

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

In the Matter of) File No. EB-02-IH-0715
) FRN: 0003245347
ENTERCOM SACRAMENTO LICENSE, LLC) NAL/Acct. No. 200432080020
) Facility ID No. 20354
Licensee of Station KRXQ(FM),)
Sacramento, California)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 22, 2004

Released: October 15, 2004

By the Commission: Commissioners Copps and Martin approving in part, concurring in part
and issuing separate statements.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), issued pursuant to
Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of
the Commission's rules,1 we find that Entercom Sacramento License, LLC ("Entercom"),
licensee of Station KRXQ(FM), Sacramento, California, broadcast indecent material on two
separate occasions, in apparent willful and repeated violation of 18 U.S.C. § 1464 and 47 C.F.R.
§ 73.3999. Based upon our review of the facts and circumstances in this case, we conclude that
Entercom is apparently liable for a forfeiture in the maximum amount of Fifty-Five Thousand
Dollars (\$55,000).

II. BACKGROUND

2. This proceeding arises out of a series of written complaints from a listener alleging
that Station KRXQ(FM) broadcast indecent material during segments of the "Rob, Arnie & Dawn
In The Morning Show" (the "RA&D Show") between 7:00 a.m. and 10:00 a.m. on various dates
in 2002 and 2003.2 After reviewing the complaints, audio tapes, and transcripts provided by the
Complainant, the Enforcement Bureau directed a letter of inquiry ("LOI") to Entercom requiring

1 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

2 See Letter to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, from
Complainant, dated September 9, 2002; Letter to Charles W. Kelley, Chief, Investigations and Hearings
Division, Enforcement Bureau, from Complainant, dated September 23, 2002; Letter to Charles W. Kelley,
Chief, Investigations and Hearings Division, Enforcement Bureau, from Complainant, dated October 5,
2002; Letter to Sandra Watson, Program Analyst, Investigations and Hearings Division, Enforcement
Bureau, from Complainant, dated February 26, 2003; and E-mail to Dana Leavitt, Assistant Chief,
Investigations and Hearings Division, Enforcement Bureau, from Complainant, dated March 10, 2003.

further information about program segments that Station KRXQ(FM) allegedly broadcast on September 13, 2002 (“Segment 1”), and January 17, 2003 (“Segment 2”).³

3. Entercom timely responded to the LOI.⁴ Entercom states in its *Response* that it did not retain a recording of the program that Station KRXQ(FM) broadcast on September 13, 2002. In the absence of a recording of its own, Entercom maintains that it cannot conclusively determine that the specific material set forth in Segment 1 actually was broadcast over Station KRXQ(FM) on that date.⁵ Additionally, although Entercom concedes that Station KRXQ(FM) has aired segments during the RA&D Show in which “Arnie” speaks in a young boy’s voice, it maintains that the transcript of the material contained in Segment 1, in which one of the announcers speaks in a child’s intonation, omits dialogue among the show hosts that is typical of such segment routines, thus creating a “misimpression concerning the totality and context” of the material that was broadcast.⁶ By contrast, Entercom confirms in its *Response* that the material contained in Segment 2 was indeed broadcast over Station KRXQ(FM), albeit on January 23, 2003, not January 17, 2003, as alleged by the Complainant.⁷

4. Entercom argues that none of the material cited by the Complainant to be indecent satisfies the Commission’s definition of indecency. In this regard, Entercom claims that the material contained in Segment 1 was fleeting and did not have an inescapable sexual import; and the material contained in Segment 2 was deliberately oblique and far less explicit than material previously deemed acceptable by the Commission.⁸ In addition, Entercom maintains that the Commission’s indecency definition is unconstitutionally vague and overbroad.⁹ Finally, Entercom claims that, because Station KRXQ(FM) generally garners relatively high ratings in the Sacramento, California, market, the sensitivities of a single complainant do not reflect the contemporary standards of the Sacramento listening community.¹⁰

³ See Letter to Entercom Sacramento License, LLC, from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, dated August 21, 2003. A transcript of each of the program segments is appended hereto as Attachment A and B, respectively.

⁴ Letter to Dana E. Leavitt, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, from Brian M. Madden, Esq., dated October 17, 2003 (“*Response*”). See also Letter to David Solomon, Chief, Enforcement Bureau, from Brian M. Madden, Esq., dated October 17, 2003, wherein Entercom requests confidential treatment of certain documents attached to its *Response*. Because the instant *NAL* does not rely on such attached materials, we do not herein render a decision on the merits of Entercom’s confidentiality request. See also Letter to Dana E. Leavitt, Esq., Assistant Chief, Investigations and Hearings Division, from Brian M. Madden, Esq., dated November 18, 2003.

⁵ *Response* at 3-4.

⁶ *Id.* at 4

⁷ *Id.* at 5.

⁸ *Id.* at 8-11.

⁹ *Id.* at note 8.

¹⁰ *Id.* at 12.

III. DISCUSSION

5. 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. 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.¹¹ 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 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."¹² In addition, consistent with a subsequent statute and court case,¹³ section 73.3999 of the Commission's rules provides that radio and television stations shall not broadcast indecent material during the period 6 a.m. through 10 p.m.¹⁴

6. As an initial matter, we find that both segments that are the subject of this *NAL* were indeed broadcast over Station KRXQ(FM) during the restricted time period. Entercom does not dispute that Station KRXQ(FM) broadcast the RA&D Show on the dates and at the time periods in question. Entercom claims that it cannot determine with absolute certainty that Station KRXQ(FM) broadcast the specific material contained in Segment 1 because it did not retain a recording or transcript of that program.¹⁵ Based upon the evidence before us, including Entercom's failure to refute the complainant's allegations, we find that Station KRXQ(FM) broadcast the material contained in Segment 1, as alleged.¹⁶ We further conclude that Station KRXQ(FM) broadcast the material contained in Segment 2 during the restricted hours of the day. Entercom acknowledges as much, although it states that the material contained in Segment 2 was broadcast on January 23, 2003, not on January 17, 2003, as alleged.¹⁷ We will accept Entercom's date as that of the broadcast.

7. Any consideration of government action against allegedly indecent programming must take into account the fact that such speech is protected under the First Amendment.¹⁸ The federal courts consistently have upheld Congress's authority to regulate the broadcast of indecent

¹¹ See 47 U.S.C. § 326.

¹² 18 U.S.C. § 1464.

¹³ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992); *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 C.F.R. § 73.3999.

¹⁵ *Response* at 3-4.

¹⁶ *Infinity Broadcasting Corp. of Los Angeles (KROQ-FM)*, Memorandum Opinion and Order, 17 FCC Rcd 9892, 9896, ¶ 17 (2002) ("a licensee may not avoid liability 'by claiming that he doesn't know what did or did not go out over his station.'").

¹⁷ *Response* at 6.

¹⁸ U.S. Const., amend. I; *Action for Children's Television v. FCC*, 852 F.2d 1332, 1344 (D.C. Cir. 1988) ("*ACT I*").

material, as well the Commission's interpretation and implementation of the governing statute.¹⁹ Nevertheless, the First Amendment is a critical constitutional limitation that demands that, in indecency determinations, we proceed cautiously and with appropriate restraint.²⁰

8. 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.²¹

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.²²

9. Turning to the instant case, we begin our analysis with an examination of whether the material that was broadcast, in context, depicts or describes sexual or excretory organs or activities. We find that it does. Listeners tuning into Station KRXQ(FM) at the times when the two segments were broadcast were exposed to a monologue involving contact of a sexual nature with a child; a dialogue about various sexual activities, including methods of engaging in sexual intercourse; and multiple references to sexual organs. Accordingly, we conclude that each of the segments at issue describes sexual or excretory organs or activities, satisfying the first prong of our indecency analysis.

10. Having satisfied the first prong, we now turn to an analysis of whether the material in each of the three segments subject to this *NAL* satisfies the second prong of the Commission's two-part indecency analysis -- that is, whether the broadcasts were patently offensive as measured by contemporary community standards for the broadcast medium.²³ In our assessment of whether broadcast material is patently offensive, "the *full context* in which the material appeared is critically important."²⁴ Three principal factors are significant to this contextual analysis: (1) the

¹⁹ 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 I*"); *ACT III*, 58 F.3d 654.

²⁰ *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."); *id.*, 852 F.2d at 1340, n.14 ("the potential chilling effect of the FCC's general definition of indecency will be tempered by the Commission's restrained enforcement policy.").

²¹ *Infinity Broadcasting Corporation of Pennsylvania*, Memorandum Opinion and Order, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (citing *Pacifica Foundation*, Memorandum Opinion and Order, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

²² *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) ("*Indecency Policy Statement*") (emphasis in original).

²³ 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 *WPBN/WTOM License Subsidiary, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 1838, 1841 (2000).

²⁴ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original).

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.²⁵ 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.”²⁶ 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,²⁷ or, alternatively, removing the broadcast material from the realm of indecency.²⁸

11. We turn now to an analysis of these factors as they relate to each segment to determine whether the material that was broadcast, taken in context, is patently offensive as measured by contemporary community standards for the broadcast medium.

Segment 1: The September 13, 2002 segment involved one of the program hosts playing the role of a young boy describing how his father wanted to take photographs of him in the nude and show the youngster his erect penis. Although the segment employed euphemisms (“Daddy’s going to take me to a restaurant ‘cause he wants to take pictures of me in my birthday suit. Daddy’s giving me a submarine. He says he’s giving me something long, hard, and full of seaman.”), the sexual import of the material is unmistakable. Although the segment was relatively brief, there is no question that its purpose was to shock and titillate, and is similar to other patently offensive material involving graphic references to sexual activity with children, which were found to be indecent.²⁹ Under these circumstances, we need not find that the sexual references were repeated at length in order to find that the material is patently offensive. As noted in the *Indecency Policy Statement*, broadcasting references to sexual activities with children, even if relatively fleeting, may be found indecent where, as here, other factors contribute to a finding of patent offensiveness.³⁰

Segment 2: The January 23, 2003, segment involved a graphic and detailed discussion of various methods that men may employ to disgrace, degrade and humiliate women before, during, and after sexual intercourse. The discussion

²⁵ *Id.*, 16 FCC Rcd at 8002-15, ¶¶ 8-23.

²⁶ *Id.*, 16 FCC Rcd at 8003, ¶ 10.

²⁷ *Id.*, 16 FCC Rcd at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, Notice of Apparent Liability, 12 FCC Rcd 21828 (Mass Media Bur. 1997) (forfeiture paid) (extremely graphic or explicit nature of references to sex with children outweighed the fleeting nature of the references); *EZ New Orleans, Inc. (WEZB(FM))*, Notice of Apparent Liability, 12 FCC Rcd 4147 (Mass Media Bur. 1997) (forfeiture paid) (same)).

²⁸ *Id.*, 16 FCC Rcd 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”).

²⁹ *Citicasters Co. (KSJO(FM))*, Notice of Apparent Liability, 15 FCC Rcd 19091 (Enf. Bur. 2000) (“joke” that includes patently offensive references to incest and sex with children); *Tempe Radio*, 12 FCC Rcd 21828 (patently offensive language referring to sexual activity with a child); *EZ New Orleans, Inc.*, 12 FCC Rcd 4147 (patently offensive references to incest and sexual activity with an infant).

³⁰ *Indecency Policy Statement*, 16 FCC Rcd at 8009.

went on for a considerable length of time about descriptions of sexual or excretory organs and activities. The discussion of each method, for which a descriptive name was given, was interspersed with laughter as well as expressions of repulsion. The discussion was shocking for its depravity and clearly intended as such.

Entercom maintains that the discussion was “deliberately oblique” and less explicit than other material that the Commission has deemed acceptable. We disagree. The discussion was not oblique in any sense of the word. For example, at one point, one of the hosts advises how a man may “proceed to engage in the most violent and forceful sex imaginable . . . calling her the most obscene names you can come up with, and slapping her.”³¹ At another point in the broadcast, the host suggests that after intercourse, “[y]ou put your ass right over her face while she’s sleeping . . . and break wind.”³² Elsewhere, the host describes for the listening audience, “while taking the girl from behind, the guy reaches around, grabs her breasts as hard as he can . . . and screams out another girl’s name, then he holds on for the wild bronco ride.”³³ In yet another part of the same broadcast, the host suggests that, while having sex in a bathroom, “you’re engaged in, um, ‘from behind action’ . . . then when ready, he sticks her head into a toilet, which contains a recently deposited log cabin, simultaneously flushing it . . . you hold her head there.”³⁴ The host also describes how “[o]nce again, you’re taking her from behind . . . then the man wraps his arms around her throat . . . placing her, again without her permission, placing her in the traditional “sleeper” wrestling hold . . . cutting off air to the carotid artery . . . He maintains the hold until she is unconscious . . . reviving her with his own special form of smelly salts [farting noise] on her nose.”³⁵ This discussion was unquestionably graphic, not oblique.

We also reject Entercom’s contention that this material cannot be found indecent because there are other cases referencing topics such as masturbation, and anal and oral sex in which no enforcement action was taken. In support of this argument, Entercom cites, among other things, two unpublished Enforcement Bureau staff decisions, in which there were references to “giving head”³⁶ and “finger banging your boyfriend.”³⁷ However, the material in Segment 2 is more graphic and explicit than the language cited in those decisions. Moreover, the

³¹ Attachment B, *infra*, at 12.

³² Attachment B, *infra*, at 14.

³³ Attachment B, *infra*, at 15.

³⁴ Attachment B, *infra*, at 18.

³⁵ Attachment B, *infra*, at 19.

³⁶ Response at 9, citing *Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, to Charles Giacona*, dated April 22, 2002, EB-01-IH-0407/WK.

³⁷ Response at 11, citing *Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, to Mindy Pierce*, dated February 12, 2002, EB-01-IH-0331/GDJ.

use of the term “finger banging” was brief and fleeting, which is not the case with the material at issue here.³⁸

We believe the material at issue in Segment 2 is strikingly similar to material that the Commission has previously found to be actionably indecent. *See Infinity Broadcasting Operations, Inc.*, 18 FCC Rcd 6915 (2003). As we did in that *Infinity* decision, we find the tone of the material in the instant case to be extraordinarily vulgar, extremely lewd, and profoundly unfit for broadcast when children may be in the audience. For these reasons, we find that the broadcast in Segment 2 was patently offensive as measured by contemporary community standards for the broadcast medium.

12. Entercom has acknowledged that it broadcast the RA&D Show between 6 a.m. and 10 p.m., a time frame relevant to an indecency determination.³⁹ Because there was a reasonable risk that children may have been in the audience when the material in each of the two segments was broadcast, the material that was broadcast is legally actionable. By broadcasting this material over Station KRXQ(FM), Entercom apparently willfully and repeatedly violated the prohibitions in the Act and the Commission’s rules against broadcast indecency.

13. We reject Entercom’s claim that, because this proceeding was precipitated by complaints from a lone individual, and Station KRXQ(FM) generally enjoys high ratings, the contemporary community standards of the Sacramento, California, listening community must, as a consequence, embrace the station’s programming.⁴⁰ Whether particular material is actionably indecent does not turn on whether the station that broadcast it (or the program) happens to be popular in its particular market.⁴¹ Indeed, the fact that Station KRXQ(FM) draws a significant number of Sacramento area listeners serves to increase the likelihood that more children were among those who may have heard the indecent broadcasts.

14. Finally, there is no merit to Entercom’s argument that the Commission’s indecency definition is unconstitutionally vague and overbroad.⁴² The Commission has rejected similar constitutional challenges to our broadcast indecency standards, including constitutional challenges based on *Reno v. ACLU*, a case which Entercom cites and which invalidated an indecency standard for the Internet.⁴³ Moreover, the courts have rejected similar claims that the broadcast of indecent material may not be restricted for the protection of children.⁴⁴

³⁸ *Id.* at 4-5. Entercom also cites various unpublished materials in which the former Mass Media Bureau, predecessor to the current Media Bureau of the Commission, found that certain material was not actionably indecent. *Response* at 11. Published decisions, including those cited in the Commission’s *Indecency Policy Statement*, provide guidance indicating that material such as that contained in this case is indecent. Thus, even to the extent Entercom was aware of these unpublished decisions, we do not believe any reliance on them was reasonable.

³⁹ 47 C.F.R. § 73.3999.

⁴⁰ *Response* at 11-12.

⁴¹ *See WPBN/WTOM*, 15 FCC Rcd at 184.

⁴² *Response* at note 8.

⁴³ *See, e.g., Infinity Broadcasting Corporation of Los Angeles (KROQ-FM)*, Memorandum Opinion and Order, 17 FCC Rcd 9892 (2002); *WQAM License Limited Partnership*, Forfeiture Order, 15 FCC Rcd 2518

15. Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80, both state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.⁴⁵ Based on the material before us, it appears that Entercom willfully and repeatedly violated 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules, by airing indecent programming over Station KRXQ(FM) on September 13, 2002, and January 23, 2003.

16. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$7,000 for the transmission of indecent or obscene materials.⁴⁶ 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."⁴⁷ Based upon our thorough review of the record, including the egregious nature of the misconduct and Entercom's prior history of violations,⁴⁸ we conclude that an upward adjustment of the forfeiture amount to the statutory maximum of \$27,500 is warranted in this case for each instance in which Entercom apparently violated 18 U.S.C. § 1464 and 47 C.F.R.

(2000)(noting that the Court indicated that broadcast indecency regulations were justified based on significant differences between the Internet and the broadcast medium and between the standard in the statute at issue and the Commission's broadcast indecency standard).

⁴⁴ Entercom cites language from *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002), a case invalidating provisions of the Child Pornography Prevention Act of 1996 ("CPPA"), which criminalized non-obscene "virtual" child pornography. The CPPA extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children. In the text cited, the Court distinguished provisions of the CPPA related to "virtual" child pornography from constitutionally valid statutory provisions banning actual child pornography. Protecting children from exposure to indecent material is a compelling governmental interest and courts have not questioned or expected proof on the issue of harm. See *Sable Communications*, 492 U.S. at 126-27. To withstand constitutional scrutiny, however, government regulations aimed at promoting this compelling interest must be narrowly drawn so as not to unnecessarily interfere with First Amendment freedoms. The U.S. Court of Appeals for the D.C. Circuit has concluded that a 10 p.m. to 6 a.m. "safe harbor" period, during which indecent speech may be legally broadcast, is justified as a properly tailored means of vindicating the government's compelling interest in the welfare of children. See *ACT III*, 58 F.3d at 667. See also *FCC v. Pacifica Foundation*, 438 U.S. 726, 749-50 (1978).

⁴⁵ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 12 FCC Rcd 17087, 17113 (1997), recon. denied 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

⁴⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17110.

⁴⁸ On September 27, 2002, the Commission released a Forfeiture Order in the amount of \$12,000 against Entercom Seattle License, LLC, licensee of Station KNDD(FM), Seattle, Washington, for broadcasting indecent material, in willful and repeated violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. See *Entercom Seattle License, LLC*, Order of Forfeiture, 17 FCC Rcd 18347 (Enf. Bur. 2002) (application for review pending). Entercom and Entercom Seattle License, LLC, are both wholly-owned subsidiaries of Entercom Communications Corp.

§ 73.3999.⁴⁹ Thus, we find that the appropriate forfeiture amount is \$55,000 (2 x \$27,500). We take this opportunity to note that similar violations of this nature by Entercom could well lead to more severe enforcement action, including commencement of license revocation proceedings.⁵⁰

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, that the complaints filed against Entercom Sacramento License, LLC, Licensee of Station KRXQ(FM), Sacramento, California, dated September 9, September 13, and October 5, 2002; and February 26, and March 10, 2003, ARE GRANTED to the extent indicated herein.

18. 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,⁵¹ that Entercom Sacramento License, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Fifty-Five Thousand Dollars (\$55,000) for willfully violating 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.

19. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, Entercom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

20. 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 SHALL INCLUDE the FCC Registration Number (FRN) referenced above and also SHALL NOTE the *NAL*/Acct. No. referenced above.

21. The response, if any, SHALL 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 SHALL INCLUDE the *NAL*/Acct. No. referenced above.

22. 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

⁴⁹ *Id.*; 47 C.F.R. § 1.80. The Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. The revised amounts apply to violations that occur or continue after November 13, 2000. *See Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

⁵⁰ *See* 47 U.S.C. § 312(a). On April 3, 2003, we placed broadcast licensees on clear notice that we would consider commencing license revocation proceedings in egregious cases involving the broadcast of indecent material. *See Infinity Broadcasting Operations, Inc.*, Notice of Apparent Liability, 18 FCC Rcd 6915 (2003). But for the fact that the material here was broadcast prior to April 3, 2003, Entercom might well be facing an adjudicatory hearing to determine whether its license for Station KRXQ(FM) should be revoked, rather than the instant proposed forfeiture.

⁵¹ 47 C.F.R. § 1.80.

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.

23. Requests for payment of the full amount of the forfeiture proposed in this *NAL* under an installment plan SHALL BE SENT to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁵²

24. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Investigations and Hearings Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment C of this *NAL*. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment B, please contact OCBO at (202) 418-0990.

25. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to Entercom's counsel, Brian M. Madden, Esq., Leventhal, Senter & Lerman, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵² See 47 C.F.R. § 1.1914.

ATTACHMENT A

September 13, 2002

ARNIE [affecting the tone of a young boy]: “Daddy’s going to take me to a restaurant ‘cause he wants to take pictures of me in my birthday suit. Daddy’s giving me a submarine. He says he’s giving me something long, hard, and full of seaman.”

END OF SEGMENT

ATTACHMENT B**January 23, 2003**

DAWN: Sweetheart.

ROB: So. And you might, you might have to invest some time to get her to the point where you can then perform the Rose-Creeper, which is, you begin the event by very seductively brushing a long-stem rose all along her body . . .

DAWN: Oooh.

ROB: . . . you're telling her how beautiful she is, you're caressing her, you're kissing her body, OK, and I mean it is very romantic.

DAWN: And you got to picture a sweet little mousey girl.

ARNIE: Uh huh.

ROB: You get her in the mood for love-making, and then you proceed to engage in the most violent and forceful sex imaginable, while whipping her with the rose, calling her the most obscene names you can come up with, and slapping her. [thudding sound]

DAWN: Oh my God! That will ruin someone like that.

ROB: Or turn her into to a complete slut, well that would be ruining her, yeah.

DAWN: Oh my God, that would so give her low self-esteem or something.

ARNIE: [snicker] Um, I don't like the whipping with the rose . . .

ROB: It's kind of dopey . . . [laughter]

ARNIE: Yeah, that's . . . bad.

ROB: . . . but a mousey girl would think that was really . . . or a virgin or something like that.

DAWN: Come on. Yeah. No that

ARNIE: I don't like the whipping with the rose.

DAWN: Oh God! And the . . .

ARNIE: Everything else, though.

DAWN: . . . and the betrayal, she thinks this guy likes her and they are going to make sweet passionate love and like . . .

ROB: And he's calling her the worst thing.

DAWN: . . . and the whole time he was betraying her and conning her.

ARNIE: And videotaping it for his friends to see.

ROB: Or they're in the closet watching. Who knows?

ARNIE: Um hum.

ROB: I mean, you can probably add to it by having them pop out at the end.

ARNIE: Could you watch?

ROB: Oh yeah! Yeah.

ARNIE: Could you watch it with out laughing?

ROB: No.

ARNIE: Well, OK.

ROB: No.

ARNIE: I would bust up too hard in the closet, I would be laughing so hard when he's . . .

DAWN: [gasp] Arnie!

ARNIE: It would be funny.

ROB: Yeah.

ARNIE: It would be funny.

DAWN: I hope, you know what, I hope these girls have brothers.

ROB: Um.

ARNIE: Oh yeah! You go girl.

ROB: One more of, you know, I'm sorry I'd . . .

ARNIE: Asshole.

ROB: I'd deemed these as the lighthearted ones, but Dawn has certainly pointed out they're not that lighthearted, but they certainly are compared to what I'm going to get to. Last one of these is "Resuscitation;" it's simply called "Resuscitation," this one's funny, come on.

DAWN: That's what you said about the first one.

ROB: OK, you wait for her to fall asleep, so this is obviously a girl that you've already had sex with, right.

ARNIE: OK.

ROB: [laughter] Then you, [laughter] . . .

DAWN: Rob.

ROB: [laughter] . . . this is funny. You're going to find this funny. You put your ass right over her face while she's sleeping [farting noise] and break wind.

DAWN: [laughter] That is so wrong.

ROB: [laughter] I mean that one's OK.

DAWN: No, that's wrong. [laughter]

ARNIE: If she's a deep sleeper . . .

DAWN: [giggle]

ROB: Well apparently, if I understand the web sites correctly, which no, I am not going to be giving those out on the air because they're so disturbing, um, the trick to getting more points is you have to do it and it wakes her up.

DAWN: [gasp]

ROB: It has to be such a, . . .

DAWN: OK, that is degrading.

ROB: It is.

DAWN: You just gave yourself to this guy, and now he's farting in your face.

ROB: Um. Yeah. That usually doesn't happen until after you're married.

DAWN: Exactly. And at least married men do it under the covers and then just, like, "woo," and then fan the sheets.

ARNIE: Oh, but the bad thing is [laughter] I'm thinking about the poor guy who's done this and pushed too hard.

DAWN: [wailing]

ROB: Now I do want to point out, um, we're going to get to one . . .

DAWN: Yes. I get it.

ROB: . . . like that, but there are numerous disgusting things that are involved and unfortunately that bodily function that I really have a problem with.

ARNIE: I understand. Yeah.

ROB: But, let's move on now toward, what I called this next Section . . .

DAWN: [laughter] That's so mean.

ROB: . . . I have called this next Section "Mainstream Mean," so it's definitely mean, but it's not nearly as bad as our last grouping.

ARNIE: OK.

ROB: We'll start with the ones we already told you about as a preview this week, "The Bronco." This is while taking the girl from behind, the guy reaches around, grabs her breasts as hard as he can . . .

DAWN: Ouch!

ROB: . . . and screams out another girl's name, then he holds on for the wild bronco ride.

DAWN: Abuse and degrading.

ROB: And of course "The Rodeo" that we told you about, which is just like that, only rather than calling out another girl's name, he has six of his friends burst into the room laughing, which still causes the "bucking bronco" effect.

DAWN: Yes, 'cause she's trying to get him off, because now all the friends are in the room, which is, of course, degrading.

ROB: Let's move on to some more rather disgusting, "Mainstream Mean" things that fraternity boys are doing to get into their frats. There is "The Kennebunkport Surprise." While on the way down to the "Y," the man secretly fills his cheeks with New England clam chowder, then, while screaming in disgust, he hurls it between her legs.

DAWN: That's . . . Jesus.

ARNIE: [laughter] Where does he get the clam chowder?

ROB: You've got to have this set up ahead of time, and, you know, where you can reach for something and really get it in your mouth quick, and then you know you start with the "Y" and after a couple seconds. Arggh . . .

DAWN: That's childish.

ROB: Yes.

DAWN: That's childish.

ARNIE: Now see, that, to me, would ruin a woman.

DAWN: Yes. [laughter]

ROB: That would. You're really not going to enjoy "The New York Style Taco," which is just like what I just described "The Kennebunkport," but rather than use the chowder, the man simply barfs between her legs.

ARNIE: [laughter]

DAWN: That girl is ruined forever. That is not, I'm serious she, girls that have that done will never ever let another man at the "Y."

ROB: You betcha.

ARNIE: And you know what? To other men, we would thank this guy because then we don't have to do any work.

DAWN: Arnie, it shouldn't be work, you should love it.

ROB: I personally do love it and enjoy it but I understand.

ARNIE: I don't mind. I don't mind . . . I'm just looking out for the guys out there who don't do it. [laughter]

DAWN: OK, another reason not to date Arnie.

ARNIE: Rob, if you're a guy, how do you induce yourself? Is it the finger in the throat or the . . . ?

ROB: Um hm. Well, a guy like me with a gag reflex, all I would have to do is, yeah, the finger down the throat, or if I had a, like a spoon or something, . . . that you go if you've been drinking it's that much easier. But you're right; for some guys it would be tough and maybe they have to go to ipecac, which is a "vomitant."

DAWN: Oh my God! The poor girls.

ROB: OK. One more in the "Mainstream Mean" Section and then we will get to the worst. The "Mainstream Mean" final one is "The Ram." Simply called "The Ram," this is while enjoying her from behind (I noticed a lot of these things occur with that), now you're standing up from behind this time.

ARNIE: OK.

ROB: Ah, he takes one of his hands and just starts ramming her head against the wall [DAWN gasps] in rhythmic motion.

DAWN: Abuse.

ROB: Yeah, that's pretty heinous.

DAWN: That's pretty heinous.

ROB: No, they're all heinous. You've made that clear to me and I agree with you. I agree with you and I'm doing this in degree and I think that one gets, like, an 8.

DAWN: How are there this many men that want to commit – want to be this abusive – to a woman?

ROB: 'Cause they're young and they've grown up in this society where it's OK, and you know, they haven't learned yet.

DAWN: What a pussy. What a freaking bastard if you do something like to a woman. I'm serious. What kind of man are you?

ARNIE: Now Rob, this is just "Mainstream Mean." ?

ROB: That was the last one of "Mainstream Mean," as we move on to the absolute worst.

ARNIE: Does it say how hard?

DAWN: Arnie!

ARNIE: I'm just wondering.

DAWN: It doesn't matter, . . . [laughter]

ARNIE: It's a question.

DAWN: . . .she's not asking for it.

ROB: [laughter] And again you may disagree with me that these are the worst, I just found them to be yesterday as I was rewriting this for "airable" content. Now, we already told you earlier in the week about a couple of these: "The Walrus," which involves wrapping up an oral pleasuring session in the traditional [farting noise] way and then holding her nose and pinching her lips together, which causes an appearance strikingly similar to that of a tusked walrus.

DAWN: That always feels good when you can't breathe.

ROB: Yeah. That's no good. And "The Cold Lunch" we told you about . . .

ARNIE: My personal favorite one of all time.

ROB: . . .which involves her orally pleasuring her man and he then vomits on her head, and I did find that to be worse than "The New York Style Taco" for some reason.

ARNIE: Now.

ROB: On her head.

ARNIE: Do they have "The Kennebunkport" one of those?

ROB: Oh, where you use clam chowder?

ARNIE: Yeah, could you possibly use clam chowder in that?

ROB: Maybe.

DAWN: You know, I prefer clam chowder.

ROB: Yeah. Woof, that's disgusting. OK now, um, um, the five new ones, and then we'll be done with this, it will be posted on the web site. Um, we're going to start with "The Dirty Swirly."

DAWN: Oh no.

ROB: Now, once again, you're engaged in, um, "from behind action" . . .

ARNIE: Um hm.

ROB: . . . although it must be done in a bathroom. An apartment bathroom, not a public one or whatever . . .

ARNIE: Um hum. OK.

ROB: . . . then when ready, he sticks her head into a toilet, which contains a recently deposited log cabin, simultaneously flushing it, and that's where you get the "dirty swirly." But you know and . . .

DAWN: [gasps]

ROB: . . . you hold her head there.

DAWN: Oh my God!

ROB: I don't think there's supposed to be contact, as I understand it, between her and the cabin, but you're . . .

DAWN: Oh right, they monitor it; they're real concerned about that.

ARNIE: I've seen a Rocko film where that happened. I don't know if there was anything in "said toilet," but I have seen the swirly while he's going to town.

ROB: If that's just a swirly until we can confirm the presence of the cabin, which makes it "The Dirty Swirly."

ARNIE: I'll have to go back and watch that video.

ROB: And there is also the obvious middle-of-the-road version called "The Golden Swirly."

ARNIE: Of course. Of course.

DAWN: Yes. Oh God. This is terrible.

ROB: "The Fire Island." This is kind of like that, uh, which one was it, that "Resuscitation" one. OK, she's sleeping, but rather than simply passing gas in her face, you, the man, manually

pleasures himself, and then improves her complexion at the end [farting noise], if you know what I mean, while she's still sound asleep.

DAWN: While she's sleeping?

ROB: Yeah.

DAWN: Oh my God.

ROB: Alright, now we get to what I believe are the three really, really, really bad ones. We're going to start with "The Roddy Piper," which is an ode to Rowdy Roddy Piper.

ARNIE: Professional wrestler.

ROB: This is how this one works. Once again, you're taking her from behind men, then the man wraps his arms around her throat, [DAWN gasps] placing her, again without her permission, placing her in the traditional "sleeper" wrestling hold, . . .

ARNIE: OK.

ROB: . . . cutting off air to the carotid artery.

DAWN: Oh my God!

ARNIE: While still going to town?

ROB: Yes.

ARNIE: OK.

ROB: He maintains the hold until she is unconscious . . .

DAWN: [gasps]

ROB: . . . and continues with his business . . .

DAWN: Oh my God.

ROB: . . . reviving her with his own special form of smelly salts [farting noise] on her nose. So did you get all that?

ARNIE: Road trip.

ROB: Road trips are very popular at Spring Break. Those of you that hear all these terrible stories about Spring Break, here's one. Uh, because it also must be done on a beach, that's why it's called "The Sand Bag," which you will understand in a minute. The man uses a fake name, makes up an entire story about who he is, and talks her into sex, and of course uses liquor. Picture Spring Break, a lot of women are there expecting casual sex.

ARNIE: Exactly.

ROB: And then, just prior to beginning the proceedings, he, without telling her, removes his condom intentionally . . .

DAWN: [gasps]

ROB: . . . when he finishes . . .

DAWN: Oh no.

ROB: . . .he grabs a fist full of sand, he throws it in her face, and he runs away. She doesn't know who he is, where's he's from, can't see, can't find him, and doesn't even know still what he did, and if it "takes."

DAWN: Oh God.

ROB: Now how really . . .

ARNIE: Wow.

DAWN: Not only pregnancy, but diseases.

ROB: Um hm, and no trail.

ARNIE: And you're messing up somebody else's life.

DAWN: Yes.

ROB: A whole new life.

DAWN: Yes.

ARNIE: Yes.

ROB: And her and you know.

ARNIE: Yeah.

DAWN: Yes. Oh! Oh you know what? There needs to be stings, you're right, I'm serious. Oh God I'd, I would just love to be a cop for a day just to track down these m-f'ers.

ROB: Now, the last one I saved for the last just because of the disgusting factor. The last one is called "The Chili Dog." Now there were a lot of them like this, I just chose this one.

ARNIE: OK.

ROB: This is "The Chili Dog." This one begins . . . you'll have to get your visual, with the man seated on the girl's chest, while receiving the chug-a-lug-a-lug, OK. That's a popular position, right?

ARNIE: Um hm.

ROB: Everybody with me on how this works?

ARNIE: Oh yes, yes, yeah.

ROB: And while that is occurring, he builds a log cabin between her breasts.

DAWN: [gasps].

END OF SEGMENT

Attachment C

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services

International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer

Amateur Radio Service	N/A
Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer

Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

**STATEMENT OF COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, CONCURRING IN PART**

*Re: Entercom Sacramento License, LLC, Licensee of Station KRXQ(FM), Sacramento CA,
Notice of Apparent Liability for Forfeiture*

I agree that these broadcasts are indecent in violation of the statute. Nonetheless, I concur in part because I believe that the Commission could have assessed a fine that goes beyond a cost of doing business by imposing a penalty for multiple indecent utterances within at least one of these programs. This case further highlights the need to address indecency complaints more expeditiously. These broadcasts occurred almost two years ago.

**SEPARATE STATEMENT OF KEVIN J. MARTIN
APPROVING IN PART, CONCURRING IN PART**

*Re: Entercom Sacramento License, LLC, Licensee of Station KRXQ(FM), Sacramento CA,
Notice of Apparent Liability for Forfeiture (September 22, 2004)*

Consistent with my past statements, I believe we should be fining broadcasters on a “per utterance” basis.¹ In this instance, we could have found several violations within the broadcasts at issue and therefore could have assessed a larger fine.

¹ See, e.g., Separate Statement of Commissioner Martin, *Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan*, Notice of Apparent Liability, 18 FCC Rcd. 6915, 6939 (2003) (urging the Commission to fine violators “per utterance”).