

Dissenting Statement of Commissioner James H. Quello

In re: KRTH(FM), Los Angeles, CA Assignment of License

The pattern of egregious repeated violations of FCC indecency rules is so flagrantly aggravated by six new complaints against Infinity and Howard Stern that I am impelled to dissent to being a party to any action that would result in approving additional stations for Infinity. This is such a serious nationwide matter that I believe final disposition of the Infinity case should involve a thorough review by a full Commission. Once the issues raised in the Act III court case have been fully addressed, the full Commission should reconsider Infinity's repeated flaunting of the FCC indecency rules which could bear on the fitness of the licensee. It is apparent that previous FCC fines have not had a deterrent effect. Additional fines could merely be written off as a cost of doing business. In fact, no fines have been paid. Infinity is actively opposing the FCC fines exercising its legal rights. Approving transfer of additional stations to Infinity at this time might be misinterpreted as the FCC endorsing Infinity and Howard Stern actions.

The FCC has broad discretion in determining and implementing the public interest. I believe it is antithetical to the public interest to authorize additional stations for probable dissemination of gross indecency and possibly obscene broadcasts by Stern. It is unlikely and counter-intuitive to believe decent responsible people would find it in the public interest to support additional outlets for licensees propagating lewdness, incest, deviant behavior and demeaning women, blacks and gays. Certainly, First Amendment rights were not conferred by our Founding Fathers for repulsive indecent or possibly obscene purposes. It must surely be embarrassing for First Amendment absolutists to defend language quoted below, broadcast at times children and young people are in the audience.

In this case, substantial justice should ultimately prevail over any technical legalism that First Amendment purists may utilize. Substantial justice requires the FCC to serve overall public interest. Today there is an overwhelming public outcry against excessive, explicit, deviant sex and glamorized violence and brutality on the air. It requires responsible action by the FCC and by public service minded broadcasters.

I believe substantial and material questions of fact have been raised by the continued repeated egregious violations so as to question whether further grants of assignment applications to Infinity would serve the public interest, convenience and necessity.

The recent Act III decision confirmed that there is a compelling government interest in protecting children from indecency and in no way invalidated the FCC's indecency enforcement from 6 AM to 8 PM.

Below are sample excerpts from the six new offenses not part of the previous \$1,278,750 in fines, defined by the FCC Notice of Apparent Liability. I believe the excerpts contain language that describes sexual and excretory functions and organs in patently offensive terms. It is repulsive for me to cite such graphic examples as gays inserting live gerbils or Stern describing incestuous conduct of fathers with daughters and sons. I'm listing them to inform the public who may have been unimpressed by bland excerpts.

MV: Howard you know all about this.
HS: Oh, I know all about this stuff.
MV: Explain it to us.
HS: You shave a gerbil
MV: Okay.
HS: And the reason you shave them is so that he's slippery and you grease him up with vaseline.
MV: K-Y.
HS: You put him in a tube.
MV: Mm mm.
HS: Alright, the tube, I don't have to tell you where to insert that, this is a family program, at the other end of the tube you cut off the oxygen. Okay, you hold it, you clip it and you hold it. The gerbil has only one way to run now.
RQ: Oh.
HS: For oxygen if he wants to live and believe me they want to live. these gerbils. God knows why.
FV: I think I.
HS: Cause look where they're going.
FV: I don't want to live.
HS: I'd rather stay in the tube. So the gerbil runs for air and guess where the air is?
RQ: Oh.
HS: Okay?
FV: Little claws though.
HS: Excuse me?
FV: Doesn't he use his little claws?
HS: You can de-claw him before he goes in for the kill.
FV: (Unintelligible)
HS: He goes in there and when he's there, again lack of oxygen forces him to squirm around looking for oxygen. What do the gerbils say when the gays come walking into a pet store.
MV: Arf, arf, arf. (bark)

RQ: Becoming a mother takes a toll on a woman's whole body.
HS: Yeah, what about their horny husbands?
RQ: After a month nearly half of the women surveyed in this study they did, said that they had breast problems.
HS: Yeah.
RQ: Including discomfort, infection and nipple irritation.
HS: Yeah, my wife's got all that.
RQ: Other common problems at one month included fatigue, hemorrhoids, constipation, poor appetite and hot flashes.
HS: Appetite she hasn't lost.
RQ: (Laughs) Oh, stop it, after three months 40 per cent reported sexual problems such as painful intercourse.
HS: Are their hands alright after, how about some action that way.
RQ: Decreased desire.
HS: She, you know, she went out and bought condoms.
RQ: Or difficulty reaching orgasm.
HS: She went out and bought condoms, my wife, you know, I bought condoms, but I know she.
RQ: Nine out of five still have problems after delivery a year later.
HS: Yeah, how are their mouths?
RQ: Oh stop it.
HS: Okay, I mean, you know, I'm sensitive to all that stuff you just read. But how are their hands and mouths? Fine, right?
RQ: They're tired too.
HS: Oh, I see. Take a nap is right. Got a housekeeper, take a nap.
RQ: Oh, you're so understanding.
HS: Get your hand and mouth ready.

HS: I go over to him, let me see it. He starts pulling his pants off. Look at this. I thought he was going to show me, you know, his nuts. I don't know what he was going to show me. And then he pulls his underpants to the side and he shows me this whole, green, globby mess.

RQ: She's in love, yeah.
HS: So she had to sleep next to me, so she comes in at midnight, bangs open the door, I'm wide awake, I got no sleep last night.
RQ: Oh no.
HS: I'm up and she's snoring away in the bed. I went downstairs to masturbate.
AS: Oh get out.
HS: I did and you know, this is after making love to my wife.
RQ: Oh, you're a hero.

HS: I was wild yesterday. My little love juice catcher.
AS: I thought you said you were going to start masturbating?
AS: Oh, stop it.
HS: I didn't say start it. Where you been? But tell everyone, why was I in such a good mood yesterday? Did you figure it out?
AS: No.
HS: The Imus thing with his lung.
AS: Oh.
HS: Yeah, that was it. You know I love good news.
AS: (Laughs) You're terrible, you're terrible.
HS: And you were really hot for me too. I didn't need any foreplay. She was like screaming the whole time, I want foreplay, I want foreplay. I said you don't even need it, you're ready. I tested you, you're ready.
AS: Well, it would have been nice, a little foreplay.
HS: You didn't need it.
RQ: How long was the whole thing.
HS: About two minutes.
AS: (Laughs)
HS: Not even, but honey, did you have an orgasm?
AS: Not really.
HS: No?
AS: But it felt good.
HS: I had one.
AS: No, it was fun.
HS: It was good but then, I was afraid you'd charged up because I really didn't finish her off and I'm not, if I was with a new girl.
AS: Oh would you stop it.
HS: I would probably get into a whole bunch of stuff afterwards just to please her, but it's my wife, who cares? I had an orgasm.

HS: I'm going to home and drag you around the floor today with, by your hair. Treat you like a dish rag.
AS: I don't like that.
HS: Treat you like a whore.
AS: No, I don't like that.
HS: Tonight you're my whore, I treat you like a whore. See how horny she got?
RQ: You know it's always interesting with love talk and you chewing at the same time.
AS: I know.
HS: Hey, why not do two things at same time? I'm ambidextrous. You were on fire. You were on fire and you know where I'm talking about.
AS: I know but what are you eating?
HS: Something that tastes like you.
AS: Oh.

HS: Fish. I'm eating some tuna fish (Fish pronounced like "Fee-shh") My little tuna. You know what I do when you're not in bed next to me? I put a can of tuna next to me.

RQ: Oh Howard.

HS: That's a cute one. Alright, you did good.

AS: Oh God.

HS: Plus I didn't have to do any foreplay with two hours with that stupid vibrator, boy, I went right in for the kill. That's the kind of love I like.

AS: It would have nice with a little foreplay.

HS: Hey, who had time?

AS: Listen, it was very nice.

HS: Alright, you might get more, you might get more. Alright, thank you.

AS: Goodbye.

HS: Keep everything, keep everything moist and nude.

HS: But I used to take tissues out of that bathroom and I would tuck 'em in the pants and charge into my bed, do my business and then I had to get the contaminated tissues back into the toilet.

RQ: What's funny to me is they, you actually have your parents comment.

HS: Mm.

RQ: About that.

HS: Yeah, it's a good book. I wasn't like other kids, I didn't have a dog so I couldn't feed my ratty tissues to the dog.

RQ: Is that what they did?

HS: Sure, that's how you get rid of them. After you.

RQ: No wonder dog is man's best friend.

HS: After you do your rudeness, after you do your rudeness you just feed the dog the tissue.

RQ: Feed the tissue to the dog?

HS: Yeah, he loves it. It's protein.

RQ: That's sick. Nobody ever did that.

HS: That's how I got my dog pregnant.

MV: (Unintelligible) Only female dog.

HS: Yeah. Right.

RQ: Nobody ever did that.

HS: No, I knew a guy used to feed his dog used condoms. He didn't feed it to him, he'd just throw them off the side of the bed and.

RQ: An accidentally.

HS: Yeah.

RQ: The dog devoured.

HS: It could really hurt the dog cause it was hard for them to go to the bathroom.

MV: Sure, show up.

HS: Yeah, those condoms don't get destroyed in the bloodstream. They reappear.

RQ: See how good they are? They survive.
HS: They're strong.

HS: This is the one about incest? Daughter?
RQ: Let me hear that.
HS: I want to have sex with my daughter.
RQ: That's romantic.
HS: It's romantic too. It's a ballad to my daughter.
(Laughter) You're so cute in your jammies, I don't know what I'm saying, I know Jerry Lee Lewis is with his cousin but.
RQ: Daughters too close.
MV: (Unintelligible) Breakfast table in an otherwise empty room, beyond her.
HS: This is going to be a big hit this one.
MV: My only.
HS: This guy goose bumps.
MV: That are ever. (Unintelligible)
HS: My thick fingers will make you happier than Barney. I know, yeah.
MV: (Unintelligible)
HS: Yeah, they're good.
RQ: Yeah, where's my copy?
MV: I'll bring it tomorrow.
HS: I'll take this one home, before Robin grabs it from me, she's wrestling me. This one's about getting it on with your father. Guys.
RQ: Daughters.
HS: No, this is guys who get it on with their dads.
RQ: I see.
HS: I love you dad, you're my dessert, every night. This is good.
MV: (Unintelligible) That's okay man cause I love.
RQ: (Unintelligible) Played this one before.
HS: Why don't those dudes come on my show? Let's come down here and be naked.

Stern to female caller:

25. "Am I gonna eat you up when I see you?"
26. "I'd like to take a bite out of your ass"
27. "Have you had guys bite your ass"
28. "Does it smell"
29. "What color are your panties, look down"
30. "Do you touch yourself in church"
31. "Do you ever look at yourself naked in front of a mirror"
32. "What size are your breasts" Do you ever wear a bra?" Do you wear an 'A,' 'B' or 'C' cup?"

33. "You big pussy"
34. "Why do you wear panties and a bodysuit, the stench?"
35. "Do you really get off in bed"
36. "I'm gonna kick your ass, you Pussy boys"
37. "Stupid Dickheads"
38. "This time we bury your ass"

A few sample excerpts from many previous violations:

[Discussing Kathy Lee Gifford]

HS: From your heart. She didn't reach into, she always, you know, you notice everything about her now, she's reaching into toilets.

RQ: Yes. Or somebody's reaching in for her.

HS: First, listen to this woman, first she loses her jewelry in the toilet, which I don't know how that happened, then she, she pees in the toilet and she has an assistant reach in and grab the watch out of the toilet.

RQ: Right. Right, she doesn't go get it herself.

HS: Yeah. Some guy reached into her pee to get a (water sound effect) toilet. You know, to get a, to get her watch. Then, now the next story is that she'd have you believe, she's having a miscarriage, so she reaches in the toilet like that's a baby in there.

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HS: Yeah, you know, I, you know, when I make a bowel movement it is so perfect, I just can't bear to see it go down the toilet, you know it, it's Kathy Lee's bowel movement. It might be worth something. So I reach in and I grab it.

RQ: You know Reg, I'm saving every one of those.

HS: You know what, if I saved every one of my bowel movements we could auction them off on the show. Probably make a ton of dough. I wouldn't have to do all those stupid commercials. I mean for God's sake. Can you imagine the balls on this, I've never heard a woman say you reach, I've never heard of anyone reaching into a toilet (water sound effect) for a bloody mess. And you don't even see like a head or, I mean you don't see anything.

RQ: No, it's like an ink blot.

HS: I cry when Frank, when Frank plays with himself and everything dries up and I realize that could have been a baby. (Laughter) I can't handle it. (Laughter) Who's she kidding?

HS: He was lubed up. He jams his finger into Tony O. Tony O felt like a woman raped. Tony goes, "how, how." He stayed

maybe ten minutes and left.
RQ: Yeah, he had to leave, he was embarrassed.
JM: He never said another word.
HS: And Jackie, and Jackie didn't miss a bite after he, after,
after he gave a rectal exam to Tony O.
RQ: He went right back to eating.
HS: Right Fred. Right back to his ribs and wings.
MV: The un, the unbelievable part was he used that hand.
HS: That's right.
MV: He didn't wash.
HS: Right.

HS: And this Sun Yi, why does, it's an amazing thing what's
going on. Here you are an older man and yet you're with a
younger woman. Isn't it amazing.
RQ: Fifty four right?
HS: Right.
WA: Somehow Sun Yi enjoys my old Jewish penis.

WA: I love to eat Chow Mein off of Sun Yi's bare ass.

WA: I taught Dylan to put a condom on with one hand.

WA: I like to play nude twister with five year old's. Is that
so wrong?
HS: Alright. You know Woody, I got to say goodbye to you if you
really, serious, make a serious comment about this whole,
this whole situation.
WA: Dylan is the right height to wash my genitals in the shower.

HS: Let me tell you this Pee Wee. If they are going to make him
do public service, the service should be he should go to
every movie theater in Sarasota and scrub the theater seats
where guys drop their load. Because I'm going to tell you
something that that's disgusting. Imagine I go to the movie
theater and I'm sitting in Pee Wee's mess.
RQ: It's interesting, because the other day the lawyers for Mr.
Reubens decided they would try another argument to get him
out of the case. They wanted the case dropped on the
grounds that nudity is expected at a triple x-rated theater.
so that Pee Wee was only doing what was expected. If he was
nude at the time.

HS: That's brilliant. That's some defense. because there's a movie on there you're allowed to whip it out and spew that evil gunk all over everybody. Now, I don't know about you but I've heard people actually say that this is not a serious offense. He did not hurt anybody.

HS: The closest I came to making love to a black woman was, I masturbated to a picture of Aunt Jemima.

GR: Oh, come on.

HS: On a pancake box. (Laughter) All right? And that was it. And then I heard Aunt Jemima died in a plane crash.

GR: Were you really one of those two finger guys?

HS: Yeah. (Laughter) Yeah, Geraldo, oh boy. No, I did it right on her kerchief. (Laughter)

HS: When I go to a movie, I don't need a hail storm coming out of some guy's genitalia. And I see the Pee Wee's offense as being a serious one. Now I know people think I'm joking but I am absolutely not. If my daughters or my wife were in a movie theater and they came back with some pervert throwing a huge hail storm on to their backs.

RQ: Wouldn't you be upset?

HS: I'd sure as hell would. I'd beat the piss out of him.

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