

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

Re: Infinity Broadcasting Operations, Inc., Licensee of Station WKRK-FM, Detroit, Michigan, Forfeiture Order

I am disappointed with today's decision.

I agree that Infinity Broadcasting Operations, Inc. violated our indecency rule during the broadcast of the "Deminski and Doyle Show" on January 9, 2002. As I noted when we issued the Notice of Apparent Liability, however, I believe the fine of \$27,500 is inadequate, and therefore I concur in this Order.

As the attached Order explains, the indecent broadcast included conversations with nine callers over a 30-minute period. I believe each of these 9 calls could be separate "utterances" or "material" for purposes of the statute and our rules.¹ Because of the extremely graphic, lewd and offensive nature of this broadcast, I would have applied the statutory maximum fine for each call, for a total of \$247,500.

¹ See 18 U.S.C. § 1864 ("Whoever 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"), 47 C.F.R. § 73.3999 ("No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent").