

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

Re: Infinity Broadcasting Operations, Inc., Licensee of Stations WNEW(FM), New York, New York; WYSP(FM), Philadelphia, Pennsylvania; KYCY(AM), San Francisco, California; Infinity Radio Operations, Inc., Licensee of Stations WBUF(FM), Buffalo, New York; KSFN(AM), North Las Vegas, Nevada; WXTM(FM), Cleveland Heights, Ohio; WAZU(FM), Circleville, Ohio; KUPL(AM), Portland, Oregon; Infinity Radio Subsidiary Operations, Inc., Licensee of Station KXOA(FM), Roseville, California; Infinity Broadcasting Corporation of Dallas, Licensee of Station KLLI(FM), Dallas, Texas; Infinity Broadcasting Corporation of Washington, D.C., Licensee of Station WJFK-FM, Manassas, Virginia; Infinity Holdings Corporation, Licensee of Station WCKG(FM), Elmwood park, Illinois; Hemisphere Broadcasting Corporation, Licensee of Station WBCN(FM), Boston, Massachusetts, Notice of Apparent Liability for Forfeiture; AMFM Radio Licenses, Licensee of Station WWDC-FM, Washington, D.C., Notice of Apparent Liability for Forfeiture

I dissent from the Commission's decisions to provide no more than a slap on the wrist to Infinity (owned by Viacom) and Clear Channel rather than take serious action to address indecency on our airwaves. Today, the majority proposes a \$27,500 fine for each incident of airing what the majority agrees appears to be indecent programming at a time when children likely composed a significant portion of the audience.

In the case of Infinity/Viacom, thirteen stations ran the "Opie & Anthony Show" which contained a broadcast of sexual activity at St. Patrick's Cathedral in New York as part of an on-air stunt. In this stunt, called "Sex for Sam," couples received points for having sex in public places. In addition to St. Patrick's Cathedral, the broadcast described sexual activity at restaurants, at the Disney Store and at FAO Schwartz. In the case of Clear Channel, one of its stations, WWDC-FM, broadcast an "Elliot in the Morning" show which included a station-sponsored promotion to which female high school students called in for the opportunity to audition to dance in a cage at an upcoming rock concert. The show's hosts questioned the girls about their sexual activities at their school -- Bishop Denis J. O'Connell High School -- actively solicited other high school students to call, and made repeated and graphic references to oral sex.

Neither of these cases is a difficult call. Both are outrageous and both were run by stations whose owners knew better and whose parent companies have had previous indecent broadcasts brought before this Commission. I believe we should designate these cases for a hearing on the possible revocation of these stations' licenses, as provided for by section 312(a)(6) of the Communications Act.

I am particularly troubled by the decision on the "Opie and Anthony Show." I defy anyone to read the transcript and argue that this broadcast does not violate the statutory prohibition against airing indecent material. And I defy anyone to argue that a \$27,500 fine to each of the stations owned by a multi-billion dollar conglomerate is adequate to address this clear violation of federal law.

Infinity/Viacom could pay this entire fine by tacking just one more commercial onto one of its prime-time TV shows and probably pocket a profit to boot. Some punishment!

The majority admits that each of these stations appears to have egregiously and extensively violated the statutory ban on broadcast of indecent material. The majority claims

further to recognize the seriousness of the offense. And it even concedes that the Commission has the option of the license revocation process. But then it turns timid and decides that the appropriate recourse for this filth is a \$27,500 fine against each station. In other words, the majority determines that these stations deserve yet another chance before the Commission even considers revoking a license. When, I ask, will this end?

This is not the first action against a station owned by Infinity. Infinity stations paid \$1.7 million 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. More complaints involving other Infinity broadcasts followed. Last April, this Commission issued another tepid proposed fine against another station owned by this same company – WKRK-FM in Detroit – which had aired some of the most vulgar and disgusting indecency that I have had the misfortune to examine. In that decision, the majority warned that repeated serious violations by Infinity could result in the revocation of station licenses. The majority repeats that same warning again in this decision.

Yet, two months prior to the airing of “Sex for Sam” on the “Opie and Anthony Show,” this agency cited the same show for three separate apparent violations of the indecency statutes. These shows aired between November 2000 and January 2001. In one instance, a graphic song about a father having oral sex with his young daughter was broadcast. In the second instance, the “Opie and Anthony Show” aired another graphic song by a man seeking girls between the ages of two and three for sex. In the third instance, the show provided detailed instructions to a teenager and then broadcast her rubbing a telephone between her legs.

If this situation does not meet the majority’s test for repeated violators, I fail to understand what would. The message to licensees is clear. Even egregious repeated violations will not result in revocation of a license. Rather, they will result only in a financial penalty that doesn’t even rise to a serious cost of doing business.

I wonder when this Commission will finally take a firm stand against the “race to the bottom” on our airwaves. The time has come for us to send a message that we are serious about enforcing the indecency laws of our country and that we will be especially vigilant about the actions of repeat offenders such as those cases before us here. Instead we turn an apparently incurable deaf ear to millions of Americans who are fed up with the patently offensive programming sent into their homes so regularly. Today’s decision does nothing to discourage such programming.

It all comes down to this: station owners aren’t given licenses to use the public’s airwaves to peddle smut. They are given licenses to serve the public interest.