

October 12, 2000

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

**In the Matter of Amendment of Section 19.735-203 of the Commission's Rules
Concerning Nonpublic Information Order**

This *Order* would seem to help curtail the flood of document leaks out of this Commission, but no rule change will have any effect on this endemic problem unless we vigorously enforce our own internal rules and tighten our document handling procedures.

The regular pattern of leaks of pre-decisional written material is intolerable. They damage the deliberative prerogatives of the individual Commissioners and impair the integrity of the entire agency. This brief *Order* is *part* of the solution and I support it. This rule change imposes responsibilities on certain outside parties to help the FCC's Inspector General appropriately retrieve *written* materials that are leaked. And, the new rule subjects such *outside* parties to possible disciplinary action. This step could help prevent a wider dissemination of our pre-decisional documents after they have left the premises, but I have to admit that the change does little to plug the dike in the first place.

We need stronger enforcement of our current rules, including a zero tolerance policy for all leaks. Outside parties—including the press which are correctly excluded from this new rule—who entice our valuable employees to leak non-public information should be on notice as to the peril in which they are placing their “moles.” Likewise, our employees must be well informed and educated about their responsibilities and their fate should they disclose non-public information without proper authorization. This item notifies everyone inside and outside the Commission of the possible consequences. I would also suggest that, to the extent that there is evidence that outside parties are obtaining non-public materials by other means not involving FCC employees directly or knowingly, appropriate law enforcement officials should be called in immediately.

But, it will also take more than disciplinary actions or threat of such actions against persons inside and outside of the Commission. I agree with Commission Furchtgott-Roth that it will take a change in the culture that has come now to expect such unauthorized disclosures as the way things are done.

I, therefore, not only support the rule changes in this *Order*, but I have joined the Chairman and my colleagues in requesting the Inspector General and the Managing Director closely and expeditiously examine the Commission's internal management of nonpublic information. I plan to personally and substantially involve myself in this task. We need strong enforcement, disciplinary action and preventative measures to make any headway toward shifting expectations and the culture of the handling of non-public deliberative materials and information.

To paraphrase Donny Osmond, “one bad apple should not spoil the whole bunch.” We have got a great group of employees who are very loyal and dedicated to this agency

and I am not placing blame at any level. This is an institutional problem that needs fixing and we need the help of all parties both inside and outside the agency.

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