

## APPENDIX B

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

LETTER  
June 18, 1990

Released: June 26, 1990

## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Gregory P. Barber, President  
Narragansett Broadcasting Company of California, Inc.  
Licensee, Radio Station KSJO(FM)  
1420 Koll Circle  
San Jose, CA 95112

Dear Mr. Barber:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended.

On August 24, 1989, we asked for your comments concerning complaints received by the Commission alleging that portions of the "Perry Stone Show" (transcripts of which are attached) broadcast by KSJO(FM), San Jose, CA, contained indecent material. The broadcasts at issue occurred from 7:00 to 8:00 a.m. on October 19, 20, 25, 27, 28 and November 10; from 8:00 to 9:00 a.m. on November 4; and from 9:00 to 10:00 a.m. on October 31 and November 10 and 14, 1988.

Your September 21, 1989, response to our letter of inquiry concerning these broadcasts advises, for background purposes, that you discharged Perry Stone from KSJO on March 14, 1989, and immediately put into practice your decision to cease broadcasting the kind of language and "shock" humor that generated the complaints against Perry Stone's program. You also advise that you met with some of the complainants in May and June 1989 and issued a news release and a public apology with respect to the Perry Stone Show prior to any Commission inquiry regarding the matter.

You describe KSJO management's efforts, prior to Perry Stone's dismissal, to comply with Commission rulings regarding indecency, and state that management first became aware of the particular broadcasts here at issue when complainants submitted transcripts to the station in November 1988. You concede that the broadcasts in question were "tasteless" and may have been "offensive to many listeners," but in view of strong listener support for the Perry Stone Show and your uncertainty about how to apply Commission standards, you did not suspend the programming until you had determined that Perry Stone was "insufficiently responsive to program direction and could not be persuaded to satisfactorily conform to KSJO guidelines." Citing the "largely unsettled" state of the law on actionable indecency, you assert an inability, continuing into the present, to determine whether the particular broadcasts, especially those involving double entendre, violated the Commission's articulated indecency stan-

dards. In addition, based on your belief that "parents would normally be in a position to supervise their children's radio listening" before 9:00 a.m., you question whether the seven broadcasts occurring before that hour are actionable even if they were indecent.

Section 1464 of Title 18 of the United States Code prohibits utterances of "any obscene, indecent or profane language by means of radio communication." Pursuant to Sections 312(a)(6) and 503(b)(1)(D) of the Communications Act, the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. § 1464. The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court upheld the Commission's authority to regulate indecent broadcasts and rejected the argument that the Commission's definition, essentially unchanged from the one used today, was unconstitutionally vague. The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict, using the same definition of indecency, the broadcast of indecent material when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988) ("*ACT*").

We find that the subject broadcasts all fit squarely within the definition of indecency quoted above. Even in the cases of double entendre, not only was the language understandable and clearly capable of a specific sexual or excretory meaning but, because of the context, the sexual and excretory import was inescapable. See *Infinity Broadcasting Corp. of Pa.*, 2 FCC Rcd 2705 (1987), *recon.*, *Infinity Broadcasting Corp.*, 3 FCC Rcd 930 (1987), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC, supra*. As the broadcasts occurred during daytime hours, they are legally actionable. Indeed, in *ACT*, the Commission's application of its indecency standard to broadcasts aired between 6:00 and 10:00 a.m. was specifically upheld regarding the broadcast at issue in *Infinity, supra*. With respect to KSJO's subsequent efforts to avoid the broadcast of indecent material, the Commission generally considers prompt and effective remedial action by a licensee as mitigative in determining the appropriate sanction level in an enforcement proceeding. In this case, however, we do not believe that the licensee's actions, while perhaps ultimately effective, were such as should affect the sanctions imposed for the broadcasts cited in this letter. Your letter states, for example, that the specific incident that triggered Stone's suspension was unrelated to the Commission's indecency policies.

Thus, it appears that on the above-referenced dates in October and November 1988, at the times stated, Station KSJO(FM) violated 18 U.S.C. § 1464 by airing indecent programming at times when there was a reasonable risk that children may have been in the audience. Accordingly, pursuant to Section 503(b) of the Communications Act, Narragansett Broadcasting Company of California, Inc., is hereby advised of its apparent liability for a forfeiture of twenty thousand dollars (\$20,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on June 7, 1990.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy  
Secretary

Attachments

cc: Peter D. O'Connell, Esq.

Radio Station KSJO-FM, San Jose, CA  
The Perry Stone Show 6:00 to 10:00 a.m.  
Tape #1 Side "A"

1. 10/25/88 7:00 - 8:00 a.m.

CA: Caller

PS: Perry Stone

CA Hello

PS Sophie, baby.

CA What do you want?

PS Sophie baby, I love 'ya. You know how much I love you?

CA I love you too, Perry.

PS You know how much I appreciate you?

CA What do you want?

PS I love you. I'd love to, I'd love to lick the matzo balls right off your butt. As a matter of fact, I'd put it right there in the middle.

CA Perry, you didn't get enough sleep last night. That's why you're talking like this.

PS I'd like to have a smorgasbord in your butt. I'd like to have matzos in there with borsch, everything. I'd just have a buffet.

CA You wouldn't find your way out, darling.

PS I know that.

2. 10/20/88 7:00 - 8:00 a.m.

Song: To the tune of the "Beverly Hillbillies" theme.

Come a listen to story about a man named Boas, a poor politician that barely kept his winky fed, then one day he's poking a chick and up from his pants

came a bubbling crude. Winky oil. Honey pot. Jail bait. Well, the first thing you know, old Roger's doing jigs. Some kin folks said, "Rog, move away from there." Jail bait is the place where I really want to be. So he loaded up his winky and he did it with Beverly. Big breasts. Only 15 years old. Going to jail. Well, now it's time to say goodbye to Boas and his friends and they would like to thank you folks for kindly dropping in. You're all invited back to this jail serenity and hope you bring some chick called Dorothy.

Radio Station KSJO-FM, San Jose, CA  
Tape #1 Side "B"

3. 11/4/88 8:00 - 9:00 a.m.  
11/10/88 9:00 -10:00 a.m.

Song: Sore Pussy

My pussy cat was scratching out on the back door, scratched so long, poor pussy got sore. Sore pussy, sore, pussy, just a friendly little cat. Friendly little cat. My pussy cat was sitting out on the front step, sat so long poor pussy got wet. Wet pussy, sore, wet, pussy, just a friendly little cat. Friendly little cat. My pussy cat was playing out on the back lot, played so long, poor pussy got hot. Hot pussy, sore, wet, hot, pussy, just a friendly little cat. Friendly little cat. My pussy cat was rocking in the rocking chair, rocked so long he lost his hair, bald pussy, sore, wet, hot, bald, pussy, just a friendly little cat. Friendly little cat. My neighbor and I, out at the clothes line, I said to my neighbor, won't you look at mine, my pussy, sore, wet, hot, bald, pussy, just a friendly little cat. Friendly little cat. My neighbor sold my kitty but I did see, I said to my neighbor set my pussy free. Free pussy, sore, wet, hot, bald, free, pussy, just a friendly little cat. Friendly little cat. Here kitty, kitty, kitty, kitty, kitty, ahhh, nice pussy.

4. 11/10/88 7:00 - 8:00 and 9:00 -10:00 a.m.  
11/14/88 9:00 - 10:00 a.m.

PS All right, we got one contestant hanging on the line and play my three bongos, if you want. If you want to participate, 408-575-1800 from ninety-two three, KSJO.

Music Coming soon, S and M Pictures presents, Pecker. Pecker, it's hiding in the bush. Pecker, he's hiding in your pants, waiting to come out. (music) Listen to me, Chief, it's Pecker, it's coming. Pecker is getting bigger all the time and once it becomes big, it's going to be hard to stop it. Stop spanking the monkey, this is serious. This Pecker, he's dangerous. Arghh. Woody Woodpecker is back but this time he's really peeved. He's a peeved Pecker who had a piper pick. No, Pecker is coming. Whew. God, I'm lonely. Hey, what's that crawling up my pants? What is that? (music) Oh. Oh. (unintelligible) Oh, I just simply love cleansing myself. Oh, Jesus this is beautiful, au naturel, oh, I think I've dropped the

soap. Let me bend over here. What's that? Something feels strange on my back. What is that? (music) Oh. Oh. This Pecker is long and hard and waiting to pounce from the bush. This weekend, check it out.

Radio Station KSJO-FM, San Jose, CA

5. 10 27 88 7:00 - 8:00 a.m.

PS Contestant number two, you're on the air. Identify yourself.

CA I'm Eric.

PS Yes.

CA From Campbell.

PS Yes, Eric.

CA You know what relative humidity is?

PS Relative humidity? What?

CA It's the sweat running down your sister's back when you're doing her doggie style.

PS Ohhh.

6. 10 28 88 7:00 - 8:00 a.m.

PS Christian Blasey, the third. And classical music lovers, through this limited time offer, you can have the world's best loved classics performed by the original composers but with one exception, these true classics are performed in complete fellatio. You get Bach.

FV Ohh. Oh, yeah you're what I've been looking.

PS The immortal Chopin.

FV Oh. Oh. Oh. You like that baby, oh yeah.

PS Yes, these timeless classics are performed in true Dolby stereo with complete fellatio. You can surround your entire living room with fellatio movements. You and your family will lick their lips just waiting for fellatio. Order today and get a free Beethoven bib.

FV Oh, yeah, you really like that don't you baby.

Radio Station KSJO-FM, San Jose, CA

7. 10 31 88 9:00 - 10:00 a.m.

PS: Perry Stone

MV: Male Voice

FV: Female Voice

PS All right man. Thank you.

MV When you were born maybe your parents were just too lazy. Now that you're all grown up and you're a healthy American male you have to suffer the consequences.

FV Ohh, it's an uncircum sized one. Ohh, how gross.

MV Yes, over 65 million healthy American males suffer from uncircum sized ones. Unlike normal men, uncircum sized males have to constantly worry

about pulling back their foreskins every time they have to use it. Now, you don't have to worry again because Rodgo proudly presents the foreskin garage opener. It's a computer chip that fits snugly on the tip of your thing and included is a remote control that you keep in your pocket. You use it just like a garage opener. Open it up when you have to use your thing. (Mechanical sound effect) Watch the foreskin get pulled back in a comfortable, relaxed fashion. Now, you're ready for some serious pounding. (Metal hammer sound effect) So, never worry again about foreskin. Pick up Rodgo's new foreskin garage opener. You'll be glad you did.

MV Oh, wow. I think she's ready to do it. Hey, you ready to do it? Yeah, I think she's ready to do it. (Mechanical sound effect)

FV Yeah. Oh, yeah, you are.

MV Thank you foreskin garage door opener.

8. 10 19 88 7:00 - 8:00a.m.

MV Oh, this one is for you Trish. If I had a rooster and you had a donkey and your donkey ate the feet off my rooster, what would you have?

TB I don't know. What would I have?

CA Two feet of my cock in your ass. (music payoff) (laughter)

PS Of course, we're speaking about those farm animals again, just so we can clear it up.