

Background

Consumers often complain to the Federal Communications Commission (FCC) about call-in or open microphone radio programs. They most often object to the subject matter being discussed, or the accuracy or fairness of the commentary. Consumers also complain that their calls have been limited or barred by the station, or that program hosts are biased, insufficiently informed, and/or discourteous. Many consumers also complain that the nature of the material being broadcast, like radio stunts or "shock jock" programs, is obscene, indecent, profane, or otherwise offensive.

What Are the Broadcasters' Programming Responsibilities?

The FCC regulates the broadcast of obscene, indecent, and profane programming. Neither the FCC nor any other government agency, however, can direct broadcasters to present or refrain from presenting specific programs, or tell them how to conduct their call-in shows and other programs. Broadcasters are responsible for deciding what their stations present to the public.

Broadcasters are expected to be aware of the important local issues in the communities that their stations serve, and to offer programming that will inform their audiences about these issues. The selection of issues and the kinds of programming offered are the broadcasters' responsibility. "Call-in" programs are not required to be used to discuss community issues.

Broadcasters are not obligated to give any particular individual an opportunity to participate in a broadcast unless the broadcast involves a candidate for public office.

In general, broadcasters have wide discretion in choosing their programming. The First Amendment to the Constitution and the Communications Act prohibit the FCC from becoming involved in selecting the content of specific programs or otherwise engaging in activities that might be regarded as censorship.

Specifics of the FCC's Rules Governing Obscene, Indecent, and Profane Programming

Congress has given the FCC the responsibility for administratively enforcing the law that governs obscene, indecent, and profane programming. The FCC may revoke a station license, impose a monetary forfeiture, or issue an admonishment for the broadcast of obscene, indecent, or profane material.

Obscene speech is not protected by the First Amendment to the Constitution and cannot be broadcast at any time. The Supreme Court has established that, to be considered obscene, material must meet a three-pronged test:

- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.

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Specifics of the FCC's Rules Governing Obscene, Indecent, and Profane Programming (cont'd.)

The FCC has defined broadcast **indecent** as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity. The courts have held that indecent material is protected by the First Amendment and cannot be banned entirely. FCC rules prohibit indecent speech on broadcast radio and television between 6 a.m. and 10 p.m., when there is reasonable risk that children may be in the audience.

The FCC defines **profane** material as "including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance." Like indecency, profane speech is prohibited on broadcast radio and television between 6 a.m. and 10 p.m.

What If I Have Comments and/or Concerns About a Specific Broadcast?

All comments and/or concerns about a specific broadcast should be directed, in writing, to the stations and networks involved so that the people responsible for making the programming decisions can become better informed about audience opinions.

What If I Have a Complaint about an Obscene, Indecent, or Profane Program?

Enforcement actions in this area are based on documented complaints received from the public about specific obscene, indecent, or profane material. **In making obscenity, indecency, and profanity determinations, context is key.** The FCC analyzes what was actually aired, its meaning, and the context in which it was aired.

What If I Have a Complaint about an Obscene, Indecent, or Profane Program? (cont'd.)

Accordingly, we ask you to provide the following information:

- Information regarding the details of what was actually said or depicted during the broadcast.

The complainant may choose the format for providing the information, but it must be sufficiently detailed so that the FCC can determine the words or language used, or the images or scenes depicted during the broadcast and the context of those words, language, images, or scenes. Subject matter alone is not sufficient to determine whether material is obscene, indecent, or profane. For example, stating only that the objectionable programming "discussed sex" or had a "disgusting discussion of sex" is not sufficient. Moreover, the FCC must know the context when analyzing whether specific, isolated words or images are obscene, indecent, or profane. The FCC does not require complainants to provide tapes or transcripts in support of their complaints. Consequently, failure to provide a tape or transcript of a broadcast, in and of itself, will not lead to automatic dismissal or denial of a complaint. Nonetheless, a tape or transcript is helpful in processing a complaint and, if available, should be provided.

- The date and time of the broadcast.

Under federal law, if the FCC assesses a monetary forfeiture against a broadcast station for violation of a rule, it must specify the date the violation occurred. Accordingly, it is important that complainants provide the date the material in question was broadcast. Indecent or profane speech that is broadcast between the hours of 10 p.m. and 6 a.m. is not actionable. Consequently, the FCC must know the time of day that the material was broadcast.

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What If I Have a Complaint about an Obscene, Indecent, or Profane Program? (cont'd.)

- The call sign, channel, or frequency of the station involved.

To take enforcement action for the airing of prohibited material, the FCC must be able to identify the station that aired the material. By providing the call sign, channel, or frequency of the station, you will help us to quickly and efficiently process your complaint.

Any documentation you provide to the FCC about your complaint becomes part of the FCC's records and may not be returned.

How to File a Complaint

The fastest and easiest way to file a complaint containing this important information is to use the FCC's new electronic complaint Form 475B, available on our Web site at <http://fjallfoss.fcc.gov/cgb/fcc475B.cfm>.

You may also file a complaint by e-mail at fccinfo@fcc.gov or by calling 1-888-CALL-FCC (1-888-225-5322) voice, 1-888-TELL-FCC (1-888-835-5322) TTY. You can also mail your complaint to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th St., SW
Washington, DC 20554.

How to File a Complaint (cont'd.)

If you are submitting a video tape, DVD, CD, or other type of media with your complaint, please send it to the following address to avoid mail processing damage.

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
9300 East Hampton Drive
Capitol Heights, MD 20743

For more information regarding obscene, indecent, or profane broadcasts, visit the FCC's Enforcement Bureau Web site at www.fcc.gov/eb/oip/. For a list of the Commission's recent enforcement actions in this area, visit www.fcc.gov/eb/oip/Actions.html.

For general information on other telecommunications-related issues, you may contact the FCC's Consumer & Governmental Affairs Bureau in the following ways:

Internet at www.fcc.gov/cgb

Telephone:

1-888-CALL-FCC (1-888-225-5322) voice
1-888-TELL-FCC (1-888-835-5322) TTY

Fax: 1-866-418-0232

Mail:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, SW
Washington, DC 20554.

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To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on www.fcc.gov/cgb/contacts/.

This document is for consumer education purposes only and is not intended to affect any proceeding or cases involving this subject matter or related issues.

09/24/07* - cpb

