

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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In the Matter of:	)	
	)	MB Docket No. 04-232
Retention by Broadcasters of	)	
Program Recordings	)	

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TO: Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**REPLY COMMENT ON NOTICE OF PROPOSED RULEMAKING**

By counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 & 1.419, the Illini Media Company (the "IMC") respectfully submits its reply comments on the Notice of Proposed Rulemaking, MB Docket No. 04-232 to the Federal Communications Commission (the "Commission"). In this NPRM, the Commission seeks comments regarding the retention of program recordings by broadcasters as a means to enhance its enforcement of the Statute prohibiting indecent and obscene programming, 18 U.S.C. §1464. The Commission received over 450 comments on this NPRM, with the vast majority from broadcasters and licensees in opposition to the proposed rule. The IMC refers to, incorporates, and restates its comments made in its initial comments filed on August 25, 2004. The IMC respectfully OPPOSES the proposed rule in this NPRM and provides reply comments, related to the comments filed by certain entities, below:

**Comments of the Alliance for Better Campaigns, the Benton Foundation, Campaign Legal Center, and the Annenberg School of Communication at the University of Southern California, MB Docket No. 04-232, submitted July 29, 2004**

The Commenters support the recording and retention NPRM of the Commission. They further propose that the Commission require licensees to place those recordings in the public file so that researchers may access the recordings for the purpose of determining whether licensees are "serving the 'public interest, convenience, and necessity.'" First and foremost, there are numerous copyright issues involved with this suggestion. The Commenters refer the Commission to an incomplete citation of a 2000 paper by James Snider for a discussion of the copyright laws involved. In that time frame, the Copyright Act has been revised and updated and only a true analysis by the competent legal minds at the Commission should be relied upon to determine the copyright implications of this NPRM.

Second, it is not the responsibility of public broadcast corporations, education broadcasters, or private commercial broadcasters to assist research organizations in doing their jobs. Broadcast licensees should not become public libraries for anyone wanting to research the public interest activities of a licensee. The public file already contains sufficient information about the programming activities of the licensee to serve the public interest. Aside from that, any researcher can turn on a radio or television at any given time of the day and listen for free to what is being broadcast. Licensees should not be forced to shoulder the cost of broadcasting research simply because the researchers are unable, unwilling, or uncaring enough to do the research on their own.

**Comments of Morality in Media, MB Docket No. 04-232, received August 23, 2004**

Morality in Media ("MIM") incorrectly asserts that there is no censorship issue or violation of First Amendment freedoms by requiring recording and retention of daily

broadcasts "since the broadcast has already been broadcast without restraint." The requirement that each broadcast day be recorded from 6 a.m. to 10 p.m. and be retained for 60 to 90 days has a chilling effect on speech. Broadcasters would be forced to sanitize all programming before airing it, in order to ensure that no possible offensive material would air.

Furthermore, MIM suggests that the Commission could carve out an exemption to the recording requirement. MIM suggests that the programming need not be recorded if it does not contain any of 39 enumerated topic areas contained in its comments. Aside from the sheer numerosity of these exemptions, this is a ridiculous proposal. It would mean that if there were a recording, it would constitute prima facie evidence of obscenity or indecency based on the 39 exemption topic areas. Some of these 39 topic areas that would require recording, under MIM's exemption proposal, include: sodomy, fellatio, cunnilingus, annilingus, sadism, "wet nightgown or nude wrestling performances," and other sexual or excretory activities. What sane broadcaster would allow that over the air and then record it under the NPRM - to ensure a Notice of Apparent Liability and Forfeiture? We think not. If the suggestions by MIM are followed, what would become of such radio talk shows like *Loveline* or *Coast to Coast*? If any one of the 39 topic areas were to come up on one of those shows, the recording would have to be made and MIM could joyously contact the Commission with its complaint.

Finally, MIM's suggestion that recordings be made 24 hours a day, seven days a week is ludicrous. The safe harbor provisions of the Commission and 18 U.S.C. §1464 address these issues and are not part of this NPRM. If Morality in Media would like to monitor broadcasters on an hourly basis every day, it has that right. However, it is not its right to utilize the Commission as "big brother" to support its socio-political agenda.

**Comments of United States Conference of Catholic Bishops, MB Docket No. 04-232, submitted August 27, 2004**

The United States Conference of Catholic Bishops (“USCCB”) suggests that recording retention will help the public in drafting petitions to deny license renewals. Broadcast licenses are currently granted by the Commission for an eight (8) year period. Given that Notices of Apparent Liability and Forfeiture must be placed in the public file, should broadcasters be required to retain all recordings of daily broadcasts for the entirety of the license period? Why not require broadcasters to submit all of their recordings along with their license renewal application? The simple fact is that with over 11,000 radio stations and over 4,000 television stations in the United States, no one could monitor everything at every time. It seems as if some entities, which often have no background or experience in broadcasting, wish to add to the day-to-day difficulties of broadcasters. This is not to excuse indecent or obscene broadcasting, however, every broadcaster cannot be painted with the same morally sanctifying brush. Perhaps, MIM and the USCCB would like to come visit a station to see how hard many broadcasters work to provide quality programming to their listeners and viewers.

**Comments of OMT/Intertain Media, MB Docket No. 04-232, received September 2, 2004**

OMT Technologies (“OMT”) suggested to the Commission in its comments that it is relatively cheap and easy to install recording technology to comply with the Commission’s proposed rule. However, as with other similar comments promoting the ease and inexpensive nature of potential compliance equipment, OMT does nothing more than provide a one-line cost assessment and attach a few equipment price sheets. OMT has its own self-interest at heart in its comments, and has done no cost-study analyses. OMT has not looked at the labor

and time costs involved with implementing the proposed rule. The reason for that is simple – once OMT sells the recording technology, it could care less how much time and labor costs a broadcaster or licensee will incur to comply with the proposed rule.

IMC respectfully urges the Commission to seek out cost-analysis studies, based on data from recording technology companies, radio station engineers, accountants, and related organizations or individuals in order to uncover the true cost of compliance with this proposed rule. The Commission just might be surprised to learn how many broadcasters and licensees would be hurt by this proposed rule.

### **CONCLUSION**

For the foregoing reasons, IMC respectfully opposes the NPRM in Docket No. 04-232. This proposed rule is overly broad and unduly burdensome, infringes on the first amendment rights of broadcasters, may potentially interfere with contractual obligations of broadcasters, may expose broadcasters to copyright infringement liability, and poses a financial and administrative burden on broadcasters, especially smaller broadcasters.

Respectfully submitted,  
ILLINI MEDIA COMPANY

By:  One of Its Attorneys

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