

# Mandatory Recording of Broadcasts Proposed by FCC

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The FCC on June 7, 2004 released a Notice of Proposed Rulemaking proposing that broadcast stations be required to record broadcasts between the hours of 6:00 a.m. and 10:00 p.m. (when children are likely to be in the audience) and keep those recordings for either 60 or 90 days in order that such recordings be available for FCC investigations into allegations of obscene, indecent or profane broadcasts.

The comment period for this proceeding is unusually quick. Comments are due on July 30, 2004 and reply comments are due on August 30, 2004. The rapid times for comment may indicate that the adoption of recording rules is a foregone conclusion.

The FCC's recording proposal could reverse the FCC's procedures for public complaints on broadcast programming. Rather than requiring a specific complaint, the FCC suggests that simply a general description of the allegedly offensive programming by a complainant would trigger the broadcaster's obligation to submit a recording of the broadcast in question for further investigation.

The FCC has held in the past that where a licensee can neither confirm nor deny a complainant's allegations of indecent broadcasts, the Commission will presume the broadcasts occurred. In one sense, the requirement that all broadcasters keep contemporaneous recordings may protect broadcasters from spurious or ill-founded complaints. On the other hand, it can be expected that having recordings available will further encourage complaints from those who would substitute their personal judgment for the judgment of listeners and viewers.

The Commission asks a number of questions about its proposed recording requirements including whether the recordings could also be used in enforcing other FCC rules, what are the financial burdens the new requirements would impose, and whether there are any First Amendment, copyright or contractual issues.

The Commission's Notice of Proposed Rulemaking may be read at:  
[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-04-145A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-145A1.pdf).

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