

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

In the Matter of)	
)	
)	
ENTERCOM SEATTLE LICENSE, LLC)	File No. EB-01-IH-0395
)	NAL/Acct. No. 200232080005
Licensee of Station KNDD(FM),)	FRN 0003245719
Seattle, Washington)	Facility ID # 34530
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2004

Released: May 14, 2004

By the Commission: Commissioner Martin issuing a statement; Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny the Application for Review, filed on October 28, 2002, by Entercom Seattle License, LLC (“Entercom”), licensee of Station KNDD(FM), Seattle, Washington. Entercom seeks review, pursuant to 47 C.F.R. § 1.115, of a *Forfeiture Order* issued by the Chief, Enforcement Bureau (“Bureau”) that imposed a monetary forfeiture penalty in the amount of Twelve Thousand Dollars (\$12,000.00) against Entercom for willful and repeated violations of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999, which prohibit the broadcast of indecent material between 6 a.m. and 10 p.m.

II. BACKGROUND

2. The Commission received a complaint that KNDD(FM) broadcast indecent material on May 30 and 31, and June 1, 2001. The complainant alleged that, during the May 30 and June 1 broadcasts, the station broadcast material concerning whether and how a penis could be used to lift or pull objects. After reviewing the complaint, we issued a letter of inquiry to Entercom.¹ Entercom submitted a response,² which included a transcript of the material at issue in the complaint, which Entercom had prepared.³ As set forth in the transcript, during the May 30, 2001, broadcast, the station’s morning show personalities discussed whether a penis could be used to lift or pull objects.⁴ As a result of the on-air discussion, the show’s hosts decided to give concert tickets to listeners who agreed to appear in the studio to pull objects

¹ See Letter from Chief, Investigations and Hearings Division, Enforcement Bureau to Entercom Seattle License, LLC, dated July 5, 2001.

² See Letter from John C. Donlevie, Executive Vice President, Entercom Seattle License, LLC, to Chief, Investigations and Hearings Division, Enforcement Bureau, dated August 15, 2001.

³ See Program transcript, Attachment.

⁴ *Id.* at 10-13, 13-15, 18-19.

with their penises.⁵ During the June 1, 2001, broadcast, the show's hosts discussed the preparations for the contest, during which an individual in the studio attempted to put a harness on his penis.⁶

3. After reviewing Entercom's response to the letter of inquiry, the Bureau issued a *Notice of Apparent Liability* ("NAL"), finding that the complained-of material that was broadcast on May 30 and on June 1, 2001, was patently offensive and therefore apparently violated the Commission's indecency rule.⁷ The NAL proposed a monetary forfeiture penalty of Fourteen Thousand Dollars (\$14,000.00) based upon KNDD(FM)'s broadcast of apparently indecent material on two separate occasions.

4. On February 27, 2002, Entercom filed a response to the Bureau's NAL⁸ in accordance with Section 1.80(f)(3) of the Commission's rules.⁹ Entercom contended that there is a clear absence of any sexual or excretory context or import in the complained-of material because there is no discussion about the sexual or excretory functions of the male genitalia.¹⁰ Thus, Entercom argued that the material was not patently offensive as measured by contemporary community standards for the broadcast medium, and was not actionably indecent.¹¹ Entercom also cited the United States Supreme Court's decision in *Reno v. ACLU*, 521 U.S. 844 (1997), which invalidated an indecency standard for the Internet, in support of its argument that the Commission's indecency standard is vague, overbroad, unenforceable, and, therefore, unconstitutional.¹² Moreover, Entercom argued that if the proposed forfeiture was not canceled, it was entitled to a downward adjustment based on its history of overall compliance with the Commission's rules.¹³

5. The Bureau considered the Entercom NAL response, and issued the *Forfeiture Order*.¹⁴ The Bureau rejected Entercom's argument that the NAL's finding that the complained-of material apparently met the Commission's indecency definition was a "radical and unexplained departure from past FCC case precedent, where an unmistakable sexual or excretory import has been an indispensable element of an

⁵ *Id.* at 12, 15.

⁶ *Id.* at 18-19.

⁷ *Entercom Seattle License, LLC*, Notice of Apparent Liability for Monetary Forfeiture, 17 FCC Rcd 1672 (EB 2002). The complaint also alleged that KNDD(FM) broadcast indecent material on May 31, 2001. 17 FCC Rcd at 1674, n. 9. However, the Bureau denied the complaint with respect to this material.

⁸ See Response to Notice of Apparent Liability for Forfeiture of Entercom Seattle License, LLC, dated February 27, 2002. ("Entercom NAL Response").

⁹ 47 C.F.R. § 1.80(f)(3).

¹⁰ Entercom NAL Response at 4-5.

¹¹ *Id.* at 6-10.

¹² *Id.* at 2, n. 1.

¹³ *Id.* at 10, n. 5.

¹⁴ *Entercom Seattle License, LLC*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 18347 (EB 2002).

indecent finding.”¹⁵ In doing so, the Bureau specifically ruled that the indecency definition encompasses references to sexual organs, separate and apart from sexual activities, where those references are patently offensive. Although the Bureau disagreed with Entercom’s assertion that the broadcast of indecent material on two separate occasions constituted a minor violation, it nevertheless found that a downward adjustment of the forfeiture amount was appropriate in light of Entercom’s overall history of compliance and imposed a Twelve Thousand Dollar (\$12,000.00) forfeiture.

6. In its Application for Review, Entercom continues to assert its argument that the Bureau’s decision amounts to a new indecency definition, under which non-sexual references to male genitalia during a broadcast are *per se* indecent, and that such use, by itself, is sufficiently explicit and graphic to justify an indecency finding, even in the absence of any sexual or excretory import.¹⁶ Entercom also contends that the Bureau’s finding that the complained-of material was patently offensive is conclusory and unsupported by the precedent cited.¹⁷ In addition, Entercom argues that the Commission’s indecency definition is unconstitutional.

III. DISCUSSION

7. We have reviewed Entercom’s Application for Review and the record in this matter, and find no reason to reverse the Bureau’s *Forfeiture Order*. We agree with the Bureau that the material cited in the *Forfeiture Order* met the indecency standard. Consequently, we deny the Application for Review and affirm the forfeiture assessed by the Bureau.

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.¹⁸

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.¹⁹

¹⁵ Entercom *NAL* Response at 4.

¹⁶ Application for Review at 4-5.

¹⁷ *Id.* at 6-11.

¹⁸ *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987)(subsequent history omitted)(citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff’d sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978)).

¹⁹ *Industry Guidance on the Commission’s Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency* (“*Indecency Policy Statement*”), 16 FCC Rcd 7999, 8002, ¶¶ 7-8 (2001) (*emphasis in original*).

This definition has been specifically upheld by the federal courts.²⁰ The Commission's authority to restrict the broadcast of indecent material extends to times when there is a reasonable risk that children may be in the audience.²¹ Under current law, indecent material may not be broadcast between 6 a.m. and 10 p.m.²²

9. In the Entercom *NAL* Response, Entercom acknowledged that the material broadcast on May 30 and June 1, 2001, contained references to sexual organs and did not dispute that the material warranted scrutiny.²³ However, Entercom now challenges the Bureau's threshold determination that it aired material describing or depicting sexual organs and activities. Specifically, it contends that non-sexual "references" to the male genitalia do not meet the threshold subject matter definition under the indecency standard. Entercom therefore contends that, because the complained-of material does not depict or describe sexual or excretory organs or activities, the Bureau's conclusion that this material warranted scrutiny constituted an impermissible departure from precedent that requires indecent material to have an unmistakable sexual or excretory import.²⁴

10. We disagree, and find no error in the Bureau's determination that the material at issue warranted scrutiny. Our indecency definition requires an initial determination as to whether the material at issue, in context, depicts or describes sexual organs or activities. Contrary to Entercom's assertion that the material is "non-sexual," there is discussion of erection and arousal, which implicates the sexual functions of the male genitalia.²⁵ In any event, material that, in context, depicts or describes sexual organs is subject to the indecency definition, regardless of whether sexual activity is also depicted or described. In this regard, the *Forfeiture Order* states that the complained-of material "referred to sexual organs,"²⁶ and also makes clear that "... the Commission's indecency definition is applicable to material that describes or depicts sexual organs, which was the subject of these broadcasts."²⁷ The Bureau cited, and the record includes, descriptions of the male genitalia sufficient to warrant further scrutiny to determine whether or not this material was patently offensive as measured by contemporary community standards for the broadcast medium.²⁸

²⁰ In *FCC v. Pacifica Foundation*, the Court quoted the Commission's definition of indecency with apparent approval. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). In addition, the D.C. Circuit Court of Appeals upheld the definition against constitutional challenges. *Action for Children's Television v. FCC*, 852 F.2d 1332, 1339 (D.C. Cir. 1988) ("*ACT I*"); *Action for Children's Television v. FCC*, 932 F.2d 1504, 1508 (D.C. Cir. 1991), *cert denied*, 112 S. Ct. 1282 (1992) ("*ACT II*"); *Action for Children's Television v. FCC*, 58 F.3d 654, 657 (D.C. Cir. 1995), *cert denied*, 116 S. Ct. 701 (1996) ("*ACT III*").

²¹ *ACT I*, 852 F. 2d 1332.

²² *ACT III*, 58 F.3d 654.

²³ Entercom *NAL* Response at 3.

²⁴ Application for Review at 3-5.

²⁵ Attachment at 10, 18.

²⁶ *Entercom Seattle License, LLC*, 17 FCC Rcd at 18349, ¶ 8.

²⁷ *Id.* at 17 FCC Rcd 18350, ¶ 12.

²⁸ *Entercom Seattle License, LLC*, 17 FCC Rcd at 1675, ¶ 9. Attachment at 10-11, 16, 18-19.

11. In the assessment of whether broadcast material is patently offensive, “the *full context* in which the material appeared is critically important.”²⁹ Three principal factors are significant to this contextual analysis: (1) the 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.³⁰ In examining these three factors, it is necessary to 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.”³¹ In particular cases, one or two of the factors may outweigh the others, either rendering the broadcast material patently offensive and consequently indecent,³² or, alternatively, removing the broadcast material from the realm of indecency.³³ In this case, we agree with the Bureau’s examination of all three factors and its determination that each weighs in favor of a finding that the broadcast material was patently offensive. Consequently, we reject Entercom’s assertion that the *Forfeiture Order* establishes that mere “references” to male genitalia are *per se* indecent.³⁴

12. First, we find no merit to Entercom’s contention that the Bureau failed to provide a meaningful analysis of its finding that the material at issue is sufficiently graphic and explicit. The Bureau cited the broadcasts’ discussion as to the capacity of the male genitalia to pull objects, as well as references to erection, to relative penis size and to the anatomical features of the male genitalia.³⁵ Entercom also argues that the Bureau failed to address an unpublished staff letter, which ruled that certain material broadcast over Station WMCA(AM), New York, New York, was not indecent.³⁶ We note that the WMCA decision was an unappealed staff decision. The Commission is not bound by, nor does it necessarily agree with, Bureau precedent.³⁷

13. The Bureau determined, under the second factor, that the discussion of the male genitalia was not fleeting or isolated. We emphasize, however, that “[t]he mere fact that specific words or phrases

²⁹ *Indecency Policy Statement*, 16 FCC Rcd at 8002, ¶ 9 (emphasis in original).

³⁰ *Id.* at 8002-15, ¶¶ 8-23.

³¹ *Id.* at 8003, ¶ 10.

³² *Id.* at 8009, ¶ 19 (citing *Tempe Radio, Inc (KUPD-FM)*, 12 FCC Rcd 21828 (MMB 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))*, 12 FCC Rcd 4147 (MMB 1997) (forfeiture paid) (same).

³³ *Id.* 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”).

³⁴ Application for Review at 4-5.

³⁵ See *Entercom Seattle License, LLC*, 17 FCC Rcd at 1674, ¶ 9.

³⁶ Entercom cites *Letter from Chief, Complaints and Investigations Branch, Enforcement Division, Mass Media Bureau* (Oct. 26, 1989).

³⁷ See, e.g., *Complaints Against Various Broadcast Licensees Regarding Their Airing of The “Golden Globe Awards” Program*, Memorandum Opinion and Order, 19 FCC Rcd 4975 (2004) (petitions for reconsideration pending) (Commission reverses Enforcement Bureau’s initial finding that isolated use of the “f-word” by a performer is not actionably indecent).

are not sustained or repeated does not mandate a finding that material that is otherwise patently offensive to the broadcast medium is not indecent.”³⁸ Although Entercom argues that the complained-of material includes “numerous traffic reports, celebrity news items, concert updates and other news related breaks[...that] ultimately diluted the segments’ overall focus on the pulling capacity of the penis,”³⁹ the fact that the broadcasts repeatedly returned to the topic demonstrates a persistent focus on the male sexual organ and removes any doubt that this material was patently offensive.

14. Under the third factor, Entercom also argues that, because the material at issue contains “no discussion at all to the sexual or excretory functions of the penis or testicles,” it was not used to pander, titillate or shock.⁴⁰ Entercom claims that precedent cited by the Bureau in the *Forfeiture Order* can be distinguished because the material found to be indecent included discussion of sexual activities, whereas the material broadcast over KNDD(FM) does not.⁴¹ However, as noted above, the material that was broadcast over KNDD(FM) included discussion of the sexual function of the male genitalia.⁴² Moreover, material that describes or depicts sexual organs, in context, may be patently offensive within the meaning of the Commission’s indecency definition regardless of whether that material also includes description or depiction of sexual activity.⁴³

15. In addition, Entercom argues that the Bureau impermissibly drew a distinction between the material broadcast over KNDD(FM) and material which is of greater “serious” merit.⁴⁴ However, the Bureau’s *Forfeiture Order* pointed to other material that was clinical in nature or part of a legitimate news story in order to distinguish the material broadcast over KNDD(FM) from other material that, in context, was not patently offensive because the manner and purpose of the presentation was not pandering or used

³⁸ *Id.* at ¶ 12.

³⁹ Application for Review at 8.

⁴⁰ *Id.* at 8-9.

⁴¹ Entercom cites the following cases: *Capstar TX Limited Partnership (KXTQ(FM))*, 15 FCC Rcd 19615, 19619 (EB 2000)(segment with discussion of deformities in male genitals). *Independent Group Limited Partnership (WWWE(AM))*, 6 FCC Rcd, 3711, 3712 (MMB 1990), which included a humorous discussion of a man’s “birth defect” -- a penis on his head, as well as discussion of masturbation, oral sex, copulation, and urination; *Goodrich Broadcasting, Inc. (WVIC-FM)*, 6 FCC Rcd 2178, *aff’d* 6 FCC Rcd 7484 (MMB 1991) which involved vulgar, repeated and gratuitous references to sexual organs and activities in the context of humorous discussions concerning an allegedly true incident in which a man’s testicle was trapped in the drain of a hot tub; *KFI, Inc.(KFI(AM))*, 6 FCC Rcd 3699, 3700 (MMB 1989)(discussion of the size of the genitals of male celebrities and political leaders, including commentary on the size of erect genitals relative to those that are not erect as well as on how size affects sexual performance; *The Rusk Corporation (KLOL(FM))*, 5 FCC Rcd 6332, 6334-35 (MMB 1990), which included an on-air discussion concerning shaving the female genitalia and on-air references to “Aunt Vagina.” This precedent is cited in the *Forfeiture Order*. 17 FCC Rcd at 18350, n. 11.

⁴² Attachment at 10, 18.

⁴³ See *Indecency Policy Statement*, 16 FCC Rcd at 8004, citing *Infinity Broadcasting of Pennsylvania (WYSP(FM))*, 2 FCC Rcd 2705 (1987) (subsequent history omitted) (finding vulgar and lewd references to male genitals, including discussion of use of testicles as Bocci balls, met the indecency definition).

⁴⁴ Application for Review at 9-11.

to titillate or shock.⁴⁵ We agree with the Bureau's conclusion that the complained-of material, in context, is similar to other material that has been found to be patently offensive and thus find no error in the Bureau's application of the factors used to determine patent offensiveness.⁴⁶

16. Entercom also argues that the Commission's indecency standard is facially unconstitutional, citing *Reno v. ACLU*⁴⁷ and *Ashcroft v. Free Speech Coalition*.⁴⁸ The constitutional validity of the Commission's indecency standard has been repeatedly affirmed by courts.⁴⁹ As we have previously indicated, neither *Reno* nor *Ashcroft* alters this conclusion.⁵⁰

IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 (g) of the Commission's rules,⁵¹ that the Application for Review filed on October 28, 2002 by Entercom Seattle License, LLC is hereby DENIED.

18. 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 Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN)(0003245719) referenced above and also must note the NAL/Acct. No. (200232080005) referenced above. If the forfeiture is not paid within 30 days of the release of this Memorandum Opinion and Order, the case may be referred to the Department of Justice for collection

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street,

⁴⁵ See *Indecency Policy Statement*, 16 FCC Rcd at 8010-13. See also, *Entercom Seattle License, LLC*, 17 FCC Rcd at 18350, ¶ 10.

⁴⁶ *Indecency Policy Statement*, 16 FCC Rcd at 8002-15. See, e.g., *Capstar TX Limited Partnership* (KTXQ(FM)), Notice of Apparent Liability for Monetary Forfeiture, 15 FCC Rcd 19615, 19619 (EB 2000)(forfeiture paid); *Independent Group Limited Partnership (WWWE(AM))*, Notice of Apparent Liability for Monetary Forfeiture, 6 FCC Rcd, 3711, 3712 (MMB 1990); *KFI, Inc. (KFI(AM))*, Notice of Apparent Liability for Monetary Forfeiture, 6 FCC Rcd 3699, 3700 (MMB 1989); *Goodrich Broadcasting, Inc. (WVIC-FM)*, Notice of Apparent Liability for Monetary Forfeiture, 6 FCC Rcd 2178, Apparent Liability for Forfeiture, Forfeiture Order, 6 FCC Rcd 7484 (MMB 1991); *The Rusk Corporation (KLOL(FM))*, Notice of Apparent Liability for Monetary Forfeiture, 5 FCC Rcd 6332, 6334-35 (MMB 1990).

⁴⁷ 521 U.S. 844 (1997).

⁴⁸ 122 S. Ct. 1389 (2002).

⁴⁹ See, e.g., *FCC v. Pacifica*, 438 U.S. 726; *ACT III*, 58 F.3d 654; *ACT I*, 852 F.2d 1332.

⁵⁰ See *Infinity Broadcasting Operations, Inc. (WKRK-FM)*, Apparent Liability for Forfeiture, Forfeiture Order, 18 FCC Rcd 26360, ¶ 5 and n.1 (2003), *recon. denied*, Memorandum Opinion and Order 19 FCC Rcd 4216 (2004) (petition for reconsideration pending).

⁵¹ 47 C.F.R. § 1.115(g).

S.W., Washington, D.C. 20554.⁵²

20. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to John C. Donlevie, Executive Vice-President, Entercom Seattle License, LLC, 401 City Avenue, Suite 409, Bala Cynwyd, Pennsylvania, 19004 and to Entercom's counsel, Brian M. Madden, Esq., Leventhal, Senter & Lerman P.L.L.C., 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵² See 47 C.F.R. § 1.1914.

ATTACHMENT

Radio Station: **KNDD(FM), Seattle Washington**
Dates/Time of Broadcasts: May 30, 2001 and June 1, 2001, between 6 a.m. and 10 p.m.
Material Broadcast: The Andy Savage Show

May 30, 2001

AS: Andy Savage
J: Jody
B: Bob, the Producer
MV: Caller

AS: That was the Red Hot Chili Peppers, 107.7, The End. It's 7:16, I'm Andy Savage, along with Jody, Queen of Normandy and Bob the Producer, who's filling in for Steve the Producer.

B: Woop, Woop.

AS: 50 going to 70 for the high today. It's going to be sunny

J: Was that your wacky producer noise right there? Woop, woop, woop, woop, woop!

AS: Bob, I don't think you should be saying anything 'cuz you lost on "Beat the Producer.

B: Alright, I'm Sorry, I'll be quiet.

AS: Meanwhile in India when they protest against the federal government, you know they don't blow things up or anything, they pull Jeeps with their penises. A uh, Naga Sathu naked holy man was demonstrating again the government harassment of naked holy men and to make sure that they heard him he tied a rope around his penis and pulled a Jeep.

J: He should have just used a megaphone like everyone else. What the Indian government has a big problem with naked holy men? Are they're running around crazy like?

AS: I guess so, I guess it's against the law. But he, I guess, pulled a Jeep to prove his point. I'm sure it was in neutral. I hope it was in neutral.

J: I can imagine it was in neutral. I'm sure it was one of those like Suzuki Samurais too, not a big Hummer.

AS: Holy crap Nadi, he just pulled a Jeep and it was in park - he did it with his penis!

- J:** You always hear about guys lifting stuff and pulling stuff with things attached to their penises. I think that is incredible. Could you pull something with your penis?
- AS:** Me?
- J:** Like if I was to tie, let's say um, what if it was something small like.
- AS:** I'd pull my penis right off!
- J:** If it was something small like
- AS:** Like an acorn, yeah I can drag that around.
- J:** Like my orange. Let's say I tied a rope around my orange and then tied the other end to your penis, and you could pull that?
- AS:** Of course I could drag that.
- J:** How about a 13 inch TV? Like at what point do you think.
- AS:** If I think, I think if I was fully erect I could pull a 13 inch TV.
- J:** So you would have to be erect?
- AS:** Yes.
- J:** Bob?
- AS:** Not for an orange though.
- J:** Bob, could you pull a 13 inch TV?
- B:** No. I'm not going heavier than ten pounds. I'm not. That's about my cutoff, about ten pounds-erect, no erect. Ten pounds.
- J:** Well what do you think the problem would be, that you'd pull your back out or you'd actually pull your penis off?
- B:** Perhaps.
- AS:** No, I don't think you'd pull your penis off with a TV that small.
- J:** Cause if these guys can drag stuff, why can't you?
- AS:** We're talking about a Jeep. Why, I don't know I've never tried nor do I care to try

- J:** I want to see somebody pull something with their penis right in front of me live, here in the studio.
- B:** You could do a lot of damage.
- J:** Really.
- B:** You could tear some tissue. You don't even want to joke around with....
- AS:** Yeah. It's in there in some sort of socket I'm sure. What if it just pops right out. That would suck.
- J:** Well it's like saying, you know, what if we're arm wrestling and my arm pops out of the socket.
- AS:** That's true.
- J:** Things are attached with muscles and tendons. Your penis is attached with muscles and tendons.
- AS:** No it's a tissue that fills with blood, that's all,
- J:** Well it's attached.
- AS:** Well yeah, it's just skin though. It's not like it's an attached bone.
- J:** Well if Naboo whatever can pull a Jeep with his penis....
- AS:** Naga Sathu.
- J:** Do you think that he has some super penis?
- AS:** No.
- J:** And yours is not so super?
- B:** He's been practicing for a long ass time. He didn't first start with a Jeep.
- J:** What about those guys that ?
- AS:** Mr. Lifto from the Jim Rose Circus.
- J:** He lifts stuff.
- AS:** He lifts stuff with his penis and he lifts like concrete blocks doesn't he?
- B:** But he started small.

- J:** So you gotta start small and practice and build up.
- AS:** I'm sure there's a training regime just, like in any sport.
- J:** Really?
- AS:** You don't start out with a shot-put and throw it, you know, fifty you know
- J:** Yards.
- AS:** Right, whatever. You gotta start small.
- J:** With like an acorn for instance.
- AS:** I don't know. How do you learn how to, I guess it's like anything. You practice, you get better. You pull things with your penis. You go from an orange to a 13 inch TV to maybe a motorcycle.
- J:** Can I, can I put something out here, and if you don't like what I'm about to say then go ahead and just say Jody shut up. We have so many concert tickets right now, just flying out of all our pockets - I say tomorrow morning if someone is willing to come in here and let me tie something onto their penis and if they can pull it like five feet.... Maybe something like five pounds, if they can pull it five feet here in the studio, we'll give them concert tickets. Their choice.
- AS:** Well, I'll go along with that. But I mean I think it should be a 'bid' thing. For example, Joe can call up and say yeah I'll pull an orange for you five feet, big deal. Who wants to see that?
- J:** But if someone else can pull a 13 inch TV?
- AS:** Right. Somebody who's gonna do something kind of amazing, yeah we'd love to have you.
- J:** So their choice Godsmack & Deftones tickets or
- AS:** Three Doors Down.
- J:** Three Doors Down with Tantric and Lifehouse.
- AS:** Yes.
- J:** Their choice.
- B:** We're gonna see an amazing spectacle of penis pulling.
- J:** I wanna see some penis pulling.

B: I guarantee, I guarantee there's people out there that can pull a lot of stuff with their penis and we're gonna hear from them.

AS: Do you think there's a lot of people out there that spend a lot of time practicing? I mean if they did, wouldn't we hear about them in the news or like in some show, like in the Jim Rose Circus?

J: You know certain people collect stamps? Other people pull stuff with their penis. It's whatever your hobby is.

AS: Well this guy did a freakin' Jeep. I don't think anybody is gonna do that well.

J: That's incredible.

AS: Yes it is. How about a Volkswagen?

J: Some sort of smallish Cabriolet type thing?

AS: A little lighter, yeah?

J: No, we don't need something like that. I'm sayin' like, you know, some sort of studio equipment that weighs like ten pounds.

AS: Let's say, for example, we get 20 people to call in and say yes, I can pull stuff with my penis. Why don't we get all 20 in to pull the Volkswagen?

J: Wow.

AS: That'll make the news.

J: That'd be something.

AS: Alright. Well, check it out. 421-107. It's 7:21. Coming up we're gonna give you a chance to win some Godsmack/Deftones tickets in a different sort of way and we're still waiting for the Stone Temple Pilots "Days of the Week."

J: Yeah, (clapping) whew.

AS: It should be here any minute now.

[Recorded Voice Over: 107.7, The End, Music News You Can Use -- with Steve the Producer. Now.]

J: If you enjoyed Weezer's new "Green" album you waited four years for, it looks like you're not going through that again.

AS: You have it, we have it.

J: We have what?

AS: We have the new Stone Temple Pilots.

J: Oh nice.

AS: Alright, do that.

J: Alright, I'll do this real quick.

J: Uh, Weezer used one day off to go into the studio and start recording new songs already. They've already laid down demos for twelve new songs about sixteen minutes of music. I'd imagine in case you are wondering, among the new songs one is called "American Gigolo," there is an instrumental called "Burnt Jamb" that is, j-a-m-b like a doorjamb because they are clever. Mikey Walsh the bassist says that they do want to put out a new album every year just like the bands in the sixties use to and that waiting four years was obviously a bad idea.

Again Endless Summer Concert #6 are down with Tantric and Lifehouse. Wednesday July 11, Pickeria, tickets on sale Friday 4:00 p.m. at Ticketmaster \$27.50. Also Endless Summer Concert #7, Godsmack and Deftones Friday, July 13 at the Gorge. Tickets go on sale 11 a.m. Ticketmaster, \$35.00. Of course, listen all week to win tickets before you can buy them here on the morning show and inside of Endmail at 107.7.com for extra chances to win.

AS: Yeah.

J: That's it.

AS: Traffic.

J: I-5 north bound heavy at south bound 88th street and then messy from Oliver Place to Seattle Bridge. I-5 south bound congested from I-96 southwest to northeast 185th street and shoreline continues heavily at north gate also sluggish approaching the ship Canal Bridge. I-5 express lanes are heavy through the Convention Center. 405 north bound congested from the Rednest Curve to Colecreek Parkway. 405 South bound slow from 532 Northeast 85th Street and then heavy at Northeast 44th south. Stop and go through the Red Nest Curve and then messy from 167 to the I-5 Interchange at South Center. 520 East Bound heavy stop and go throughout the arboretum and that's your End traffic.

AS: Hmm.

J: You ready over there?

AS: Ah, yeah, I'm, I'm just thinking to myself, you know I bet if we had twenty guys pulling on a Volkswagon with their penises Q13 would cover it.

J: You think?

AS: Yes, I think they will cover it.

J: But we don't, do we have enough concert tickets for twenty guys?

B: Oh yeah.

AS: I'll buy them.

J: Yeah?

AS: Yes, alright, Brad.

MV: Yeah, I gotta question on this whole penis thing.

AS: Yeah.

MV: Well, dude seriously, how could you possibly attach it? I mean are we talking duct tape? Are we talking

J: No. No.

AS: Good question.

J: No, no. I'm thinking that we would tie some sort of string-like fabric around ...

AS: No. You tie string and something that heavy that's gonna like rip the skin.

MV: Yeah. Jody I love you but you gotta understand its not built quite like that.

J: No, I've seen penises once or twice before. I can imagine that maybe bungee cord?

AS: What?

AS: Use one of hair scrunchies or like a wristband or something and double-up and then tie some string to that.

J: Well how?

MV: Yeah, well, I don't know.

- AS:** Hair scrunchies!
- MV:** I'm all for the contest and, more power to you, but that poor guy. If we're talking like kite strings, god help him.
- AS:** No, right. That would like sever the head right off, especially for the circumcised nadoos.
- J:** Oh, we're not doing it around the head, we're doing it closer to the bottom of the shaft, you gotta get your whole, I mean weights and levers.
- MV:** Yeah, but there's not like knobs down there. I mean what are you gonna
- AS:** There's not really anything to hold on to, it would slip all the way to the mushroom, if you will.
- MV:** Exactly.
- J:** There's not knobs. Are you sure?
- AS:** Yes.
- MV:** Last time I checked. No, that's what I was curious about. I think it's a great idea, but man, it's gonna have to be tape or something.
- AS:** Well you know Brad this is all for not if you don't actually know how to pull anything with your penis or have never practiced it, right.
- J:** I'm gonna have Bob, the producer, pull down his pants real quick and we're gonna figure out some sort way to tie stuff on it.
- AS:** Could you get us a hair crunchie please?
- J:** Scrunchie.
- AS:** Scrunchie.
- J:** We gotta trial and error here - is the way to attach things to your penis.
- AS:** First we'll have Bob try it. Thank you very much and that's a fine point, you don't want to use like flimsy bad string.
- MV:** Absolutely not. It's bad, bad news.
- J:** Nobody's duct taping anything to anybody's penis, believe you me.

AS: Alright. We'll investigate it, we'll look into it and see how we can actually do it. Alright, coming up next here check this out, this is ah, I'm not going to play the whole thing or anything, just a piece of the new Stone Temple Pilots called "Days of the Week". **[Plays two lines of music]**. Alright that's next. The whole thing on the End.

[Lengthy Commercial Break]

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June 1, 2001

AS: Andy Savage
J: Jody
B: the Producer
C: Carl
K: Kevin
MV: Male voice

AS: Alright, you ready for some music news? It might take Carl a little while to get the harness on.

[Recorded Voice Over: 107.7, The End, Music News You Can Use -- with Steve the Producer. Now.]

J: So, if you've been watching VH-1's "Most Shocking Moments Of Rock. Listen to this. Mark McGrath, he's from Sugar Ray, the front man, he's hosting it, he's got a shocking past himself. If you've ever seen *Backstage Sluts, 1, 11 and 111*. He was in that, doing some shocking stuff. He agreed to do the show as long as the network downplayed his involvement in that series of porn films. He's in it, Fred Durst is in it, and they're doing very nasty things with groupies. The series director, porn star Matt Zane shot back at Mark McGrath and he said that it was Mark's decision to be in the film and even signed a release form. To have a fellow artist censor you for your personal reasons is the lowest of low acts that on can commit. So Matt Zane, pom star, firing back at Mark McGrath. So basically Mark was just like sure I'll host it if you pretend like you never saw me in *Backstage Sluts*.

Blink 182 news. Drummer Travis Barker has a big problem. He's been telling people that a deranged stalker has been after him, broke into his house a number of times, left letters in each room that read "I'm watching you, lock your doors." And then the next day, letters again, "P.S., lock your doors." Travis, obviously freaked out, says since the incident occurred he invested in two 140-pound Rottweillers and now carries a gun to protect his family. He says it's not really him that he's worried about, if it comes down it he can kick the guy's ass. He's worried about his girlfriend. Well you know, if it comes down to him or this weird guy, he's like you know I'll just beat him up. But if my girlfriend's in the house while I'm on tour, that's what I'm worried about. He says now if anyone comes into my house, they're gonna be sorry.

Rehab. Singers Brooks and Danny Boone say they've always felt like oddballs in their native Atlanta because they're white rappers. Hmm, I wonder why they would feel weird about that? They say we're the only ones that I know of that are rapping. They say that people usually look at white rappers as a novelty act. But, "To me, rhyming is poetry and that is dateless."

- J:** If I can get some of these penis guys out of the way here, I have some. .
- AS:** Wait a minute. I hate to interrupt, but we have a problem here. Apparently crazy Carl can't get aroused enough to get the harness on.
- J:** Oh really.
- AS:** Yes.
- C:** Actually, the harness that actually goes around the scrotum is a little tight and I'm worried about....
- AS:** Your testicles are too large.
- C:** We can't snap it through.
- J:** You're supposed to pull them through there crazy Carl. It's like a belt.
- AS:** Kevin, could you go over and help him?
- J:** Oh God.
- K:** That's not in my job description.
- AS:** Well Carl do what you gotta do. Would anybody else like to try? I mean if you can't get the harness on we can't pull the car.
- J:** I think Joe the modulator should step up and try.
- AS:** Yeah virgin.
- J:** While he's doing this, let me just mention this one thing. If you sign up for Endmail at 1077theend.com for your exclusive invitation to another penny pincher concert with Rehab. It's Tuesday, June 12th at Graceland. It's just a buck seven with your printed Endmail invite. For Endmail listeners only. Of course, you cannot get in unless you are on the Endmail list. Just another reason to sign up for Endmail at 1077theend.com.
- AS:** And get there early or you still may not get in 'cause it's kind of a first come first serve.

- J:** Not kind of.
- AS:** There's a fire code you know.
- J:** It is.
- AS:** Here's traffic.
- J:** I-5 Southbound heavy to just before the Orange County line. 405 Northbound just heavy north of northeast 44th. 405 Southbound heavy just South of Southeast 124th. And 167 Northbound heavy off 15th Street to the Green River. And heavy approaching the 405 interchange, and that's in traffic.
- AS:** Alright. Kevin from Love Zone, these harnesses, are they specifically made for larger men or what is the deal here? I mean, how big do you have to be to get into this harness?
- K:** I believe that they're kind of a one size fits all.
- AS:** Yeah? So you can be very small and it doesn't matter? I'm not trying to make fun of anybody here. But, I mean, maybe Carl has a half inch whatever and can't get it thru the harness.
- MV:** I think Carl wasn't smart enough to it button and so he's making up a story about "Oh, I'm too big to put it on."
- J:** Joel's making fun of crazy Carl. I feel things tensing up in the studio. Joel, he's crazy. You never poke fun at a crazy man.
- AS:** Alright. All you guys that are here, could you please grab a harness from Kevin.
- J:** Yeah.
- AS:** And try and put it on.
- J:** Yeah.
- AS:** And then we'll tie a piece of rope to it. And then we'll yank you around like dogs .

[Lengthy Commercial Break]

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

Re: Entercom Seattle License, LLC, Licensee of Station KNDD(FM), Seattle, Washington, Memorandum Opinion and Order

I dissent from today's decision upholding an Enforcement Bureau decision that I believe is inadequate. In response to complaints about two separate broadcasts on KNDD, the Enforcement Bureau proposed a forfeiture of \$7000 for each incident of airing indecent material. In a subsequent order, the Bureau reduced the fine for each broadcast by \$1000. I am concerned that this fine for what the majority concludes is a violation of the indecency statute will be easily absorbed as a "cost of doing business." I am further troubled that the Bureau, rather than the Commissioners, made the initial determination. Our enforcement actions should send a message that licensees cannot ignore their public interest responsibilities. The Commission's action today fails to do so.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Entercom Seattle License, LLC, Licensee of Station KNDD(FM), Seattle, WA, Memorandum Opinion and Order

Consistent with my past statements, I believe we should be fining broadcasters on a “per utterance” basis.¹

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”).