

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: Infinity Broadcasting Operations, Inc., Licensee of Stations WNEW(FM), New York, New York; WYSP(FM), Philadelphia, Pennsylvania; KYCY(AM), San Francisco, California; Infinity Radio Operations, Inc., Licensee of Stations WBUF(FM), Buffalo, New York; KSFN(AM), North Las Vegas, Nevada; WAZU(FM), Circleville, Ohio; WXTM(FM), Cleveland Heights, Ohio; KUPL(AM), Portland, Oregon; Infinity Radio Subsidiary Operations, Inc., Licensee of Station KXOA(FM), Roseville, California; Infinity Broadcasting Corporation of Dallas, Licensee of Station KLLI(FM), Dallas, Texas; Infinity Broadcasting Corporation of Washington, DC Licensee of Station WJFK-FM, Manassas, Virginia; Infinity Holdings Corporation of Orlando, Licensee of Station WCKG(FM), Elmwood park, Illinois; Hemisphere Broadcasting Corporation, Licensee of Station WBCN(FM), Boston, Massachusetts, Notice of Apparent Liability for Forfeiture*

I support the finding in this Notice of Apparent Liability that the licensee apparently violated our rule against the broadcast of indecent content, but I would have proposed a higher fine. I note both that we have taken issue with this licensee in past broadcasts of this radio show and that the licensee subsequently removed the show.<sup>1</sup> As I have said in similar cases, we could have found that each time the show's hosts started talking about an indecent topic or had a separate distinct conversation, the ensuing conversation constituted a separate violation.<sup>2</sup> In prior cases, the Commission has acknowledged that we have the discretion to consider each indecent utterance a separate violation.<sup>3</sup>

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<sup>1</sup> In June 2002, for example, the Enforcement Bureau issued a Notice of Apparent Liability for \$21,000 for the Opie and Anthony Show willfully and repeatedly broadcasting indecent language on several occasions. *See Infinity Broadcasting Operations, Inc., Licensee of Station WNEW(FM), New York, New York*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 27711 (EB 2002). The final outcome of this case is still pending.

<sup>2</sup> *See* Separate Statement of Commissioner Kevin J. Martin, *Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 6915 (2003) (*Infinity Detroit NAL*).

<sup>3</sup> *Infinity Detroit NAL* at para. 13 (clarifying that the Commission could pursue enforcement action for each indecent utterance). *See also* 18 U.S.C. § 1464 (specifying that “[w]hoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.”).