



The

# Broadcasters' Desktop Resource

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... edited by Barry Mishkind – the Eclectic Engineer

## Ask the Lawyer

### Always Build At The Right Time

By Cary S. Tepper

[March 2015] Often, the FCC Rules do not provide clear answers for stations. It can take some effort to get the full sense of Commission Policy on matters. Our friendly communications attorney, Cary Tepper, again helps clarify a few issues for **BDR Readers**.

**Question:** We anticipate getting our CP late in the summer. However, due to our location, we know weather-related issues make construction more difficult later in the year. Is it wise for us to, at least, get the tower base and lower sections done while the weather is good?

**Cary Tepper:** Many people do not realize that the Rules and Policies of the FCC strictly dictate the scheduling of the many activities necessary in constructing or modifying a broadcast station.

Simply put: you cannot build a new tower structure or install a new antenna and transmission line at will.

Many activities are considered “unauthorized premature construction” until you get the required FCC construction permit. Many broadcasters and engineers do not realize this, but the policy is decades old. A violation of this policy can result in fines ranging from \$10,000 to \$25,000.

#### GET THE CP FIRST

Section 319(a) of the Communications Act states in pertinent part that *“no license shall be issued under the authority of this Act for the operation of any station unless a permit for its*

*construction has been granted by the Commission.”*

Although the wording of Section 319(a) has changed slightly in the last twenty-eight years, the interpretation has remained generally the same – you are absolutely prohibited from doing certain things until the FCC issues you a construction permit.

Unfortunately, the FCC has not published any convenient list of permitted or prohibited actions. The only reasonable guidance available to us comes from the select number of published rulings regarding premature construction. We can provide you more details on these FCC rulings, but here is a quick summary of the policy:

1. The construction of three steel sleeves intended for use as support for a television tower to be located on the roof of an applicant's present studio building was prohibited before the FCC issued a construction permit since there is no evidence that the three sleeves used together could be used for anything other than to support the proposed new tower. In contrast, the construction of a rooftop room to house transmitting equipment was permissible since that small building had, in and of itself, no intrinsic television facility function.
2. The purchase of a transmitter and its delivery to the transmitter site may be done prior to the issuance of a construction permit. The transmitter may be delivered, but not

installed prior to the issuance of the construction permit.

3. The installation of a tower base and anchors or the installation of a new power line (which would be impossible to accomplish in winter months) does not constitute prohibited premature construction.
4. Although the pre-authorization tower construction or installation of radio antennas is clearly prohibited, the following steps are unquestionably permissible prior to receipt of an authorization to construct:
  - a. site clearance;
  - b. pouring of concrete footings of a tower;
  - c. installation of a tower base and anchors;
  - d. installation of a new power line;
  - e. purchase and on-site storage (but not installation) of radio equipment and other preliminary steps not having an intrinsic radio communication use related to the proposed facility.
5. The installing of antennas and transmission line, and increasing the height of a tower structure with prior FCC approval is a significant violation of the prohibition on premature construction.

If you have any compliance questions related to your particular situation, please do feel free to [send me an email](#).

## SCORING YOUR PENMANSHIP

**Question:** *There are a number of station logs and records that require the review and signature of the Chief Operator, such as Operating Logs, EAS logs and tower inspection records. If the Chief Operator's signature is not legible, will the FCC issue a citation or notice of violation?*

**Cary Tepper:** Although FCC Rule 73.1800 requires station logs to be legible and clear in detail – and this is sometimes enforced through a Notice of Violation – I have never seen the FCC raise an issue about the signature itself not being legible.

That being said, an easy way to resolve this issue is for the logs to require the person's signature *and* printed name.

## THE CALL TO ACTION

**Question:** *We are a non-commercial radio station. I know we can only broadcast underwriting announcements from for-profit sponsors. I notice that other non-commercial radio stations use the words "learn more at \_\_\_\_" in their underwriting spots. That seems like an impermissible call to action. Am I right?*

**Cary Tepper:** That certainly does sound like a call to action, and you are right to be wary.

I regularly review underwriting copy for many of my noncommercial clients, and merchants often pressure the broadcasters to include impermissible copy. In fact, I have prepared a special memo on how to prepare underwriting spots. (You also can see in that memo that if the sponsor is a *non-profit entity*, there are almost no content restrictions.)



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### **THE RIGHT SIGN LANGUAGE**

**Question:** *Our transmitting site has three towers with a common perimeter fence around the property. There are three gates to the site, each with its own road leading to one of the three towers within the fence. The roads are not interconnected, and the public is excluded from the area inside the fence.*

*How many ASR signs do I need to post at each gate?*

**Cary Tepper:** Although each road is devoted to just one of the three towers, from what you describe entering any one of the gates will allow access to all three towers.

That being so, you need to post all three ASR signs at each of the three gates.

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*Here is your chance to ask question about any FCC rule or procedure. Just [click here and ask away](#) with no obligation.*

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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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