



# 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**

*[June 2014] We continue with our series of answers to questions posed by BDR readers. DC Communications Attorney Cary Tepper is at your service.*

#### **UPDATING PENDING LPFM APPLICATION INFORMATION**

**Question:** *We have an LPFM application pending before the FCC and one of the four directors of our non-profit entity has moved out of the area. We are about to appoint a replacement director. Do we need to tell the FCC about this?*

**Cary Tepper:** Yes, you do. FCC Rule 1.65 requires all applicants to update material information in their applications on a continuing basis. In most circumstances, an applicant must do this within 30 days.

Many amendment filings require an exhibit where you will explain what sections of the application are being changed. And then you should amend the pertinent sections of the application.

Please be advised, however, that if your application is in competition with other applications, you cannot amend your application to improve

its comparative status. Amendments that would otherwise improve your comparative status will be accepted for informational and compliance purposes only.

#### **LPFM OWNERSHIP CHANGES**

**Question:** *I know that LPFM stations do not need to file FCC ownership reports, but are we obligated to advise the FCC at all about any changes in our ownership structure?*

**Cary Tepper:** Over the course of time, should 50% or more of your board members, trustees or ownership principals (whatever they may be called) change, you would need to apply to the FCC for a transfer in control from the old board or governing body to the new board or governing body.

Please understand, however, that if your FCC license was awarded based upon a point system comparison against other competing applicants, there may be ownership change restrictions noted on your FCC license with regard to local community presence and diversity of ownership.

These matters should be addressed carefully in order to protect the status of your FCC license.

## RETENTION OF STATION LOGS AND RECORDS

**Question:** *When we prepared our last FCC license renewal application, our FCC attorney advised us to retain operation logs for the entire eight-year license period. I had always been advised to retain those records for 2 ½ years. What do you recommend?*

**Cary Tepper:** Although the FCC's Self-Inspection Booklets indicate that certain logs and records be maintained for two years, it is really prudent to retain all important logs, records and correspondence for the entire eight-year license period. (You may wish to remove items over two years or so, but keep them in a separate, internal storage location.)

With regard to what is important, if the FCC's Self-Inspection Booklet makes reference to a particular type of log, record, correspondence or document then it is "important." The FCC's Self-Inspection Booklets are a valuable free tool, and they should be in your studios and utilized on a regular basis.

If there happens to be a challenge to your license renewal application, you might need to defend your eight-year record. Such a defense would be difficult if some or all of those records had been thrown out. So it is my suggestion that you protect yourself and keep all such logs, records and correspondence for eight years.

## TV CLOSED CAPTIONING RULES

**Question:** *In the FCC's recent Report & Order issuing new television Closed Captioning rules the words "to the extent technically feasible" is used throughout the document. What does this mean?*

**Cary Tepper:** This is a very good question, and I was surprised by what I found.

The FCC has used the words "to the extent technically feasible" in many documents over the years without offering a definition. But I

also discovered that those exact words have been used by many state and federal agencies in a wide variety of laws and proposals that have nothing to do with technology.

Therefore, "to the extent technically feasible" is actually a term of art that is used to indicate reasonable, "good faith" efforts.

In this instance, you would be expected to act in good faith and use all reasonable means with the equipment commonly used in the industry to comply with the Closed Captioning rules.

You would not be expected to take extraordinary steps.

## RF COMPLIANCE SHOWING FOR FCC LICENSE RENEWALS

**Question:** *With regard to the RF compliance showing required in an FCC license renewal application, the instructions to FCC Form 303-S state that "in the event there has been no material change in a station's RF environment since the station last received a grant of a license application or a license renewal application, the licensee may certify its compliance with RF exposure limits based on the information submitted with such application."*

*So, what constitutes a material change in the station's RF environment?*

**Cary Tepper:** This issue has come up many times with my clients during the current FCC license renewal cycle.

Although I am not an engineer, what I have learned from the consulting engineers that I work with is that if your station modified its facilities since the last FCC license renewal grant or subsequent grant of a new license, or if any other communications provider at your transmitting site modified its facilities during that same time period, then you must conduct a new RF analysis and submit that as an exhibit attachment to your FCC license renewal application.

Likewise, if there is one or more new tenants at your transmitting site -- or the loss of one or more tenants at your transmitting site -- since you last filed RF compliance information with the FCC, then the station's RF environment has materially changed.

Since RF compliance is an ongoing obligation for every FCC licensee, you will be required to bear the cost of a new RF compliance analysis regardless of the circumstances. While it is possible that every tenant at your transmitting site could work together, pool their money and commission a study for everyone at the site, I have never actually seen that happen.

Generally speaking, if you replace equipment or coax and there is no change to the station's ERP or TPO, it would not be considered a material change. As always, if you are in doubt, consult with your engineer and ask for a written supporting statement to submit along with your FCC license renewal application.

## **FM TRANSLATORS FOR AM RADIO STATIONS**

**Question:** *When the FCC changed its policies in June 2009 to allow certain FM translator stations to rebroadcast certain AM radio stations, only FM translators authorized by May 1, 2009 qualified for the new policy. Is it true that*

*the policy has since changed and that all FM translators now qualify for use by AM radio stations?*

**Cary Tepper:** The FCC did modify this policy in March 2012 but not exactly as you stated.

The May 1, 2009 date remains important but the universe of qualifying FM translator stations has been expanded to also include FM translator applications that were pending as of May 1, 2009 although granted subsequent to that date.

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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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