

June 28, 1983

Dear Tom:

On behalf of the President, I would like to acknowledge and thank you for your June 9 letter expressing your grave concern over the operation of the telephone recording system operated by High Society magazine.

We appreciate being informed of your efforts thus far to address this matter. Please know that we are sharing your letter with the appropriate staff members here for their close attention and review.

With best wishes,

Sincerely,

Kenneth M. Duberstein  
Assistant to the President

The Honorable Thomas J. Bliley, Jr.  
House of Representatives  
Washington, D.C. 20515

KMD:CMP:KRJ:krj

cc: w/copy of inc to Fred Fielding - for DIRECT response  
cc: w/copy of inc to Bob McConnell, Legis Affrs, DOJ - FYI  
cc: w/copy of inc to Mark Fowler, Chairman, FCC FYI

WH RECORDS MANAGEMENT HAS RETAINED ORIGINAL

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

June 9, 1983

The President  
The White House  
Washington, D. C. 20500

My dear Mr. President:

I am writing to ask your personal intervention in a matter of serious consequence to our nation's children: the operation of a highly pornographic telephone recording system known popularly as "dial-a-porn."

High Society, a hard-core smut magazine operates a phone number in New York City, (212) 976-2727, offering a recorded pornographic message. The phone system can handle as many as 56,000 calls per minute. A local surcharge results in revenue of \$25,000 per day for New York Telephone Company and \$10,000 daily for the magazine, more than it makes off its publishing operations.

I have received reports of children as young as ten years old who were given the number at school and called it repeatedly. This has occurred not only in the New York area, but in Utah, Kentucky, Florida, North Carolina, Virginia, Maryland and Washington, D. C. The messages, which are as graphic and objectionable as anything I have ever heard, are changed twice daily (see attached transcripts). Not only do parents have to deal with a threat to their pre-adolescent children's psychological development, but \$100-plus long distance charges are a substantial financial burden.

These kind of messages in interstate phone calls are illegal under both Section 223 of the Communications Act and the phone company's tariff to provide reasonable service. The "service" began early this year. A suit filed in the Eastern District of New York was dismissed because the plaintiff, Suffolk County, New York, had not exhausted its administrative remedies. On March 17 the County filed a petition with the FCC, and I filed comments in support of that petition. I also wrote to the U. S. Attorney for the Eastern District of Virginia making a formal complaint. In May over 50 Members of Congress wrote to the FCC asking them to take action against this service, but on May 16 the FCC refused to act, claiming that the Justice Department was the proper agency to handle the complaints.

June 9, 1983

On May 24 I met with FCC Chairman Fowler who persisted in his refusal to act. I also found that even though the FCC never intended to do anything about the complaint, they did not contact the Department of Justice until nearly two months after they received a complaint. On May 24, Chairman Fowler and the FCC General Counsel assured me that the Department of Justice was prepared to file suit against the service. As of June 7, however, the Deputy Assistant Attorney General for the Civil Division informed me that they believed that the FCC was the proper agency to act, and that the Department of Justice still had not decided whether to file a suit.

After over five months, the government has gotten exactly nowhere.

While the government prevaricates the smut peddlers thrive, and try to grow. Chesapeake and Potomac Telephone tells me that they have received similar requests for phone numbers in Washington, D. C., and Richmond, Virginia. If the government does not establish a policy against this kind of obscenity, phone companies may soon be required to allow such services in other areas as well.

I am aware of your recent meeting with the anti-pornography coalition, and of the concern you have often expressed for the moral character of our nation and its children. In light of the incredible delay and buck-passing on the part of the federal bureaucracy, I most urgently request that you take a personal role in forcing the federal government to take immediate action against this growing plague.

Respectfully yours,

  
THOMAS J. BLILEY, JR.

TRANSCRIPT-OF TAPE RECORDING, 976-2727

February 17, 1983

Oh! Oh! Hi! It's Crystal from Live Magazine and I'm afraid you've caught me doing something very nasty. Look on page 28 and you'll see what I mean. I'm naked, how about you? If I lean over like this, can you fill my order. Oh, oh, ooh, oh, it's hard, oh, oh, oh, that's nice, oh, oh. Heh! Not so rough. Oh, oh, oh, oh, oh! Oh! Oh! Oh, oh, thanks. You're not bad at all. Can you get it up again. Um, Um, um, um, um - Uh oh, time's up. Call back after 3 and I'll swallow your load.

TRANSCRIPT OF TAPE RECORDING, 976-2727

February 23, 1983

9:47 AM

Hi. I'm Jessica. My friend is (inaudible). You can take a long, hard look at us on page 86 of Live's April issue. I'm lying here naked and waiting for you to spread me open. Ooh, you're getting so hard. Ooh, I want you in my mouth while I touch myself. Mmm, mm, mmm, mmmmm, mmmmm, oh, you're so thick, I can barely get my mouth around you. Mm, ohm, ohm, oh, I want you pouring juices down my throat. Mm, mm, mm, mm, that's it. Mm, mmm, oh, hold the back of my head. Oh, push it. Mm, mm, mm, oh, oh, oh, oh, oh. Oh. Oh. Oh. So much juice and it tasted so good. Oh, I hope you call back real soon.

TRANSCRIPT OF TAPE RECORDING, 976-2727

February 24, 1983

9:52 AM

Oh. Yes. Back so soon? You've really got staying power. I'm Cindy from page 80 on Live magazine and I promise to let you cream all over my chest. Mm, oh, yes, I know they're big and they're real soft, too. Feel them. Mm, oh, sure. You can put it between them and rub it good. Oh, I'll hold them together and make it real tight and you can rub in and out. Ooh, yea. Oh, oh, in and out. Ooh, yes. Oh, that really gets me, baby. Ooh, yea. Ooh! Yes. Oh, it gets me so good. Mm, mm, oh, oh, yea. Oh, yes! Oh, oh, yea. Oh, oh, oh. Oh! Oh! Oh, God, you got it all over my chin. Come tomorrow and my friends and I will lick you dry.

TRANSCRIPT OF TAPE RECORDING, 976-2727

February 26, 1983

9:23 AM

Hee, hee, hee. Hi. This is Judith. And I'm Lisa. There are more of us girls on page 4 of the April issue of Live. We usually fight over men, but today we're getting along fine. In fact, I brought along a toothbrush. (Buzzzzzzzzzzzz.) Oh, great. Oh, oh, oh, stick it in. Oh, oh, oh, that's good. (TWO GIRLS ARE NOW TALKING): Mm, mm, mm, oh, oh, faster, oh, oh, oh, that's it. Oh, oh, oh, oh, oh, it won't go much deeper. Oh, oh, that's it. Oh, oh. Oh, oh, oh. Oh! Oh! Oh! Oh, oh. Oh! Now it happened. Oh! It's shocking! Oh. Oh.

TRANSCRIPT OF TAPE RECORDING, 976-2727

February 28, 1983

9:27 AM

Hi. I'm Catherine. You can see me on page 36 of High Society's April issue. I'm so glad you called. I'm so hot for you, I need you. Oh, (inaudible) hard (inaudible) mm. (Inaudible) I (inaudible) do this all the time. (inaudible) down my throat. Oh, oh. oh. Mm, good. (inaudible) Give it to me. Oh, oh, oh, oh. Mmm, mmm, mm. Oh, oh, oh, mm. (inaudible) delicious breakfast (inaudible) today is over. Call me back, (inaudible) I'll be waiting.

TRANSCRIPT OF TAPE RECORDING, 976-2727

March 1, 1983

9:33 AM

Hello. It's Laurie again. \_\_\_\_\_  
\_\_\_\_\_ High Society's April centerfold. There's a  
lucious \_\_\_\_\_ of me. So, pull it out and spread me  
wide open. Ooh, it's so big. Push your hot (inaudible)  
around my (inaudible) again and rub it on my lips. Oh. Ooh.  
Now let me take a taste. Mm, mm. (inaudible) try  
(inaudible) my breast, my tummy. Oh, oh, yes. Now put it  
in. Oh, oh, harder. Oh, oh, mm, oh. Oh. Oh! Oh. Oh.  
Oh. Let me take it out. (inaudible) So, call back soon, it  
might still fit.

TRANSCRIPT OF TAPE RECORDING, 976-2727

March 2, 1983

10:02 AM

Oh. Hi. I'm Sharon. You can see how wet I am on page 30 of High Society's April issue. Just thinking of you looking at me stark naked makes me so hot. Oh, I can't reach my own pink lips, but how would you like me to run my tongue up and down your body. Mmm. I love to give you a tongue bath. Mmm. Please let me. Mmm, ahhh. Please, I want you so much. Let me start with your neck and I'll slide my tongue straight down your spine. Mmm. I want to lick you clean. Ahh. Let me circle my tongue around those soft things. Ahh, mmm, ah. Ahh, Ahh. Ooh. Call back soon so I can give you another nice warm bath.

TRANSCRIPT OF TAPE RECORDING, 976-2727

March 3, 1983

9:14 AM

Oh! Oh, hi, it's Sharon from High Society Magazine. I'm afraid you've caught me doing something very bad. Look on page 30 and you'll see what I mean. I'm naked, how about you? If I lean over like this, can you fill my order. Mm. Oh. Ooh, it's hard. Oh, oh. Oooh, ohoh, ohoh, hey, not so rough. Oh, oh. Ohoh! You're not bad at all. Can you get it up again? Mm, mm, oh, (inaudible). Mmm, ohoh, ohoh. Oh. Ohoh. I would love you to call again and I'll swallow your load. Mmm.

TRANSCRIPT OF TAPE RECORDING, 976-2727

March 4, 1983

10:17 AM

Hello you miserable worm. This is Mistress Sharon from page 34 of High Society. I knew you would call. You just can't get enough, can you. Take that rod out of your pants and make it hard for me. That's it. Your whole body is there to give me pleasure. Ahh, ohh, yes. Let me hear your tongue, I want to hear that tongue. Ohh, yea, my lips are wide open and I'm soaking wet. You're my slave. You're a slave to my body. Ahh, ohh, ahh, ohh, ahh, ohh, ahh, ohh. Ah, ohh. Ohhhhhhhhhhhhh! That was a good piece of dirt. Now call later and speak to one of my horny girlfriends.

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

FCC 83-582  
34134

In the Matter of )  
)  
Enforcement of Prohibitions ) Gen. Docket No. 83-989  
Against the Use of Common )  
Carriers for the Transmission )  
of Obscene Materials )

FURTHER NOTICE OF INQUIRY AND  
NOTICE OF PROPOSED RULEMAKING

Adopted: December 14, 1983; Released: December 20, 1983

By the Commission:

1. On September 9, 1983, the Commission adopted a Notice of Inquiry ("NOI") in the above-referenced docket. A large part of the inquiry focused on the scope of the Commission's authority to take action against "dial-a-porn" services under Section 223 of the Communications Act, 47 U.S.C. § 223, 1/ and the extent to which the Commission ought to exercise its discretion to use any such authority. The comment period closed on December 19, 1983.

2. On December 8, 1983, a bill that amends Section 223 became law. (A copy is attached to this Notice.) The amendment answers some of the questions raised in the Notice of Inquiry regarding the Commission's authority, 2/ but leaves other questions unanswered. 3/ It also requires the Commission to prescribe, within 180 days of the bill's enactment, rules and

1/ By express statutory language, the application of Section 223 is limited to the use of telephones or telephone facilities. Therefore, the legislation does not apply to the provision of non-telephonic services by common carriers.

2/ For example, the amendment seems to answer the questions raised in ¶ 11 of the Notice of Inquiry by its prohibition of obscene or indecent communications via dial-a-porn services when the obscene or indecent communications are made to persons under eighteen years of age or to unconsenting adults -- unless a defendant has attempted to restrict minors' access in accordance with FCC rules and regulations. The bill also gives the Commission explicit authority to impose fines for violations.

3/ Although in his remarks inserted into the Congressional Record, Congressman Bliley proffers his answers to the questions raised in the NOI, 129 Cong. Rec. H10559 - 10561 (Nov. 18, 1983), we respectfully believe that comment from the public is warranted on all questions not explicitly answered by the statutory language. See 5 USC Section 553(b).

regulations that restrict access to the telephone communications at issue by persons under 18 years of age, while retaining adult access. 4/ We issue this further notice of inquiry in order to permit and encourage the public to comment on the issues raised in the NOI with reference to the amended Section 223 rather than the old Section 223, where pertinent. We issue this notice of proposed rulemaking in order to solicit comments and suggestions on the rules and regulations that the Commission must adopt pursuant to Section 223(c) if practicable.

3. We thus seek comment on all questions and issues raised in the notice of inquiry that are affected, but not answered, by the amendment. In addition, we seek ideas and comments on rules and regulations that are technically and economically feasible which could limit access to adults. In this regard, we note that many of these message services are "dial-it" services which permit multiple callers to access the same recording simultaneously. Requiring an operator to take a credit card number would not be economically practicable in the case of such services, since operator intervention on an individual call basis would entail substantial administrative burdens. We seek comments, however, on whether some variation of an automated screening device might be feasible, such as an access code that requires no operator assistance (as with some long distance services where manual entry of a several-digit access code is required for completion of the call). With respect to non dial-it message services, should the same system be used or could a credit card be required? Because access codes or credit cards are not issued to minors by the companies, we solicit comments from the public as to whether such screening devices would meet the requirements of amended Section 223(b)(2). Therefore, we are seeking comments as to what is feasible and state our intention to adopt a rule requiring such a device if practicable.

4. We also seek comments as to the technical and economic feasibility as well as the desirability of blocking access to dial-a-porn numbers from coin telephones. Since many

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4/ As the legislative history notes, the Commission is limited by the constraints of what is practicable and constitutional. See also ¶ 7, *infra*. Thus, although we intend to make every effort to fashion rules that serve their intended purpose while being both practicable and constitutional, we note that adoption of specific regulations may not be feasible. See 105 Cong. Rec. E 5966 - 5967 (remarks by Congressman Kastenmeier)(December 14, 1983). In that event, the Commission may consider adopting goal-oriented regulation, such as requiring each message service provider to submit for Commission consideration their plan to limit access to individuals eighteen years and older. The public is also requested to comment on the desirability of this type of regulation.

calls placed by children to dial-a-porn services originate from coin telephones, this proposal might effectively limit the hours when such services are available to children while only marginally impeding adults' access to such services. 5/

5. Another possible regulation would limit the hours of operation of these telephone services to those hours of the day when a majority of parents can be expected to be home and therefore responsible for their children's behavior. In FCC v. Pacifica Foundation, 438 U.S. 726 (1978), the Supreme Court suggested that the time of day could affect whether certain conduct was prohibited by the obscenity laws. We seek comment on whether prohibiting operation between 8 a.m. and 9 p.m. Eastern Time (to encompass 8 a.m. to 6 p.m. in all Continental U.S. time zones) plus 8 a.m. to 6 p.m. in Hawaii and Alaska, would be a reasonably effective restriction.

6. Other possible restrictions could focus on limiting advertisements of the telephone number, viz., restricting advertisements to the inside pages of the magazines available only to persons over eighteen. However, the Commission may not have authority to impose restrictions on any medium other than broadcast and related services. We further solicit comment on whether any advertising restrictions by the Commission would be valid under the criteria for permissible governmental restrictions on commercial speech, as set forth by the Supreme Court in Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980).

7. In addition, we seek suggestions from the public as to other time, place and manner regulations that would permit adults to have access to these services while restricting access by children. It would seem necessary that any regulation we adopt give adults continued access to these services, lest we risk violating Butler v. Michigan, 352 U.S. 380 (1957). In Butler, the Court struck down as unconstitutional a statute that had the effect of preventing adults from having access to materials that were judged to have a potentially deleterious influence on children. Id. at 382-83. The Court refused to

5/ A regulation which would prevent the use of coin telephones to reach dial-a-porn services would place parents in a better position to control and supervise their children's exposure to obscene or indecent communications. As Congressman Kastenmeier noted:

[i]t seems to me that parental responsibility must play a role here. If a family's telephone bill shows long distance calls -- including any to a dial-a-porn number -- it should be up to the parents, not the Congress or the FCC, to set rules which limit access by children to these messages. See 105 Cong. Rec. E 5967 (Dec. 14, 1983).

reduce the adult population to reading what was fit for children. Id. at 383. We see no reason why that same principle would not apply here. If, therefore, there are no feasible specific restrictions that permit adult access while limiting children's access, then less specific measures may have to suffice. 6/

8. We ask commenters to be as specific as possible, both in their initial suggestions and in any criticisms of other suggestions. We also ask that commenters not merely criticize but, if possible, suggest solutions to their perceived problems. It is possible that one of the restrictions mentioned above, either alone or in combination with another, may meet the objectives of Section 223. Because of the 180-day deadline imposed on the Commission for adopting regulations pursuant to amended Section 223(c), we do not anticipate granting any extensions of time for the filing of comments or reply comments.

9. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule changes on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. § 601 et seq. (1982)).

10. For the purposes of the non-restricted notice and comment rulemaking portion of this docket (as distinguished from the notice of inquiry portion), members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an ex parte presentation is any written or oral communication (other than formal written comment/pleading and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters

6/ See note 4, supra.

not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; and, on the day of oral presentation, must serve that written summary on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it related. See generally, Section 1.1231 of the Commission's Rules, 47 CFR § 1.1231.

11. This Notice of Proposed Rulemaking is issued pursuant to authority contained in Sections 4(i) and 223(c) of the Communications Act of the 1934, as amended. Interested parties may file comments on or before January 23, 1984 and reply comments on or before March 1, 1984. <sup>7/</sup> All relevant and timely comments filed in response to this Notice will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Commission Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished to the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All comments should be submitted to the Commission's Secretary. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact of the Commission's reliance on such information is noted in the Report and Order.

12. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

13. For further information concerning this proceeding, contact Sharon Kelley or Holly Berland, Office of General Counsel, (202) 632-6990.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico  
Secretary

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<sup>7/</sup> The January 26 deadline for filing reply comments on our initial notice of inquiry is hereby supplanted by these new filing deadlines.

CLARIFICATION AND ADMINISTRATION OF SECTION 223

Sec. 8. (a) Section 223 of the Communications Act of 1934 (47 U.S.C. 223) is amended—

(1) by striking out "\$500" and inserting in lieu thereof "\$50,000";

(2) by inserting "(a)" before "Whoever"; and

(3) by adding at the end thereof the following new subsection:

"(b)(1) Whoever knowingly—

"(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person under eighteen years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than \$50,000 or imprisoned not more than six months, or both.

"(2) It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.

"(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(4)(A) In addition to the penalties under paragraphs (1) and (3), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(B) A fine under this paragraph may be assessed either—

"(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

"(ii) by the Commission after appropriate administrative proceedings.

"(5) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure."

(b) Section 223(a) of the Communications Act of 1934 (as redesignated by subsection (a) of this section) is amended in paragraph (2) by inserting "facility" after "telephone".

(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) not later than one hundred and eighty days after the date of the enactment of this Act.

(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 which are pending on the date of the enactment of this Act within ninety days of such date of enactment.