

D. Arbitron and Birch Ratings Data

Ratings information for the Stern Show in New York supports the foregoing findings. According to Arbitron figures, the show's New York audience is consistently comprised almost exclusively of adults ages 18 and older, and has particular appeal among adults ages 25-34. For example, Summer 1991 survey data show that the 12+ average quarter hour audience consisted of 97.6 percent adults and only 2.4 percent teens, ages 12-17. The program's average quarter hour audience included less than one-half of one percent of the approximately 1,345,700 teens who reside in the New York metro area. These statistics are particularly significant in light of the ACT I Court's conclusion that reasoned explanation is required to support a determination that a "reasonable risk" is posed by potential exposure to indecent material of four percent of the children in the audience. See discussion at page 13, supra.

To a similar effect, a Birch/Scarborough survey relevant to the Stern Show demonstrates that listening among teens is concentrated among older teens, with no listening whatsoever among the youngest members of the 12 to 17 age bracket. Specifically, according to Birch/Scarborough, during the months March through August 1989, of the nominal teen audience, 17 year olds were the most likely to tune in the program and there were no 12 to 13 year olds listening.

E. National Research, Inc. Study

Moreover, independent data indicate that, even when children and teens are in the listening audience during these morning hours, they are almost always under the supervision of a parent or other adult. One such survey showed that virtually 100% of children 17 or younger were in the presence of an adult, asleep, or at school during the 6:00 a.m. to 10:00 a.m. time period.^{8/}

* * *

In light of the Commission's determination that there is no time of day when children are completely absent from the overall radio audience, consideration of audience composition factors such as those described above is required in order to reach reasoned channeling decisions. ACT I, 852 F.2d at 1343 n.18; ACT II, 932 F.2d at 1506. Such an approach is consistent not only with the Supreme Court's statement in Pacifica that consideration of program content is a relevant factor in

^{8/} National Research, Inc., "When Children Are In the Presence of Parents and Other Adults: A Survey of Parents" (February 1990). The extensive survey consisted of 1000 interviews with parents of children seventeen and younger. The sample was chosen by means of random digit dialing. The questionnaire used was developed by National Research, Inc. ("NRI") in consultation with the National Association of Broadcasters. NRI is a marketing and public research firm based in Chevy Chase, Maryland with substantial experience in conducting public opinion and market research surveys. It is a member of both the American Association of Public Opinion Research (AAPOR) and the Market Research Association. See Exhibit D hereto.

indecent enforcement, but also the remand instructions in ACT I and ACT II and the Commission's own declaration that it will not rely "mechanistically" on "a specific time" to determine whether material is appropriately channeled. Pacifica 1987, 2 FCC Rcd at 2699-700.

Based upon the data attached hereto, it is beyond dispute that the predicted, unsupervised child audience for the Stern Show is zero. It is thus clear that there is no "reasonable risk" -- indeed, no risk at all, reasonable or otherwise -- that unsupervised children will be among the program's listeners. Given the absence of a predicted listening audience containing any children, even consideration of arguably indecent broadcasts serves no legitimate public interest and is constitutionally inappropriate, as any attempted application of the indecency standard to the Stern Show must ultimately result in a finding that the broadcast is nonactionable. Accordingly, Infinity respectfully requests that the Commission declare that, under existing legal

principles, no finding of actionable indecency is possible as to material aired during the Stern Show.

Respectfully submitted,

SAGITTARIUS BROADCASTING
CORPORATION

By: *Dennis P. Corbett*

Steven A. Lerman
Dennis P. Corbett
Laura B. Humphries
David S. Keir

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

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Its Attorneys

EXHIBIT A

GALLUP ORGANIZATION SURVEY:
WXRK RADIO
SPECIAL LISTENERSHIP STUDY

The Gallup Organization, Inc.

PRINCETON, NEW JERSEY

*Broadcasting Group
300 South 68th Street
Lincoln, Nebraska 68510
(402) 469-8700*

WJRK RADIO

SPECIAL LISTENERSHIP STUDY

December 1989

Prepared by

**Gale D. Muller, Ph.D.
The Gallup Organization, Inc.
Princeton, New Jersey**

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Introduction

In December of 1989, The Gallup Organization, Inc. of Princeton, New Jersey conducted a special listenership study for radio station WXRK, New York, New York. The primary purpose of this study was to determine listenership for "The Howard Stern Talk Show" among young persons age six to eleven.

Methodology

To ensure a true projectionable sample, the New York metro area of dominant influence (ADI), a random digit-dialing procedure was used. Twenty counties in New Jersey, New York and Connecticut were included in the study area. Only those households in which a child six to eleven years of age currently resided were qualified for the study. Two hundred fifty-two qualified households were contacted. In each case, the head of household (either male or female) was asked a series of questions concerning their own listening habits and their child's (children's) listening habits.

All interviewers included in this study were professionally trained Gallup Organization staff members who were briefed specifically about this project. Ten percent (10%) of all interviews were re-called to ensure the validity and reliability of the interview process.

Sample Characteristics

In Table 1, the sample characteristics of those persons interviewed are included.

TABLE 1
Sample Characteristics
(n=252)

	<u>%</u>
<u>Sex</u>	
Male	48%
Female	52
<u>Age</u>	
18-24	2%
25-34	19
35-44	61
45-54	15
55-over	2

Not surprisingly, 96% of all respondents in the study were age 25 to 54 (child-rearing years). Approximately half the respondents were male and approximately one-half female.

Study Area

By design, the contacts in the study were made in proportion to the population in each of the counties in the study area. The actual percent of respondents in the sample by county and the percent of persons in the population by county are summarized in Table 2.

TABLE 2
Study Area

<u>County</u>	<u>% in</u>	
	<u>Sample</u>	<u>Population</u>
New Jersey	31%	30%
Bergen	6%	5%
Essex	3	5
Hudson	2	3
Middlesex	8	4
Monmouth	3	3
Morris	2	2
Passaic	3	3
Somerset	1	1
Union	2	4
New York	67%	68%
Bronx	6%	7%
Kings	14	14
Nassau	9	8
New York	9	9
Putnam	*	*
Queens	12	12
Richmond	2	2
Rockland	2	2
Suffolk	8	8
Westchester	5	5
Connecticut	2%	2%
Fairfield	2%	2%

*Less than 1% mention

The percent of respondents in each of the counties closely approximates the percent of respondents in the population.

Results

Since all respondents in the study were to have children six to eleven years of age in the household, a follow-up question concerning the number in the household was asked so that questions could be addressed concerning each child in each household. The first question asked was:

"Please tell me the age of your child (children)."

TABLE 3
Number of Children Ages Six to Eleven
(Multiple Responses Allowed)

<u>Response</u>	<u>f</u>	<u>n</u>
1	63%	160
2	29	144
3	6	48
4	1	12
5 or more	0	5
Total		369

In all, 369 children were represented by the households in this study. Obviously, most of the households had only one child six to eleven years of age. An average of 1.46 children (age six to eleven) were in each of the households in the study.

Next, respondents were asked if each of their children listened to the radio in the morning from 6 a.m. to 10 a.m. If the respondent did not know or was unsure, they were asked to bring their child to the telephone and solicit this information from them directly. The actual question used was:

"Does your child (children) in (each) age group, age six to eleven, listen to the radio in the morning from 6 a.m. to 10 a.m.?" (Multiple responses allowed)

Thirty-five percent (35%) of the respondents (n=87) indicated their child six to eleven years old did, in fact, listen to the radio from 6 a.m. to 10 a.m.

The respondents who had children and indicated their children listened to the radio in the morning from 6 a.m. to 10 a.m. were asked if their child listened to "The Howard Stern Talk Show." (This was asked for each child in the household.) The results of this question are included in Table 4.

TABLE 4
Incidence of Children Listening
to "The Howard Stern Show"

	Of Those Who Listen to Radio in the Morning (n=87)		Of Total Sample of:			
	n	%	Households (n=252)		Persons (n=369)	
	<u>n</u>	<u>%</u>	<u>n</u>	<u>%</u>	<u>n</u>	<u>%</u>
Have listened to "The Howard Stern Show"	1	1.1%	1	.4%	1	.3%

Only one child, of the 369 in the study, listened to "The Howard Stern Show" in the morning. Overall, this represents less than one percent (1%) of all children in the study area.

The respondents in the study were also asked which radio station they listened to most in the morning. The actual question asked was:

"Which radio station, if any, do you yourself typically listen to in the morning from 6 a.m. to 10 a.m., Monday through Friday? What other stations?" (Multiple responses allowed)

TABLE 5
Station Listened to Most Often
(Three or More Responses)
(2% or More Mentions)

<u>Station</u>	<u>Sample</u> <u>%</u>
1 WINS-AM (1010)	18%
2 WCBS-AM (880)	12
3 WCBS-FM (101.1)	11
4 WHTZ-FM (100.3)	10
6 WPLJ-FM (95.5)	8
6 WLTW-FM (106.7)	8
6 WOR-AM (710)	8
8 WNEW-FM (102.7)	7
9 WXRK-FM (92.3)	6
9 WFAN-AM (660)	6
11 WABC-AM (770)	5
13 WNCN-FM (104.3)	4
13 WNSR-FM (105.1)	4
13 WYNY-FM (103.5)	4
15 WQHT-FM (97.1)	3
15 WRKS-FM (98.7)	3
18 WQCD-FM (101.9)	2
18 WBLS-FM (107.5)	2
18 WEVD-AM (1050)	2

Overall, six percent (6%) of all respondents in the study said they listened to WXRK-FM in the morning. This ranked WXRK ninth among radio stations in the marketplace. Overall, WXRK currently ranks seventh (for the entire day) among persons 25 to 49 years of age. Therefore, it appears that this sample includes a similar percentage of WXRK morning show listeners as actually exist in the marketplace.

Conclusions

The sample used in this study appears to be representative of the total population. The number of persons contacted and interviewed by county is similar to that of the total population, and the actual listenership to WXRK Radio of this group of respondents appears to be similar to that measured by Arbitron.

Among the respondents in the study, only one child listened to "The Howard Stern Show" in the morning. The parent of that child was asked a follow-up question:

"When your child listens to 'The Howard Stern Show', is there an adult present?"

That parent indicated there was in fact an adult present when he/she listened to "The Howard Stern Show." In short, the survey shows that less than one percent (1%) of all children age six to eleven (.3%) appear to be listening to "The Howard Stern Show" in the morning and that one child of this sample who appears to be listening to "The Howard Stern Show" in the morning has adult supervision.

EXHIBIT B

**ARBITRON SURVEY:
MEASUREMENT OF CHILDREN**

MEASUREMENT OF CHILDREN

MADDY SCHREIBER
MANAGER, REPRESENTATIVE
AND NETWORK SALES

ARBITRON RATINGS

RADIO

MHS
1/87

MEASUREMENT OF CHILDREN

- 0 BACKGROUND

- 0 RESEARCH ISSUES

- 0 RESEARCH DONE
 - PHASE I - TELEPHONE RECALL
 - METHOD

 - HIGHLIGHTS

- 0 ADVERTISER/AGENCY INPUT

- 0 PHASE II - NEXT STEPS

ARBITRON RATINGS

RADIO

MHS

MEASUREMENT OF CHILDREN

BACKGROUND

- o INCREASE ADVERTISER/AGENCY REQUESTS FOR INFORMATION ABOUT CHILDREN'S RADIO LISTENING
- o SOME INCREASE IN RADIO PROGRAMMING FOR CHILDREN HAS OCCURRED
- o RECENT INDEPENDENT STUDY SHOWED STATION PREFERENCES AS EARLY AS GRADE 3 (8 YEARS OLD)

ARBITRON RATINGS
RADIO

MHS
1/87
1-3

MEASUREMENT OF CHILDREN

NON-ARBITRON RESEARCH

CHRISTENSON & DEBENEDITTIS (SPRING 1986, JOURNAL OF COMMUNICATION):

- o 102 CHILDREN, GRADES 1-5.

- o PERSONAL INTERVIEWS, ONE SCHOOL, PENNSYLVANIA.

- o STANDARD MIX OF RADIO STATIONS AVAILABLE.

- o 52% HAD A RADIO IN THEIR ROOMS.
 - 42%, GRADES 1-3
 - 68%, GRADES 4-5

- o 34% LISTENED "LAST NIGHT."
 - 30%, GRADES 1-4
 - 55%, GRADE 5

ARBITRON RATINGS

RADIO

MHS
1/87
1-4

MEASUREMENT OF CHILDREN

NON-ARBITRON RESEARCH (CONTINUED)

CHRISTENSON & DEBENEDITTIS (SPRING 1986, JOURNAL OF COMMUNICATION):

- o 69% HAD A FAVORITE STATION.
 - 50%, GRADES 1-2
 - 80%, GRADES 3-5

- o 45% KNEW CALLS OR SLOGAN OF FAVORITE STATION.
 - 15%, GRADES 1-2
 - 49%, GRADES 3-4
 - 95%, GRADE 5

- o A THIRD OF EVENING LISTENING, AND TWO-THIRDS OF AFTERNOON LISTENING, HAD NO ADULT PRESENT.

ARBITRON RATINGS

RADIO

MHS
1/87

MEASUREMENT OF CHILDREN

ISSUES RELATING TO MEASURING THE CHILDREN'S RADIO AUDIENCE

- O AT WHAT AGE DO CHILDREN BEGIN INDEPENDENT RADIO USAGE?
- O AT WHAT AGE ARE CHILDREN AWARE OF RADIO STATION IDENTITY?
- O AT WHAT AGE DO CHILDREN HAVE GOOD SENSE OF TIME AND DURATION?
- O AGE FOR SHORT-WORD WRITING ABILITY?
- O AGE WHEN THEY HAVE FORM/QUESTIONNAIRE EXPERIENCE?
- O AGE WHEN THEY CAN READ AND UNDERSTAND RADIO TERMS ("CALL LETTERS", "DIAL SETTING", ETC.)?

ARBITRON RATINGS
RADIO

MHS
1/87

MEASUREMENT OF CHILDREN

PHASE I - TELEPHONE RECALL: MAY, JULY 1986

OBJECTIVES

- O IDENTIFY CHILDRENS' LISTENING PATTERNS

- O EVALUATE FEASIBILITY OF TALKING WITH CHILD VERSUS PARENT

- O EVALUATE DIFFERENCES IN LISTENING PATTERNS WHEN SCHOOL IS IN SESSION AND NOT IN SESSION

- O EVALUATE DIFFERENCES BETWEEN 6-7 YEAR OLDS AND 8-11 YEAR OLDS, BOY AND GIRLS

ARBITRON RATINGS
RADIO

MHS
1/87
1-7

MEASUREMENT OF CHILDREN

TELEPHONE RECALL - METHOD

SURVEY PERIODS

- MAY 15-21, 1986: DURING SCHOOL
- JULY 18-24, 1986: SUMMER VACATION

MARKETS

- LOS ANGELES METRO
- CINCINNATI METRO

SAMPLING FRAME

- LOS ANGELES - PRIOR TELEVISION SURVEY HOUSEHOLDS
- CINCINNATI - RANDOM DIGIT DIALING

SAMPLE SELECTION

- EQUAL DAILY SAMPLES
 - o 6-7 YEAR OLDS REPORTED BY ADULT
 - o 8-11 YEAR OLDS REPORTED BY ADULT
 - o 8-11 YEAR OLDS REPORTED BY THEMSELVES
- ONE INTERVIEW PER HOUSEHOLD

TECHNIQUE

- YESTERDAY'S LISTENING

ARBITRON RATINGS
RADIO

MHS
1/87
1-0

MEASUREMENT OF CHILDREN

TELEPHONE RECALL: HIGHLIGHTS

IN-SCHOOL AND OUT

O CHILDREN'S LISTENING IS HIGHER WHEN SCHOOL IS OUT --
ESPECIALLY 10-3, MONDAY-FRIDAY

PERSONS USING RADIO
TWO MARKET AVERAGE
CHILDREN 6-11*

	<u>MAY</u>	<u>JULY</u>	<u>DIFFERENCE</u>
MON-SUN, 6AM-MID	11.0	14.4	+3.4
MON-FRI, 6AM-10AM	7.9	8.1	+0.2
MON-FRI, 10AM-3PM	4.2	17.5	+13.3
MON-FRI, 3PM-7PM	14.3	14.6	+0.3
MON-FRI, 7PM-MID	13.4	15.8	+2.4
SAT-SUN, 6AM-MID	14.1	14.7	+0.6
(M-S BASE)	(421)	(408)	

*6-7 REPORTED BY ADULT; 8-11 SELF-REPORT

ARBITRON RATINGS
RADIO

MHS
1/87
1-9

MEASUREMENT OF CHILDREN

TELEPHONE RECALL: HIGHLIGHTS

SELF VS. ADULT REPORT

O ADULTS TEND TO REPORT LOWER LISTENING FOR KIDS --
ESPECIALLY 7PM-MIDNIGHT

PERSONS USING RADIO

TWO MARKET AVERAGE

MAY 15-21, 1986

	<u>8-11 ADULT REPORT</u>	<u>8-11 SELF REPORT</u>	<u>SELF REPORT DIFFERENCE</u>
MON-SUN, 6AM-MID	10.9	13.3	+2.4
MON-FRI, 6AM-10AM	9.4	9.0	-0.4
MON-FRI, 10AM-3PM	1.9	3.6	+1.7
MON-FRI, 3PM-7PM	20.4	16.2	-4.2
MON-FRI, 7PM-MID	9.1	19.8	+10.7
SAT-SUN, 6AM-MID	13.5	16.2	+2.7
(M-S BASE)	(231)	(213)	

ARBITRON RATINGS

RADIO

MHS
1/87
1-10

MEASUREMENT OF CHILDREN

TELEPHONE RECALL: HIGHLIGHTS

BOYS AND GIRLS

- O WHEN SCHOOL IS OUT, BOYS' AND GIRLS' OVERALL LEVELS ARE SIMILAR; BOYS TEND TO BE HEAVIER LISTENERS DURING THE WEEK, GIRLS ON WEEKENDS

PERSONS USING RADIO
TWO MARKET AVERAGE
JULY 18-24, 1986

	<u>BOYS 6-11*</u>	<u>GIRLS 6-11*</u>
MON-SUN, 6AM-MID	13.9	14.8
MON-FRI, 6AM-10AM	9.3 X	7.0
MON-FRI, 10AM-3PM	18.7 X	16.1
MON-FRI, 3PM-7PM	13.4	15.7 X
MON-FRI, 7PM-MID	16.4 X	15.2
SAT-SUN, 6AM-MID	11.7	17.6 X
(M-S BASE)	(316)	(305)

*6-7 REPORTED BY ADULT; 8-11 SELF-REPORT

ARBITRON RATINGS
RADIO

MHS
1/87
1-11