for our consumer report the "Pump Him Up," ah, "Pee-Pee Pump." See how big it actually gets. We have some people on the line that want to take a guess. The starting size is three inches long, four inches around.

Kris: Right.

Mark: We'll take some guesses and whoever gets closest to what we can get it, without going over gets what, Kris Gamble.

Kris: We've got a four-pack of tickets to see "The Top 10 American Idol" in concert here on November 3rd.

Mark: Fantastic, let's start with Ben. Hey, Ben, where you calling from?

Ben: I'm calling from the Lord & Taylor parking lot in Fair Oaks.

[Laughter.]

Mark: Whacha doing in the parking lot, I wonder?

Ben: Uh, I'm getting ready to go into work.

Mark: Uh, okay, good. Well hand tight just a couple of more minutes. Tell us quickly how long do you think Teapot's gonna get? He's currently three long, four around.

Ben: Well, um, my guess is he's gonna get up to eight inches and five around.

Mark: Wow, whoa, have you used one of these yourself before?

Ben: Well, kinda, yes.

Kris: Oh, so he has the inside track my friends. Ben's gonna

Kris: Alright, right, wow—five.

Mark: Fantastic. Hang on, Ben. Joyce from D.C.

Joyce: Yes, hi.

Mark: Hey, Joyce, what's your guess, how long, how big around?

Joyce: Four long, five wide. I don't think it's going to work.

Mark: Oh you don't think it's going to work, just an inch on either side?

Joyce: That's it.

Kris: Wow.

Mark: Hang on; we'll see. Hey, ah, Debbie from Bowie.

Debbie: Hey.

Mark: Hey, Debbie, what do you think, length and width?

Debbie: Barring any stage fright, seven; five and one-half.

[Laughter.]

Mark: Seven; five and one-half.

[Laughter.]

Kris: Barring stage fright, an excellent, ah, you know, thing there.

Mark: Yeah, no kidding. Just a couple more, alright. Michelle from Arlington.

Michelle: Yes, five long and six wide.

Mark: Five long and six wide.

Kris: Oh, ugh, uh, he'd be wider then he is long. That's weird!

Mark: Alright, we'll see what happens.

Male Voice: That's a soup can.

Mark: Soup-can Tim.

Kris: Push me--you have a soup can in your pants!

Male Voice: He's just happy to see me.

Mark: And finally this is Dana. How you doing, Dana?

Dana: Fine.

Mark: What are you thinking?

Dana: Seven and one-half long and five wide.

Mark: Seven and one-half long and five wide.

Dana: Right.

Mark: Alright, hang on, dear.

Dana: Oh, alright.

Mark: So here's what we got. Ben, who's eight and five; Joyce who's four and five; Debbie who's seven and five and one-half; Michelle who's five and six.

[Female laughter.]

Mark: And Dana, who's saying seven and one-half and five. Alright, Teapot, are you there?

Teapot: Yup.

Mark: You ready to go?

Teapot: Yes, let's do it.

Mark: Slide the sucker on. Is it in place?

Teapot: No, I gotta take my pants down.

Mark: Oh yeah, that's a good idea.

Kris: Well, he didn't want to stand around in there with Leslie with pants around his ankles.

Mark: Okay, are you in place?

Teapot: Yup.

Mark: Alright then, slide the unit on the unit. Okay, you're ready?

Teapot: Yup.

Mark: On you mark, get set, ah, pump 'em up.

Kris: I hear pumping.

Mark: Teapot? Teapot?

Teapot: You guys there?

Kris: Oh, they made a page out of your office and our radio station goes off in there.

Mark: Okay, let's try again.

Kris: Start pumping.

Mark: Hang on, don't yet.

Teapot: Okay.

Male Voice: That was anti-climactic.

Mark: Okay, on your mark, get set, start pumping. [Pumping sound in background with theme to the movie "Rocky" playing.]

Kris: There we go, a little false start.

Mark: Do you feel anything?

Teapot: Not really.

Kris: Give it a minute.

Teapot: I think I need to push on it harder to get the, uh, seal.

Mark: Ah, yeah.

Kris: Yeah you need it air-tight against your body.

Mark: Yeah, yeah.

Teapot: Okay, oh, now I'm starting to feel it.

[Background clapping and laughter heard.]

Mark: Okay, Teapot, think wonderful thoughts, too. Close your eyes and dream of whatever you dream of.

Teapot: (Moaning.) Ah, yeah.

Kris: Don't be a pig.

Mark: Yuck.

Kris: Bad enough you're doing this, you don't need to embellish.

Mark: Keep going until you think you can't go any further.

Teapot: Okay.

Male Voice: Ouch.

Mark: We don't want any explosions in there, please.

Kris: Yeah, I know--no ruptures.

Male Voice: Don't rupture any blood vessels or anything.

Mark: How's it going?

Teapot: [Groan.] It's not getting any bigger.

Mark: Are you pumping, do you have a nice air-tight seal?

Teapot: Yes, I do. And it's pulling on it, but it's not getting any bigger.

Kris: Like a bad date.

Mark: Can you see it or you just know?

Teapot: I can just feel, you know, you know.

Kris: No, that's the problem, we don't.

Mark: Alright, tell you what, pump like for maybe 30 more seconds.

Teapot: Yeah, okay.

Mark: Really give it your all.

Teapot: [Grunting sounds.]

Kris: Are you thinking nice thoughts?

Teapot: I am trying to.

Mark: But don't let use distract you in any way.

Teapot: Talk to me, Kris.

Kris: Ugh.

Mark: Yeah, talk dirty to him, Kris.

Kris: No, you do.

Mark: No, come on. Tell him about your breasts.

Kris: No, you do it.

Teapot: My hand's never been this tired.

Mark: [Laughter.] Yeah, right.

Kris: 'Cause it happens so quickly.

[Buzzer sound.]

Mark: I don't believe that for a second. Okay, Teapot, ten seconds.

Teapot: Okay.

Mark: Four, three, two one. Okay, ah, please remove the "Pump Him Up" unit.

Teapot: Okay.

Mark: And take a measurement. Ah, first the length.

Teapot: The length is three inches. [Sound of bell ringing.]

Mark: And what is the girth?

Teapot: The girth is four inches. [Sound of bell ringing.]

Mark: Excellent.

Male Voice: So we got absolutely no growth.

Mark: In other words, it doesn't work. Hey, Joyce. . . .

Kris: It shrank.

Mark: Hey, Joyce.

Joyce: Yeah?

Mark: You said it wasn't gonna work. So, I'll give him an inch.

Kris: I'm curious to know if he has to be excited first.

Mark: I don't know, man.

Kris: I think that may be the way it works.

Mark: Wow, maybe.

Mark "Hot Morning Mess" with Mark and Kris.

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

Re: AMFM Radio Licenses, L.L.C., Licensee Station WIHT(FM), Washington, D.C.

In this case, the Commission adopted a Notice of Apparent Liability against Clear Channel for violating the statutory prohibition against broadcasting indecent material. The Commission subsequently learned that the statutory deadline had passed last fall when the station's license was renewed. This case highlights the need to address complaints filed with the Commission expeditiously.

In addition, I have been calling for the Commission to establish an effective license renewal process under which the Commission would once again actually consider the manner in which a station has served the public interest. One aspect of that consideration should include complaints filed by the public. It is unfortunate that in this instance a license was renewed while a pending complaint remained unaddressed. Going forward, the Commission should not only ensure that all complaints have been addressed before a license is renewed, but we should also conduct a more thorough examination of how stations are meeting their public interest responsibilities over the term of their licenses.

STATEMENT OF KEVIN J. MARTIN

Re: AMFM Radio Licenses, L.L.C., Licensee of Station WIHT(FM), Washington, DC, Notice of Apparent Liability For Forfeiture (adopted February 20, 2004)

After we adopted this item (which we had received from the Bureau less than a month before), we were informed that the statute of limitations had run last year. As a result, we cannot enforce the fine this item imposes. The Commission must begin acting in a timely fashion so that we can, literally, enforce our rules.

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

*Re: AMFM Radio Licenses, L.L.C., Licensee of Station WIHT(FM), Washington, DC;
Notice of Apparent Liability for Forfeiture*

It is unfortunate that after the Commissioners promptly voted this item, we were made aware that the statute of limitations had run. We should not let unnecessary delay deprive us of the ability to meet our obligation to enforce statutory and regulatory provisions restricting broadcast indecency.