

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

LETTER

Released: February 1, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Americom Las Vegas Ltd. Partnership
Licensee, KFBI(FM), Pahrump, NV
6255 Sunset Boulevard, Suite 1901
Los Angeles, CA 90028

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE in the amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500) pursuant to Section 503(b) of the Communications Act of 1934, as amended.

The Commission has received information indicating that Radio Station KFBI(FM), Pahrump, NV, may have violated 18 U.S.C. § 1464 by broadcasting allegedly indecent material during "The Howard Stern Show" on September 30, October 6 and October 12, 1993, between approximately 6 a.m. and 11 a.m. Transcripts of the allegedly indecent broadcasts, taken from transcripts and tapes submitted by the complainant, are attached.

Pursuant to 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. See *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

We believe that the subject excerpts from "The Howard Stern Show" are indecent in that they contain language that describes sexual and excretory activities and organs in patently offensive terms. Because the material aired at times when there was a reasonable risk that children may have been in the audience, it is legally actionable. Thus, it appears that on the dates listed above, Station KFBI(FM) violated 18 U.S.C. § 1464 by airing indecent programming. Accordingly, pursuant to Section 503(b) of the Communications Act, Americom Las Vegas Ltd. Partnership is hereby advised of its apparent liability for a forfeiture of Thirty Seven Thousand Five Hundred Dollars (\$37,500) for its apparent willful and repeated violations of 18 U.S.C. § 1464 on the dates cited above. The amount specified was

determined by using the criteria set forth in the *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), *appeal pending sub nom., USTA v. FCC*, Case No. 92-1321 (D.C. Cir. filed July 30, 1992), and the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended. The base amount for an indecency violation is \$12,500.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on January 31, 1994.

BY DIRECTION OF THE COMMISSION

William F. Caton
Acting Secretary

Attachments

*Chairman Hundt not participating; Commissioners Quello and Barrett concurring in the result.

Radio Station:	KFBI-FM, Pahrump, NV
Time Broadcast:	Between approximately 6:00 and 11:00 a.m.
Material Broadcast:	Howard Stern Show

HS: Howard Stern
RQ: Robin Quivers
MV: Male Voice
AS: Allison Stern

September 30, 1993

* *

HS: She stands there. She doesn't wear any good clothes though. She ought to dress like she did in those white snake videos. Little white outfit with the legs, rolling around on a Jaguar, all sexed up. That Jaguar must have stunk for three days. I'm watching.

RQ: I don't think she's a smelly person.

HS: But you know girls have a special scent, they leave, when they're all hot and they're not wearing panties and they're laying all over a car. Panty juice. Panty juice. I always look at my wife's panties. There's always something going on there too.

RQ: Oh.

HS: She always.

RQ: (Unintelligible)

HS: What do you mean, boy oh boy.
 RQ: Panties.
 HS: These women have all kinds of stuff going on.
 RQ: Like yours are crystal clean.
 HS: I never liked, there's always like junk going on in my wife's panties.
 RQ: Let me see your's right now.
 HS: Fine. What are you saying?
 RQ: I want to see yours right now.
 HS: I'll tell you, I don't have the stuff. you know, I have some leakage I'll admit.
 RQ: (Laughs)
 HS: I think she's leaking from everywhere.
 RQ: (Laughs)
 HS: No sometimes I look at my wife's underpants and I go, yes, I shouldn't really look at her underpants cause it's kind of a turn off. You know what I mean? There's lots going on.
 RQ: I don't know why you're doing that.
 HS: She always has pads and stuff. I don't know what's going on. It's always a two-sided surprise. You got, like stuff going on in your underpants right?
 RQ: Everybody does.
 HS: Really? God, it's disgusting.

* *

October 6, 1993

* *

HS: Tom, how about you. do you use a vibrator? On your wife? You don't?
 MV: No, on his son. (Unintelligible).
 HS: Oh, Tom you're not a pedophile are you? Does Jackie know something about this? You're not a pedophile, I know that.

* *

October 12, 1993

HS: This is the one about incest? Daughter?
 RQ: Let me hear that.
 HS: I want to have sex with my daughter.
 RQ: That's romantic.
 HS: It's romantic too. It's a ballad to my daughter. (Laughter) You're so cute in your jammies, I don't know what I'm saying, I know Jerry Lee Lewis is with his cousin but.
 RQ: Daughters too close.
 MV: (Unintelligible) Breakfast table in an otherwise empty room, beyond her.
 HS: This is going to be a big hit this one.

MV: My only.
 HS: This guy goose bumps.
 MV: That are ever. (Unintelligible)
 HS: My thick fingers will make you happier than Barney. I know, yeah.
 MV: (Unintelligible)
 HS: Yeah, they're good.
 RQ: Yeah, where's my copy?
 MV: I'll bring it tomorrow.
 HS: I'll take this one home, before Robin grabs it from me, she's wrestling me. This one's about getting it on with your father. Guys.
 RQ: Daughters.
 HS: No this is guys who get it on with their dads.
 RQ: I see.
 HS: I love you dad, you're my dessert, every night. This is good.
 MV: (Unintelligible) That's okay man cause I love.
 RQ: (Unintelligible) Played this one before.
 HS: Why don't those dudes come on my show? Let's come down here and be naked.