

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV - 7 1996

IN REPLY REFER TO:

1800C1-JEE
96020256

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Released: November 12, 1996

Waterman Broadcasting Corp. of Texas
Licensee, KTFM(FM), San Antonio, TX
13 Montclair Drive
Worcester, MA 01609

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

The Commission has received information indicating that Radio Station KTFM(FM), San Antonio, TX, may have violated 18 U.S.C. § 1464 by broadcasting allegedly indecent material on January 26, 1996, when it aired an unedited recording of the song "Erotic City" by Prince at approximately 5:20 p.m. A transcript of the allegedly indecent broadcast, taken from a prior Commission decision involving this particular material, is 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). The court subsequently concluded that a 10:00 p.m. to 6:00 a.m. "safe harbor" was justified as a properly tailored means of vindicating the government's compelling interest in the welfare of children. Action for Children's Television v. FCC, 58 F.3d 654 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 701 (1996).

We note that the subject lyrics have previously been determined to be indecent in that they contain language that describes sexual and excretory activities or organs in patently offensive terms.¹ Because you aired the material 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 January 26, 1996, Station KTFM(FM) violated 18 U.S.C. § 1464 by airing indecent programming.

Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Waterman Broadcasting Corp. of Texas, is hereby advised of its apparent liability for a forfeiture of Seven Thousand Five Hundred Dollars (\$7,500), for its apparent violation of 18 U.S.C. § 1464 on January 26, 1996. Because these lyrics have previously been determined by the Commission to be indecent, we assess a higher degree of culpability to your subsequent broadcast of this material. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Act, including "the nature, circumstances, extent, and gravity of the violation."

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.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau

Attachments

¹In the Matter of Liability of Nationwide Communications, Inc., 6 FCC Rcd 13 (1990).

Radio Station: KTFM, San Antonio, TX
Date/Time Broadcast: January 26, 1996, at approximately 5:20 p.m.
Material broadcast: "Erotic City" by Prince

MS: Singer

MS: All of my purple life I've been lookin' for a dame that would want to be my wife. That was my intention babe. If we cannot make babies, maybe we can make some time. Fuck so pretty, you and me. Erotic City come alive. We can fuck until the dawn, makin' love til cherries gone. Erotic City can't you see, fuck so pretty you and me. Every time I comb my hair, thoughts of you get in my eyes. You're a sinner, I don't care. I just want your creamy thighs. If we cannot make babies, maybe we can make some time. Fuck so pretty, you and me. Erotic City come alive. We can fuck until the dawn, makin' love til cherries gone. Erotic City can't you see, fuck so pretty you and me.

MS: All of my hangups are gone. I wish you felt the same. We can fuck until the dawn, until the dawn. How I wish you were my dame. How I wish you were my dame. If we cannot make babies, maybe we can make some time. Fuck so pretty, you and me. Erotic City come alive. We can fuck until the dawn, makin' love til cherries gone. Erotic City can't you see, fuck so pretty you and me. Wooooo Wooooo Wooooo Wooooo Wooooo Wooooo Wooooo Wooooo (Repeat). Baby...you're so...creamy. If we cannot make babies, maybe we can make some time. Fuck so pretty, you and me. Erotic City come alive. We can fuck until the dawn, makin' love til cherries gone. Erotic City can't you see, fuck so pretty you and me. If we cannot make babies, maybe we can make some time. Fuck so pretty, you and me. Erotic City come alive. We can fuck until the dawn, makin' love til cherries gone. Erotic City can't you see, fuck so pretty you and me. Erotic City...Yeah.