



The

# Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

## Ask the Lawyer

### Tower Owners: Is Your Data Accurate?

By Cary S. Tepper

*[June 2015] Prior to the FCC's latest Auction, stations have been advised to ensure the accuracy of coordinates of their towers. This is clearly needed because FCC staff has discovered several types of defects. Cary Tepper explains why you should take note.*

**Question:** *We saw the Public Notice regarding the upcoming FCC Auction. Since we are at maximum power and height, do we need to do anything?*

**Cary Tepper:** If you own or manage a tower structure that is subject to the FCC's Antenna Structure Registration (ASR) requirements, the FCC's Wireless Telecommunications Bureau has just issued a warning to which you should pay attention.

#### WIRELESS BUREAU WARNING

Accurate information on each tower's location is essential for a number of reasons, including ensuring the tower has been vetted by the FAA, the location and owner information is correct, and the spacing from co- and adjacent-channel stations meets FCC requirements,

[In a Public Notice](#) the Bureau advised that, within the course of reviewing ASR applications, it had discovered several types of defects that may be considered violations of FCC rules and are potentially subject to enforcement proceedings.

Because of the issuance of last week's Public Notice we can assume that ASR applications

and registrations are now a hot topic at the FCC. Therefore, now would be a good time to review your tower registrations (or pending registration applications) for accuracy and compliance.

#### COMMON TOWER REGISTRATION VIOLATIONS

To assist stations in assessing their situation, the Wireless Bureau listed several of the more common defects that violate FCC rules and could subject a station to a monetary forfeiture. They are:

- Failure to obtain a No Hazard Determination from the FAA prior to construction.
- Failure to register the structure prior to construction.
- Failure to notify the FCC within five days of completion of either construction or dismantlement of a tower.
- Failure to light and paint the tower in conformity with the lighting/painting specifications set out for the tower in the ASR system and/or in the FAA No Hazard Determination.
- Having the height and/or location of the tower differ materially from the height/location specified in the ASR system (see below for more for a definition of "material difference").
- Although the Public Notice did not mention reporting of changes in the ownership of a tower structure, such failure is a very common defect which often leads to monetary forfeiture.

The Public Notice also cautions applicants looking for initial authority to construct or modify a tower of some additional common application defects of concern.

- Using ASR certification option (1) before an environmental review has in fact been completed. (With ASR certification (1), the applicant is called upon to certify that “the construction is exempt from environmental notification (other than due to another agency’s review) and it does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC’s rules”).
- Using ASR certification option (3) before the Bureau has notified the applicant that an Environmental Assessment is not required. (ASR certification (3) says: “The environmental notification has been completed, and the FCC has notified the applicant that an Environmental Assessment is not required under Section 1.1307(c) or (d) of the FCC’s rules, and the Construction does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC’s Rules.
- Using ASR certification option (4) “The FCC has issued a Finding of No Significant Impact” before the FCC has in fact issued such a finding.

## THE FCC URGES RULES COMPLIANCE

We recommend you review your ASR information soon to determine if any of the information (especially address and telephone information) remains up to date.

Also, please take note of Footnote Number 5 of the Public Notice with regard to “material” discrepancies in height or location. The FCC’s current rules specify that alteration of a registered antenna structure requires a new registration prior to the alteration but the rules do not define what constitutes an “alteration.” For some towers that have been in place for decades, this could create an issue, as coordinates estimated on the old topo maps might be significantly in error.

Recently the Commission proposed new standards indicating that *any height change of one foot or more, and any change in latitude or longitude of one second or more* is considered a material change. However, those changes have not yet gone into effect, since they have not yet been approved by the Office of Management and Budget. That means this is a good time to get any errors corrected, before procedures escalate and fines get stiffer.

If you would like our help with these matters, please call or email us at [tepperlaw@aol.com](mailto:tepperlaw@aol.com)

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

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