



The

# Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

## Ask the Lawyer



### Your FCC Questions Answered

By Cary S. Tepper

*[May 2014] With the potential for expensive fines, there is one smart thing to do when some matter relating to the FCC is unclear: Ask the Lawyer.*

*But what if you do not have a DC lawyer to call? Cary Tepper, a Communications Attorney with decades of experience has agreed to share his answers to questions posed by readers of **The BDR**. You are welcome to submit your questions.*

#### WHEN STATION DATA DOES NOT MATCH THE FCC DATABASE

**Question:** *We recently discovered that our station's antenna is not exactly where the FCC's database shows it to be. How do we get this fixed without incurring a fine?*

**Cary Tepper:** The FCC encourages licensees to correct their antenna data or tower site data, and the agency will be very cooperative so long as you are honest about these matters and do not purposely deceive them in any way.

A wise first step to take after you discover the problem is to apply for Special Temporary Authority to operate the station at variance with

the station's FCC license while you take additional steps to correct the matter.

The STA Request should explain in detail the variance that was discovered, the operating specifications of the current operations, and the steps you plan to take to permanently correct the situation.

Depending upon the extent of the antenna or tower discrepancy, you will also need to file either a License Modification Application to correct the data (for minimal discrepancies) or a Facilities Modification Application followed by a License Application (for more extensive discrepancies).

The exact remedial steps are fact specific, so your engineer and lawyer will need detailed information to provide you with the best plan for your situation. Be sure to consult them both to avoid problems.

#### DEALING WITH AN EXPIRED RPU/STL LICENSE

**Question:** *Our STL and RPU licenses expired some time ago. Can we just apply for a license renewal, or do we need to file new applications*

*and go through the expensive frequency coordination process for each auxiliary?*

**Cary Tepper:** Since STL and RPU licenses automatically renew when the full power broadcast station's license is renewed, it is rare for STLs and RPUs to expire.

On the other hand, sometimes these licenses do terminate for failure to respond to an FCC's inquiry letter or other form of communication.

If more than 30 days has passed since an STL or RPU license has expired or terminated, you will need to apply for a new station and go through the frequency coordination process.

### **PROPER SCHEDULING FOR THE WEEKLY EAS TEST**

**Question:** *FCC Rule 11.61 requires analog and digital AM, FM and TV broadcast stations to conduct weekly EAS tests. Does this mean that we have to conduct the weekly tests exactly every seven days apart?*

**Cary Tepper:** FCC Rule 11.61 indicates "at least once a week at random days and times."

The FCC's Self Inspection Booklets for AM, FM & TV repeats that language with the word "random" underlined. So I think it is safe to conclude that EAS tests must take place at different days and times each week. This could result in two weekly tests being only 3 or 4 days apart, or two weekly tests being 8 or 9 days apart.

So long as those two weekly tests occur within the 14-day, two week period, you will be FCC compliant.

### **ABOUT THE STATUS OF THE AM REVITALIZATION NPRM**

**Question:** *Where do you think things stand with regard to the FCC's proceeding on AM Revitalization?*

**Cary Tepper:** The FCC has received over 200 public comments in the AM Revitalization proceeding, and more than 50 of those comments were filed after the agency decided to extend the public comment period until March 20, 2014.

Most likely the FCC will need until the end of this year to reach a conclusion on the outstanding issues.

Although there is some skepticism in the industry that the FCC will take any material steps to help AM Radio, I really do believe some people of authority at the FCC are serious about helping AM Radio. I believe we are likely to see a modest expansion of the policy allowing certain FM translators to rebroadcast certain AM radio stations, as well as a plan to convert AM radio to an all-digital service by a specific time in the future.

Last August we saw the FCC implement new rules for determining when construction of a new tower may cause a distortion of the pattern of a nearby AM station, as well as an expansion of the "moment method" measurement procedure.

AM improvements are definitely moving in the right direction. Perhaps not as fast as some desire, but they are moving along.

### **THE FCC'S RELATIONSHIP WITH BROADCASTERS**

**Question:** *Do you foresee the FCC realizing that broadcasting is a business and moving away from requiring the Public Inspection File, Main Studio staffing and other rules that have little practical use other than to generate revenue from fines?*

**Cary Tepper:** I do not necessarily agree with the premise of your question.

The FCC certainly generates revenue from cracking down on broadcasters that do not comply with certain rules and regulations. But I

have been involved in a number of enforcement proceedings where we convinced the FCC that the Field Agent's findings were misplaced, or the broadcaster's situation was misunderstood by the Field Agent.

If you ask them directly, the FCC staff is likely to tell you that the Public Inspection File, studio staffing and other rules and policies encourage broadcaster accountability to better serve the public.

Although most broadcasters want to be good citizens and serve the public well because that is simply good business practice, I truly believe that many of the FCC's rules and policies provide a general framework from which broadcasters work so that the airwaves serve the public better.

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Do you have a question regarding FCC Rules and Regulations or dealing with the Commission? Just [click here and ask away](#) with no obligation.

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*Cary Tepper is the founder and managing member of Tepper Law Firm, LLC. Since 1985 Mr. Tepper has had an extensive telecommunications law practice with regard to broadcast regulation, business negotiations, acquisitions and mergers, broadcast facility modifications, radio spectrum allocations and administrative hearing litigation. Tepper Law Firm represents several hundred radio and TV stations throughout the United States.*

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