



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, S.W., Room 3-B443
Washington, D.C. 20554

August 22, 2002

In Reply Refer to:
EB-02-IH-0685-KMS

Infinity Broadcasting Operations, Inc.
Licensee, Station WNEW(FM), New York, NY
2000 K Street, NW
Suite 725
Washington, DC 20036

Dear Licensee:

The Commission has received complaints alleging that Radio Station WNEW(FM), New York, New York, broadcast program material that violated the federal prohibition against the broadcast of obscene material and the restrictions¹ regarding the broadcast of indecent material. Specifically, the complainants allege that on or about August 15, 2002, the hosts of the station's "Opie & Anthony Show" aired a contest feature² that encouraged participants to have sex in St. Patrick's Cathedral. The enclosed transcript appears to provide a commentary concerning what took place during the broadcast program.

We have made no determination in the matter. In order to assist us in so doing, you are directed, pursuant to Section 73.1015 of the Commission's rules, to respond to the questions set forth below. However, we first direct you to observe the following definitions and instructions when preparing your response.

Definitions and Instructions

For purposes of this letter, the following definitions apply:

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed,

¹ See 47 U.S.C. § 503, 18 U.S.C. § 1464, and 47 C.F.R. §73.3999. Attached, for example, is a complaint received from the Catholic League for Religious and Civil Rights with a transcript of the broadcast.

² News articles describe this feature, entitled "Sex for Sam," as one whereby the station challenges participants to engage in public sex.

taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

For purposes of this letter, the word "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

If Infinity requests that any information or documents responsive to this letter be treated in a confidential manner, you shall submit, along with all responsive documents, a statement of the reasons why the documents should be afforded confidential treatment and the facts upon which this claim is based, in accordance with the FCC's rules. *See* 47 C.F.R. § 0.459.

If Infinity withholds any documents under claims of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states individually as to each such item the numbered request (below) to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

Each requested document not subject to a claim of privilege or request for confidential treatment shall be submitted in its entirety even if only a portion of that document is responsive to a request. This means that the document shall not be edited, cut, or expunged, and shall include all attachments and all other documents referred to in the document or attachments. All written materials necessary to understand any documents responsive to these requests must also be submitted.

In addition, we direct Infinity to modify immediately its document retention policies, if necessary, to ensure that no arguably relevant documents are destroyed. This directive includes not only the information requested, but also any other documents relating to these matters, including, without limitation, files, computer disks and tapes, audio or visual tapes or recordings, manuals, instructions, training materials, memoranda, documents, forms, letters, or other writings.

For each document or statement submitted in response to the requests below, indicate, by number, to which request it is responsive. If any document is not dated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state, if known, the name of the author(s) or recipient(s). If such information is unknown to Infinity, identify the

person(s) from whose files the document was retrieved.

Infinity must identify with reasonable specificity all documents provided in response to these requests. Each written statement in response to a request should be certified by an authorized officer of the company.

Questions:

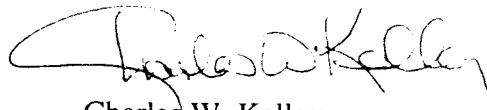
1. Did Station WNEW(FM) broadcast the material described in the enclosed transcript? If so, was the broadcast repeated? Indicate the dates and hours of the broadcasts.
2. Is the transcript's description of what occurred in the St. Patrick's Cathedral substantially accurate? Is this a complete transcript of the entire program as broadcast? If there are any inaccuracies in the transcript, or if this does not reflect a complete broadcast of the program, indicate the discrepancies or provide a complete transcript of what was actually aired.
3. Provide any and all documents relevant to the planning and execution of the contest, and the planning and execution of the broadcast of the program.
4. Identify each employee, agent, officer or director of the station, the licensee and the licensee's corporate parents and affiliates who was responsible for the concept of the contest and its subsequent broadcast, or who was aware of the contest and the broadcast prior to the broadcast. Indicate the job titles and responsibilities of each of those involved, and describe the nature of their responsibility or involvement with respect to the contest or the broadcast.
5. How was approval given? To whom? How is approval for station contests usually obtained? From whom?
6. Specifically identify and describe Paul Mercurio's relationship to Infinity.
7. Has Infinity broadcast this contest over its other stations, or other similar "Sex for Sam" contests on WNEW(FM) or over its other stations, whereby it encouraged participants to engage in public sex? If so, describe such other broadcasts or contests fully, providing broadcast dates and transcripts, if available.
8. If Infinity has broadcast this contest on other stations, or other similar "Sex for Sam" contests on this or other stations, answer Questions 1 through 6 above pertaining to each of those broadcasts.
9. Provide any additional information you deem relevant to this inquiry.

We direct Infinity to support its responses with a sworn attestation, signed by an authorized officer of Infinity, verifying the truth and accuracy of the information therein and that all of the documents and information requested by this letter which are in Infinity's possession,

custody, control or knowledge have been produced.³ Infinity must submit its response via hand-delivery and facsimile at 202-418-2080, so that it is received no later than 20 calendar days from the date of this letter.

If multiple Infinity employees contribute to Infinity's response, provide separate sworn responses to identify clearly which employees are attesting to which responses. Infinity should direct its response to the attention of Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-443, Washington, DC, 20554. Any questions regarding this inquiry should be directed to Mr. Kelley at 202-418-1420.

Sincerely,



Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau

Enclosure

³ The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this inquiry is punishable by fine or imprisonment under 18 U.S.C. § 1001.



LEAGUE

*For Religious
and
Civil Rights*

August 19, 2002

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Mr. Charles Kelley
FCC
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, SW
Washington, DC 20554

Dear Mr. Kelley:

As president of the nation's largest Catholic civil rights organization I am writing to register an indecency complaint against "The Opie and Anthony Show," a New York based show. The broadcast in question was on August 15, 2002 at approximately 4 PM. The station is WNEW (FM), in New York.

The incident involved Paul Mercurio broadcasting live via cell phone to "The Opie and Anthony Show." He described a man and a woman engaging in sexual intercourse in a vestibule of St. Patrick's Cathedral in New York, on the Feast of the Assumption, a holy day, when the cathedral was crowded with worshipers. Mr. Mercurio described the actions of the couple until stopped by an usher of the cathedral. He and the couple were then arrested by the New York City police for public lewdness. The incident was a feature of the show called "Sex for Sam" where people are offered a prize for engaging in sexual intercourse in risky locations.

The Catholic League is not satisfied with the fact that the couple and the broadcaster were arrested for indecency. We feel the broadcaster reporting sexual intercourse live on the air in a very busy Catholic cathedral more than satisfies your requirement that an incident appeals to the prurient interest.

450 Seventh Avenue • New York, NY 10123 • (212) 371-3191 • Fax (212) 371-3394

On June 7, 2002 the FCC fined Infinity Broadcasting Operations, Inc. and WNEW (FM), New York, \$21,000 for indecent broadcasts occurring on "The Opie and Anthony Show." Because of a deliberate pattern of indecency, now reaching an apex by the deliberate occurrence of a crime perpetrated in a house of worship, we ask that you revoke the license of WNEW (FM) New York and substantially fine Infinity Broadcasting Operations, Inc.

Enclosed is a copy of the broadcast and news stories from the major New York newspapers and the Associated Press about the incident. The New York City Police Department will have more specific information on the incident.

I urge a prompt response to this matter and I look forward to your reply.

Sincerely,

William A. Donohue, Ph.D.
President

"Opie and Anthony Show" Transcript 14 mins
August 15, 2002

Paul Mercurio: Hey, we're, ah, on the steps of St. Patrick's Cathedral.

Host: Whoa

Mercurio: And we're getting looks like you wouldn't believe. It's unbelievable. One of them even yelled, "That's a church! You should be ashamed of yourself!"

Host: Yeah, can't you do some pedophilia?

Host: So they're on the steps leading to St. Patrick's Cathedral today. Hey Paul! A lot of listeners calling in complaining that your team is not actually doing this in these establishments.

Mercurio: What do you mean?

Host: You can't just go in front of a place, like the Carnegie Deli. It has to be inside.

Mercurio: Alright, we'll take them inside. We're gonna go in.

Host: We'll allow the points for that, but in the future you must go inside these venues.

Host: Yeah.

Mercurio: We weren't in the [inaudible]. We weren't in the church. We'll go in the church. We'll go in. Don't worry about it.

Host: Go ahead! That's why it's such a big-money place!

Host: There go the juicy lips, Paul's team.

Host: See, he was skating for a bit

Host: Yeah: "We did it in the cab as we drove by!"

Host: His team is representing DC today. Marshall and Lynn. What's up, Paul?

Mercurio: We're in St. Pat's, and he's doing the balloon knot (?) and a security guy is coming up to us right now....Let them go, they're OK there. No, let them go. We're just looking for the restroom, that's all...I need to use the restroom. What's the problem?

Security Guard: Outside...

Mercurio: Listen, we just need to use the restroom, don't be such a...what are you being so difficult for? This is a sacrilegious place, this is a Catholic church.

Security Guard: Be quiet, alright?

Mercurio: No, I'm not gonna be quiet. I can say whatever I want to say. Just because you have a blue jacket on with a patch on doesn't mean you have authority over me. When they give you a walkie-talkie that doesn't mean you take over my Constitutional rights. We're gonna go, alright? We can do whatever we want. No harm, no foul. Not a problem what priests do to kids, though, either?

Woman: Yeah. That's right.

Mercurio: I guess if the doors are closed it happens on the altar, right? [garbled] Nothing like meat and potato sex to turn that Church around, right? ... A little homosexual sex...[inaudible]...everybody out here...

Security Guard: [inaudible]

Mercurio: I'm a scumbag? What the Catholic Church has done to kids for 35 years? How could you be part of that? You're culpable. You should be ashamed of yourself. Maybe meat and potatoes sex is what the Church needs. [yelling] Step up! Be counted! And that was a balloon knot just so you know.

[laughter]

Mercurio: [yelling] Where's your God now?

Host: [laughter] Whoa!

Mercurio: Alright, we're moving on. We'll call you back.

Host: Wow!

Host: Oh my God. 27 points. 25 points with 2 point conversion and eternal damnation.

Host: We should be allowed to just give him 200 extra points!

Host: Oh my God. The guy has a sack that is too huge.

Host: How the hell. Did you hear him?

Host: Yeah. We'll just let that sit.

Host: Paul seems to be having major problems, so, Boss, I've got to let you go, OK?

Unknown: Should we get Times Square for it? Since it's in Times Square?

Host: Yes, that's a combination. We've got to go back to the juicy lips. Yes, Paul?

Mercurio: Yeah, the cop just came and said if we go back in he's gonna arrest us.

Host: Oh!

Mercurio: They called the cops... And I told him, you know, we weren't doing anything. We were just, you know, observing the day of the Sabbath, I don't know. Whatever. Alright? And they said if you go back in [inaudible]. Now he's coming back this way.

Host: Paul, can you go back in and get your poor box money back?

[laughter]

Host: You guys are OK?

Mercurio: What?

Host: You guys are alright?

Mercurio: Yeah, we're cool. It was a little dicey, but we're cool. They're really cool, man. They blew me away. I thought I had like, that I had the dead ones. But they're insane. I'll call you in a minute. I've got something else going on. I'll call you in a minute.

Host: There go the juicy lips, it looks like they're gonna be OK.

Host: We're back with the Opie and Anthony Show. Sex for Sam 3.

Host: Guy's taking a bad turn. Right before commercials we had Paul Mercurio in St. Patrick's Cathedral, Anthony.

Host: Yeah.

Host: *The St. Patrick's Cathedral.* And this couple allegedly did the two-point conversion.

Host: The two-pointer.

Host: And there was a little altercation between Paul and the guard that was in there. They had some words. And Paul's got a big set of brass balls because he doesn't back down. And now I'm getting reports of police. Paul! Paulie!

Mercurio: Yeah, listen over here. I don't understand. You're going to take us over to the station... take us down... [inaudible]... do the investigation. But you're standing here, you've got nothing. You've got one person's opinion. Yeah. Here. I have a money card that's got my name on it, and a credit card and a money card. I don't have a picture i.d. [inaudible]

Mercurio: I have to urinate all the time.

Host: He's talking to six cops right now.

Host: They want to take all three to the station. Paul and the team.

Mercurio: We went in there to try and find a restroom. The place that we went up into, I thought that that was a restroom. What is he saying that he saw? What is the security guy saying he saw?

Host: It's really hard to hear.

Host: I can hear it.

Mercurio: These are friends of mine! ...I'm taking them around the city. I'm giving them a tour of the city. We took them into the church, and you know, what they do in the Church is their business. And this guy, he comes up from behind them and he gets on the walkie-talkie, suddenly, and suddenly, you know, he's the lone ranger. And he calls in the cavalry and you guys show up and there's five guys in a squad car and if you're gonna take us to the station, take us to the station. If you're gonna arrest us, arrest us. Get it over with. But I don't know what the basis is for an arrest. And I don't think you guys know either, or otherwise we'd be arrested by now. I mean, let's be honest. I'm not trying to be a smartass. But you know, tell him, bring him over and if he wants to talk about this look me in the eye and let him tell me what he thinks he saw. But if you're conducting an investigation and you're about to arrest the three of us don't you think you should talk to us?

[inaudible]

Mercurio: I think it's, you know, honestly, disrespect. I think it's going in one ear and out the other. And you've already made your decision, so let's get in the car, it's air-conditioned, and let's go!

Police officer: You're entitled to your opinion.

Mercurio: Yeah, you know, frankly, I am!

Police officer: If I wanted you under arrest, you'd be in handcuffs. But I haven't made that determination yet.

Host: They haven't decided to arrest him yet.

Police officer: [inaudible]...Take a breath...

Host: They're telling Paul to calm down!

Mercurio: This is fifteen minutes of nonsense. We left the church when we were told to leave, we walked down the sidewalk, he called out 'Gentlemen!' and that gentleman came tearing down the sidewalk. It looks like you guys were looking to do something with us. We left when we were told to leave! Three guys escorted us out.

Mercurio: On top of it, the Catholic Church! How could they be moral about sex? Think about that for a minute.

[inaudible]

Mercurio: That's what you were saying. You are saying that we were having, that they were having sex, to us, to our face. That's not what you said.

Police officer: I'm trying to get your side of the story.

Mercurio: Our side of the story is these people were looking in the church, he had to go to the bathroom. He's saying that they were having sex.

Police officer: [inaudible]

Host: There's a show going on outside St. Patrick's Cathedral right now! Should we put them on hold for a second, Anthony?

Host: No, no. I kind of want to hear this.

Mercurio: I don't understand the basis for detaining us then. Someone would like to tell me then that would be great. Anytime today. Now you see why nothing gets done. Five guys standing around trying to figure out what to charge us with.

Host: Oh my God!

Host: Alright now hold on a minute.

Mercurio: We're doomed, we're doomed.

Host: Tell him we're going to go right back to him. It's obvious that the cops are separated from Paul and they're trying to figure out what to do. We'll go right back there, I promise. We'll check in with [inaudible]. There's a big story building here. Let's go back to Paul, the juicy lips, outside St. Patrick's Cathedral. Paul!

Host: This guy...

Host: Can you hear us? What's going on?

Mercurio: They're now, uh, I've got to just be careful because I just, they haven't told me to take my earphone out or anything. I don't want them to know I'm on the air, but they just like, five cops standing around debating this at this point. They kicked us out, then they came, they came tearing down the sidewalk and put us against the wall...they put our hands against the wall, that whole nonsense, they patted us down and everything. And now they brought a sergeant in, and another guy's shown up in another car...

Host: You're so gone...

Mercurio: ...and the security guy from the church...and by the way, the guy I'm with, the guy, the guy of the couple is on probation and he's freaking out.

Host: [inaudible]

Mercurio: The guy, 'I'll tell him, I'll tell him we did it and it was just like a radio prank,' and I said no, if you admit it, that, no. No.

Host: Yeah.

Mercurio: He's about to, he's about to collapse, with all the sex, the heat, and this. I think he's going to have a stroke.

Host: I like your take on the whole thing. There's nothing, the guard saw nothing, then there's no crime.

Mercurio: Yeah. No. Exactly. I think we'll be, I think we'll be OK, because if he was going to do something by now, he probably would have.

Host: Yeah. Evan is saying, just Paul, just show them your Emmy. [laughter]

Host: OK, hold on. Make sure John keeps Paul on the line. Anything, anything changes, we'll go right back to him. Let's check in with Stinky...

...

Host: Let's go back to Paul.

Mercurio: Hey listen, I'm gonna go with them. Can I go down with them to the... Can I go with them? Can I go in the car with them? Oh, if you're gonna arrest them arrest me, then. What's the difference? I don't care. This is ridiculous. You don't want to take me because they're afraid to say anything. You know that you guys are wrong.

Mercurio: Go ahead! Take me, I don't care. This is ridiculous. You guys gotta have something better to do than this. Look at me, I'm five-eight, soaking wet, 150 pounds...I can't do anything, and you're like getting all tough. This is ridiculous. Officer! Officer, can I talk to you for a minute? Guy won't even talk to me now.

Host: What happened, Paul?

Mercurio: They put them in handcuffs and put them in a car. They're taking them to Midtown North.

Host: Oh, no. One of our teams was arrested.

Mercurio: Can I go down with them at least? In the car? Can I go in the car with them? Alright, I'm gonna go, I'm gonna take a cab over there to the precinct...go down there with them. Alright?

Host: OK.

Host: Oh, boy.

Host: Well, that's the first time one of our teams have been arrested.

Host: Hey. Hmm. Well, someone send someone down there to get them out of jail. [laughter]...Ken...Ken is just shaking his head, walking down the hall. He doesn't want to come in the studio. Well, we had such a good streak going, too.

Host: Yeah, no one had been arrested on this show in quite some time.

Host: Long time.

Host: In a long time.

Host: Hey, Ken's walking back down the hall. I can't tell if he's really pissed or not. Yeah, he's pissed. Is he coming in the studio? I don't know if he's gonna come in the studio...

...

Host: Hey, we're back with the Opie and Anthony Show. It's Sex for Sam 3. If you're just tuning in, boy did you miss a lot. You gotta listen to this show a little longer than you do.

Host: Paul Mercurio's team, the juicy lips, are officially out of the competition, Anthony. Marshall and Lynn from DC are out of the competition.

Host: Well, are they officially out of the question, because some people are saying, now that they took them down to jail, the hundred points should be really easy now...having sex with a stranger. I guess they're never officially out of the competition.

Host: Right.

Host: I don't, I don't think we're going to be getting a phone call from that team anytime soon.

Host: No, they shouldn't waste their one call with a score update or anything like that.

Host: Yeah, but they got arrested. Allegedly, ha, they may have had, [inaudible] sex in St. Patrick's Cathedral.

Host: What? Huh? I don't think so, though.

Host: Allegedly. [laughter]

Host: They go in there because obviously everybody knows, all of our faithful listeners really know that they're just simulating the acts...[laughter]...right? [laughter] Everyone knows that...

Host: They wouldn't be stupid enough to actually *have* [inaudible] sex in a church? Right?

Host: What? Huh?

Host: That's what we're trying to say here.

Host: Exactly. Yes. That's what the spotters are there for. To make sure they *don't*.

Host: Exactly!