

**MEDIA ACCESS PROJECT**  
**LPFM Supplement to the**  
**National Federation of Community Broadcasters**  
**Public Radio Legal Handbook**

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## **Introduction**

This handbook focuses on the Federal Communications Commission's ("FCC") operational requirements for low power fm radio stations. It is built on the National Federation of Community Broadcasters ("NFCB") Public Radio Legal Handbook. The LPFM Supplement is intended to be used with the NFCB Public Radio Legal Handbook. This supplement will help LPFM stations by explaining which chapters of the NFCB handbook are applicable to them, and explaining LPFM-specific rules where relevant. The chart below explains which chapters in the Public Radio Handbook apply, which Public Radio Handbook chapters do not apply and which chapters have been replaced with the LPFM specific chapters that follow.

In addition to reading the handbook, we recommend that you become familiar with the FCC's LPFM rules. The following LPFM rules are of particular importance:

Section 73.854 Unlicensed operations.

Section 73.865 Assignment and transfer of LPFM authorizations.

Section 73.873 LPFM license period.

Section 73.877 Station logs for LPFM stations.

Section 73.878 Station inspections by FCC; availability to FCC of station logs and records.

Section 73.879 Signal retransmission.

Section 73.881 Equal employment opportunities.

Section 73.318: FM blanketing interference.

Section 73.1015: Truthful written statements and responses to Commission inquiries and correspondence.

Section 73.1030: Notifications concerning interference to radio astronomy, research and receiving installations.

Section 73.1201: Station identification.

Section 73.1206: Broadcast of telephone conversations.

Section 73.1207: Rebroadcasts.

Section 73.1208: Broadcast of taped, filmed, or recorded material. Section 73.1211: Broadcast of lottery information.

Section 73.1212: Sponsorship identification; list retention; related requirements.

Section 73.1213: Antenna structure, marking and lighting.

Section 73.1216: Licensee-conducted contests.

Section 73.1217: Broadcast hoaxes.

Section 73.1230: Posting of station license.

Section 73.1250: Broadcasting emergency information. – waiver

Section 73.1300: Unattended station operation. Section 73.1400: Transmission system monitoring and control.  
 Section 73.1520: Operation for tests and maintenance. Section 73.1745: Unauthorized operation.  
 Section 73.1750: Discontinuance of operation.  
 Section 73.1940: Legally qualified candidates for public office.  
 Section 73.1941: Equal opportunities.  
 Section 73.1943: Political file.  
 Section 73.3533 Application for construction permit or modification of construction permit  
 Section 73.3536 Application for license to cover construction permit.  
 Section 73.3539: Application for renewal of license.  
 Section 73.3542: Application for emergency authorization.  
 Section 73.3550: Requests for new or modified call sign assignments. Section 73.3598: Period of construction.  
 Section 73.3599: Forfeiture of construction permit.  
 Section 73.3999: Enforcement of 18 U.S.C. 1464 -- restrictions on the transmission of obscene and indecent material.

### Chapter Guide to the Pubic Radio and LPFM Legal Handbooks

NFCB Chapter	LPFM Relevance
Ch. I - Contacts with the FCC	Applies to LPFM, read NFCB handbook Ch. I.
Ch. II - Station Self Inspections	Use new LPFM self-inspection checklist, found at <a href="http://www.fcc.gov/eb/bc-chklsts/EB18LPFM082902.pdf">http://www.fcc.gov/eb/bc-chklsts/EB18LPFM082902.pdf</a>
Ch. III - Regular Filings and Reports	Use MAP LPFM Supplement, p. 3-7.
Ch. IV - Sponsorship Identification	Applies to LPFM, read NFCB handbook Ch. IV.
Ch. V -Underwriting, Fundraising, and Promotion	Applies to LPFM, read NFCB handbook Ch. V.
Ch. VI - Programming Regulations	Use MAP LPFM Supplement, p. 8-24.
Ch. VII - Political Broadcasting and Candidate Rules	Applies to LPFM, read NFCB handbook Ch. VII.
Ch. VIII - Station Logs, Program Recordkeeping, the Public File and Other Records	Use MAP LPFM Supplement, p. 25-26.
Ch. IX - Operating Requirements	Use MAP LPFM Supplement, p. 26-35.
Ch. X - Technical Regulations	Use MAP LPFM Supplement, p. 36-39.
Ch. XI - Applications for New Stations	Ch. XI is about full power, read Ch. XII instead.
Ch. XII - The Low Power FM Service	Applies to LPFM, read NFCB handbook Ch. XII.
Ch. XIII - Other Legal Concerns	Applies to LPFM, read NFCB handbook Ch. XIII.
Ch. XIV - Licenses for Copyrighted Music	Applies to LPFM, read NFCB handbook Ch. XIV.

### **III. Regular Filings and Reports**

Getting a broadcast license is the beginning, not the end, of a close relationship with the FCC. The broadcast industry is a regulated industry and a broadcast license involves a continuous stream of forms and reports that must be filed with the FCC. This chapter outlines the filing and reports that LPFM stations must submit to the FCC.

#### **About Forms and Filings**

Before turning to particular forms, here are a few general suggestions that apply to all of the documents reviewed in this chapter.

##### ***Get The Instructions***

Virtually all FCC forms include a set of instructions, often separate from the form or application itself. Review the instructions before filling out an FCC form. These are available for download from the Forms page of the FCC's Internet site (<http://www.fcc.gov/formpage.html>). Instructions answer many questions and refer you to relevant FCC regulations.

##### ***File Online***

The Commission now requires that most filings be made over the Internet. It is essential to determine whether a given form may be filed on paper, or whether it must be filed electronically. A list of the forms that must be filed electronically is available on the FCC's Web site ([http://svartifoss.fcc.gov:8080/prod/cdbs/forms/prod/cdbs\\_ef.htm](http://svartifoss.fcc.gov:8080/prod/cdbs/forms/prod/cdbs_ef.htm)). Please see [Chapter I: Contacts with the FCC](#), for further information concerning electronic filing.

##### ***Sign The Form***

Most forms must be signed by specifically designated individuals, generally one of the officers of the licensee. A common error in routine FCC filings is to forget to have the form signed and dated by the appropriate station official, or to send the FCC unsigned documents while the signed original sits in a file at the station. The FCC will now accept faxed signatures as original signatures on paper filings. When filing forms electronically, you must provide the name and title of the individual "signing" the form. Before filing the form, therefore, be certain that the signor has reviewed the contents of the form and has approved the use of his/her signature.

##### ***Use The Current Form***

If filing a hard-copy form, make sure it is the current version of that form. The Commission will generally return an out-of-date form with a request that the information be filed on a current version. FCC forms contain a date indicating the date on which the form was approved for use (e.g., December, 2000). You can find the most recent version of each form on the FCC's Forms page (<http://www.fcc.gov/formpage.html>).

##### ***Be Candid***

Every submission to the Commission must accurately report the relevant facts. Any misrepresentation of a material fact or an attempt to mislead the Commission by a "lack

of candor" can have devastating effects. On the other hand, unnecessary detail can confuse the staff, slow down the application process, or raise new legal issues. The rule of thumb is to keep your answers clear and to the point.

Over the past two decades, the FCC has embraced a policy of reducing the frequency of filings and the quantity of information that must be filed. This "deregulatory" trend should not make stations lackadaisical about fulfilling FCC rules. One of the consequences of the reduced filing requirements has been stricter enforcement of those that remain-including steep fines for failure to file required reports and applications.

## **LPFM Station Forms and Filings**

### ***Change of Official Mailing Address***

Licensees must give notice of any change in their official mailing address. [Section 1.5](#) LPFM licensees may notify the FCC of a change of address by letter or by filing form 5072 which can be found at: <http://www.fcc.gov/Forms/Form5072/5072asc>.

### ***License Renewal***

LPFM stations must apply to renew their licenses no later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. Applications for renewal of experimental broadcast stations must be filed no later than the first day of the second full calendar month prior to the expiration date of the license sought to be renewed. If any deadline falls on a Saturday, Sunday, or a national holiday, the due date is the first full business day thereafter. § 73.3539.

Applications must be received at the Commission by the due date, whether the application is mailed or hand-delivered. The due date is not the date of the postmark, but the date the renewal application is stamped-in as received by the Commission's mailroom. Applications can also be hand-delivered to the office of the Secretary of the Commission.

Applications for renewal filed after the due date will not be denied solely because they are late, but may not be granted until after the expiration date for the license. If a renewal application is filed late, the FCC will accept Petitions to Deny up to 90 days after the FCC gives public notice that it has accepted the late-filed application for filing. [Section 73.3516\(e\)\(1\)](#) The Commission will allow the station to operate until the renewal application is granted, but the lack of a license in the interim will make everyone nervous.

### ***Granting License Renewal***

License renewal will be granted if: (1) no petition to deny the application is filed; (2) the application for license renewal demonstrates that the applicant is legally, technically, financially, and otherwise qualified to hold a license; (3) the applicant is not in violation

of the Commission's rules or policies; and (4) the Commission finds that a grant of the application will serve the public interest, convenience, and necessity.

### ***Petitions to Deny***

Any party may submit a petition to deny an application for license renewal. Such petitions may be filed up to the first day of the last full calendar month prior to the expiration of the license. The applicant for license renewal may file an opposition to the petition to deny up to thirty days from the date the petition was filed. Failure to respond to the petition is not construed as admission of facts alleged by the petitioner, but it is rarely advisable to ignore a petition to deny.

Unless an extension of time is granted, petitions to deny that are not filed in a timely manner may be dismissed without consideration. The Commission may grant a license renewal even when an untimely Petition to Deny is pending. [Section 73.3584](#). Please see the “Petition to Deny” section in Chapter XI of the NFCB Public Radio Legal Handbook for more information on Petitions to Deny. For legal advice on responding to a petition to deny review <http://www.mediaaccess.org/programs/lpfm/petadv.pdf>. at the Media Access Project website.

The FCC may also consider informal objections to a station's renewal application. Informal objections do not need to meet the formal requirements of a petition to deny, but are not accorded the same procedural guarantees. For example, the licensee may never be notified of the filing of an informal objection and may never have an opportunity to respond. Although the Commission is not obliged to consider an information objection, it may do so. If a station's renewal application is not granted by the expiration date of the old license, it is wise to find out the reason. If the reason is a pending informal objection, the station should obtain a copy of the objection and decide whether the allegations warrant a response.

### ***Unattended Operations***

LPFM stations that are operated in “unattended” mode (those are the times when no personnel are at the studio or transmitter site to monitor operations) are required to advise the Commission by simple letter. The letter must state when the site will be unattended and provide an address and telephone number where a responsible party can be reached when the site is unattended. The responsible party must be able to turn off the transmitter within 3 hours of receiving notice from the FCC that the equipment is not functioning properly- at all times. The FCC recommends monitoring equipment that can automatically shut off the transmitter within 3 hours of a fault occurring. *See LPFM First Report & Order* (FCC 00-19) at ¶ 117.

## ***Equal Employment Opportunity (EEO) Requirements***

All broadcast licensees, including LPFM must comply with the basic prohibition on discrimination on the basis of race, color, creed, sex, national origin, age, disability or veteran status. *See* 73.881.

In the past, stations with five or more full-time employees had to file an EEO Model Program Report (Form 396-A) in conjunction with their initial construction permit application and at the time of a station assignment or transfer of control. An EEO Program Report (Form 396) was filed with a station's license renewal application. The information required varied with the size of a station's staff.

Because of several court cases, the FCC did not have EEO reporting and outreach rules in place as of July 2002. It is most likely that any future reporting rules will only apply to stations with five or more employees. All LPFM licensees should keep up to date on future rules. Review updates to the EEO portion of the NFCB Legal Handbook.

### Additional Background About EEO

The equal employment opportunity requirements imposed on broadcast licensees for many years were held unconstitutional in *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998). The Lutheran Church case held that the rules were a race-based classification that required stations to aspire to a racially representative workforce. The court also found that "diversity of programming" was not a compelling governmental interest that would justify a race-based regulation (141 F. 3d at 352-353).

The FCC responded to the court ruling by modifying its EEO regulations. A new EEO program was designed to achieve broad outreach rather than outreach that specifically targeted women and minorities. The regulations required stations with five or more full-time employees to adopt an affirmative action program evaluated on the basis of the station's recruitment and referral efforts, not its hiring decisions. Stations were allowed to choose one of two options (Option A or Option B), and were required to file an Initial Election Statement that declared which option the station had elected.

Option A consisted of eleven recruitment initiatives, such as hosting, participating in or co-sponsoring job fairs, and participation in job banks or Internet programs. Stations with more than 10 employees had to undertake at least four of the approved recruitment initiatives; stations with 5-10 employees had to choose at least two of the initiatives.

Option B allowed stations to design their own outreach options, but required stations to collect and report information about the race and gender of each job applicant.

The new rules were challenged by the broadcast associations of all 50 states. *MD/DC/DE Broadcasters Association v. FCC*, 236 F. 3d 13 (D.C. Cir. 2001). The court found that because Option B required broadcasters to collect data on the race and gender of job

applicants, Option B pressured stations to hire women and minorities. Option B was found unconstitutional because it was not "narrowly tailored" to advance the governmental interest the FCC now asserted—the prevention of invidious discrimination. Option B put pressure on broadcasters to recruit minorities whether or not the broadcaster had discriminated in the past or could be expected to do so in the future. In addition, the court found that by requiring those selecting Option B to collect racial data the FCC revealed an interest in achieving race-based results, rather than simple outreach.

An appeals court again struck down the entire EEO program and found that the FCC's rules could not be rewritten simply by deleting all references to minorities. Shortly after the court ruling, the FCC suspended further enforcement of its EEO program.

On December 21, 2001, the FCC issued a Second Notice of Proposed Rule Making, which proposed to cure defects described in the DC/MD/DE Broadcast Association decision. Essentially, the Second Notice proposes recruitment options similar to those contained in Option A of the prior EEO program, with no Option B. The proposed rules would require broadcast licensees to disseminate job information about job openings to all segments of the community. These outreach approaches include job fairs, internship programs, and local events that would inform the public of employment opportunities. Specifically, broadcast licensees would be required to:

- Recruit for every full time vacancy
- Send job notices to organizations that request them
- Select from a menu of non-vacancy specific outreach approaches, such as job fairs, internship programs, and interaction with educational and community groups
- Place EEO report detailing outreach efforts in the public file annually
- File Annual Employment Reports (Form 395-B) with the FCC so that the Commission can monitor industry employment trends
- File a Statement of Compliance with the FCC regarding outreach efforts mid-way through the renewal term

The Second Notice invites comment on whether to maintain the old exemption for stations with fewer than five full-time employees, or to extend the exemption to stations with a larger number of employees. The Commission will implement new EEO regulations after considering the comments and reply comments submitted.

## VI. Programming Regulations

Although the First Amendment assures a great deal of freedom in programming decisions, broadcasters are subject to FCC regulations that are not imposed on print media. These regulations have been based on a number of rationales, including the scarcity of broadcast frequencies; the ubiquitous and intrusive nature of the broadcast signal; the broadcaster's duty to serve the "public interest;" and, in the case of public stations, the duty to preserve a noncommercial service.

This chapter reviews FCC rules that mandate or prohibit the broadcast of certain types of program material, including:

- Editorials
- Obscenity, indecency, and profanity
- Telephone conversations
- Rebroadcasts of other stations' signals
- Emergency Alert System (EAS) tests and announcements
- Material transmitted over police radio and other "public service" frequencies
- Recorded material
- Drug-related song lyrics

Other program-related topics are discussed in other chapters. For example, the regulations that cover broadcasts by and on behalf of political candidates are discussed in [Chapter VII](#). Underwriting announcements are discussed in detail in [Chapter V](#).

### Station Editorials and Political Editorials

In 1984, the Supreme Court overturned the long-standing prohibition of editorials by noncommercial stations. *FCC v. League of Women Voters of California*, 468 U.S. 364, (1984). Prior to the Supreme Court's decision, stations were free to carry programs that presented the opinions of individuals or organizations, but could not themselves take editorial stands. The Supreme Court found the editorial ban to be a content-based restriction that violated the First Amendment.

The fact that FCC rules do not prohibit station editorials does not, of course mean editorials present no legal problems. Editorializing may implicate other laws such as state defamation law or IRS regulations related to grassroots lobbying.

Although there are no special requirements with regard to identifying station editorials, it is a general journalistic and broadcast practice to state when an opinion has been presented on behalf of the licensee. There are no special logging or Public File requirements for station editorials.

The freedom to editorialize does not extend to political editorials, i.e. editorials that endorse or oppose a political candidate. In October 2000, the FCC repealed the political

editorial rule 73.1930 after the Court of Appeals for the District of Columbia found that the FCC had done nothing to justify the rule's existence. *In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules* 2000 FCC Lexis 5725 (2000). Even with the repeal of this rule, however, noncommercial stations are prohibited from airing political editorials. **Section 399 of the Communications Act states that: "No noncommercial educational broadcasting station may support or oppose any candidate for political office."** 47 C.F.R. §399

The FCC ban on political editorials applies only to licensee endorsement of or opposition to particular candidates for public office. It does not exclude the expression of political views by candidates or other parties over a public station. In fact, the FCC's political broadcasting rules encourage the even-handed discussion of political issues. For a detailed discussion of the political broadcasting rules, see [Chapter VII](#).

## **Obscenity, Indecency, and Profanity**

This section discusses the legal definitions of obscenity, indecency, and profanity, and the issues to be considered in crafting and administering a station policy in this area.

The Commission does not monitor broadcasts for content. Its enforcement actions are based on complaints of indecent or obscene broadcasting received from the public.

Stations must be prepared to defend everything they broadcast. While the Commission treads carefully in the area of program content, it is strict with regard to licensee control. The Commission will have little sympathy for a licensee that defends a questionable broadcast by stating, "We had no idea anybody was going to play records like that." Such a statement is tantamount to admitting that the licensee is not in control of the airwaves entrusted to it.

Clear station policies and prompt, consistent enforcement of those policies are essential to demonstrate that a licensee exercises control over its programs. Station policies regarding the broadcast of sensitive material should clearly state who has ultimate authority over programming decisions (generally, the program director or station manager), and should outline punishment for infractions.

### ***Legal Definitions:***

Two statutory provisions are relevant to the broadcast of obscene, indecent, or profane language:

Whoever utters any obscene, indecent, or profane language by means of radio communications shall be fined not more than \$10,000, or imprisoned not more than two years, or both. *18 U.S.C § 1464*

Nothing in this [Communications] Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. *47 U.S.C. §326*

As these provisions indicate, the Commission must walk a fine line between its obligation to penalize licensees who break the law and its inability to interfere with the licensee's rights of free speech. The tension between these competing duties is addressed in a number of judicial and administrative decisions, as are the distinctions between obscene and indecent material.

### Obscenity

FCC rules prohibit broadcasters from transmitting obscene material at any time. [Section 73.3999\(a\)](#) The Supreme Court has determined that three elements must be present for material to be considered obscene:

- An average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest
- The material depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law
- The material, taken as a whole, lacks serious literary, artistic, political, or scientific value *Miller v. California*, 413 US. 15, (1973).

What does this mean in practical terms? In one case, Morality in Media of Massachusetts, Inc., filed a petition to deny the license renewal of WGBH-TV of Boston, Massachusetts. WGBH Educational Foundation, 69 FCC 2d 1250, (1978). Morality in Media contended that the station had repeatedly broadcast offensive, vulgar, and other material harmful to children without adequate supervision or parental warnings. Among the programs cited were "Monty Python's Flying Circus" and "Masterpiece Theatre." Morality in Media claimed the programs were obscene.

The FCC denied this petition. It pointed out that the FCC was prohibited by the First Amendment and by Section 326 of the Communications Act from censoring broadcast matter and held that Morality in Media had failed to show that the programs cited met the legal definition of obscenity. For example, Morality in Media did not indicate which programs appealed predominantly to the prurient interest of minors, nor did Morality in Media show that the programs lacked serious literary, artistic, political, or scientific value for minors.

While the above discussion illustrates the Commission's cautious approach in the area of obscene programming, there have been several instances in which the FCC has taken action against broadcasters for obscene programming. Probably the best known such case concerning a noncommercial station involved WXPB-FM, a Philadelphia station licensed to the University of Pennsylvania. In December, 1975, WXPB-FM was fined two thousand dollars for the broadcast of obscene material in connection with a live, weekly, call-in program, "*The Vegetable Report*." *Notice to Trustees of the University of Pennsylvania of Apparent Liability for Forfeiture*, 57 F.C.C. 2d 782 (1975). During the shows in question, callers carried on sexually explicit conversations with the disc jockeys that included the words "fuck," "piss," and "titties" and discussed "beating off" and "blow jobs." During one call, a three-year old boy was asked if he could say "fuck" and the mother of the boy was told that she should let her son "screw" her so he wouldn't turn out to be a rapist.

The Commission's harshest action against WXPB was not based on the obscenity, but on the lack of control by the university licensee. When the station's license came up for renewal, the Commission denied the renewal. The University had to reapply for its frequency and face the risk of competition from other parties. *Application of the Trustees of the University of Pennsylvania Radio Station WXPB(FM), Philadelphia, Pennsylvania for Renewal of License*, 69 F.C.C.2d 1394 (1978). Miraculously, the University's construction permit application was approved and the University got the station back.

## Indecency

Unlike obscene material, indecent material is protected speech under the Constitution. It is channeled to certain hours, not banned altogether. The FCC's rules limit the time period in which indecent material may be broadcast to the hours between 10:00 p.m. and 6:00 a.m. [Section 73.3999\(b\)](#) The broadcast of any indecent programming outside this "safe harbor" period is prohibited.

The FCC defines indecency as language that:

describes, in context, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs. *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987) (subsequent history omitted), citing *Pacifica Foundation*, 56 FCC 2d 94, 98 (1975), *aff'd sub nom. FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

While this definition is similar to that for obscenity, there are three important differences. First, obscenity requires that the language in question appeals to the prurient interest; indecent language need not. Indecent speech need refer only to sexual or excretory activities or organs in a "patently offensive" way. Second, material is obscene only if it lacks any literary, artistic, political, or scientific value. A great literary work is never obscene, but may be indecent. Merit is relevant to the issue of whether material is indecent, but is not a complete defense. Third, obscenity is defined by reference to local community standards; indecency by a single national standard "for the broadcast medium." Local community values are irrelevant to the issue of whether a work is indecent.

## Policy Statement

In March 2001, The FCC released a Policy Statement to illustrate its interpretation of the indecency standard. *In the Matter of Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency, 2001 FCC Lexis 1889* the "Policy Statement"). The Policy Statement reviewed FCC indecency rulings and identified three basic principles underlying its decisions. These are:

- whether the description or depiction of sexual or excretory activities is explicit or graphic;
- whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and
- whether the material panders or titillates, or is presented for its shock value.

The particular weight given each of these, and other factors, depends on the overall "context" of the broadcast. *Policy Statement, paragraph 5.*

#### *Explicit/Graphic Description Versus Indirectness/Implication*

The first issue the FCC considers is whether the material "depicts or describes" sexual or excretory activities or organs. The more explicit or graphic the description or depiction, the greater the likelihood that the material will be considered patently offensive and, thus, indecent. *Policy Statement, paragraph 12.* The FCC issued either a warning or a Notice of Apparent Liability after finding that the language in question was immediately understandable as sexual in nature. *Policy Statement, paragraph 13.*

Even in cases involving innuendo or double entendre rather than explicit references to sex or excretion, the FCC has found language to be indecent where the context of the language made the sexual or excretory import "unmistakable." *Policy Statement, paragraph 14* (e.g., "Candy Wrapper," a song which uses the names of different kinds of candy to suggest sexual organs and activities).

In some cases, the FCC did not find material to be indecent, despite sexual innuendo, because the context of the broadcast did not have "inescapable sexual import." *Policy Statement, paragraph 15* (e.g., a suggestive description of a Peterbuilt truck as "Big Peter").

Otherwise indecent material may not be actionably indecent if such material is edited or "bleeped out." The editing must be effective, however. If portions of the indecent material are understandable, the FCC may still find the material indecent. *Policy Statement, paragraph 16* (e.g., "What's up fu(bleep)ck head").

#### *Dwelling/Repetition Versus Fleeting Reference*

The more repetitive the references to sexual or excretory material are, the more likely the FCC is to find the material indecent. *Policy Statement, paragraph 17.* In a few cases, the FCC has found that fleeting or isolated references to sex or excretion are not indecent. These cases grant the broadcaster some latitude for spontaneous remarks made during live broadcasts. *Policy Statement, paragraph 18* (e.g., a single usage of the word "mother fucker").

All factors are not created equal. For example, offensive references to sexual activities with children or extremely graphic sexual material have been found indecent even when the references are fleeting. *Policy Statement, paragraph 19* (e.g., a joke about "screwing an eight-year old").

#### *Presented In A Pandering Or Titillating Manner Or For Shock Value*

An analysis of "context" includes more than a verbal analysis of the language used. The FCC considers the "purpose" for which the material is presented. A sexual act graphically

described on a radio program for the purpose of titillating, sexually arousing, or amusing listeners, is more likely to be found indecent than similar language used in a bona fide news program or medical program, even if explicit language is used. Context is the most important factor in determining "purpose." *Policy Statement, paragraphs 20 and 21* (e.g., a sex education program for teens was not considered indecent because the material was presented in a clinical or instructional manner).

One inaccurate conclusion to draw is that a "news" context is an absolute defense to an indecency complaint. The newsworthiness of a particular topic does not immunize the programs from an indecency ruling if the topic is presented in a pandering or titillating manner. *Policy Statement, paragraph 22* (e.g., banter about the alleged rape of Jessica Hahn by the Rev. Jim Baker).

Similarly, the absence of a lascivious purpose is not an absolute defense. References to sexual activities or organs may be patently offensive even if those references are not pandering or titillating. *Policy Statement, paragraph 23* (e.g., "Penis Envy," a satiric song about what a woman would do if she had a penis).

Although broadcasters are required to apply these less-than-precise indecency standards with unerring accuracy, the FCC gets to make mistakes. The Commissioners may reconsider and reverse a staff ruling, or Enforcement Bureau staff may reverse an earlier decision. For example, after fining a commercial station \$7,000 for airing an edited version of the Eminem song, "The Real Slim Shady," outside the harbor period, the Enforcement Bureau rescinded the fine and concluded that the sexual references (e.g., "My bum on your lips") contained only "oblique" sexual references that were not "patently offensive" after all. *Citadel Broadcasting Company, DA 02-23* (Enforcement Bureau, January 8, 2002).

## **Profanity**

Although the Communications Act prohibits the broadcast of "profane," as well as "obscene" and "indecent" language, the FCC has not treated profanity as a separate category of speech. Complaints concerning profanity have been analyzed under the indecency standard. *LBS Broadcasting Company, L.P.*, 13 FCC Rcd 20956 (MMB 1998).

## **The FCC's Enforcement Process**

The FCC does not monitor broadcasts for indecent material, but relies on complaints from the public. Complaints will be considered by FCC staff if they include 1) a full or partial tape or transcript of the offending program; 2) the date and time of the broadcast; and 3) the call sign of the station that aired the program. If staff concludes that they do not have enough information to determine whether a program is indecent, or if the allegedly indecent material was aired during the "safe harbor" period, the complaint will be dismissed with a letter from the staff to the complainant. If the staff concludes that the

material meets the definition of indecency, and it was broadcast outside the "safe harbor" period, they will analyze the material for patent offensiveness.

If staff determines that the material was not indecent, the complaint will be denied. The staff may issue a Notice of Inquiry ("NOI") if they need more information about the circumstances surrounding the broadcast in question. The staff may also issue a Notice of Apparent Liability ("NAL"), to which the licensee can respond, or refer the case to the full Commission in cases that may raise new policy issues. For additional examples of indecency rulings, visit the FCC's Enforcement Bureau website, <http://www.fcc.gov/eb/broadcast/obscind.html>.

#### Additional Information About Indecency

##### ***The "Seven Dirty Words."***

The standard initially used by the FCC in enforcing the indecency standard was determined by, and for many years narrowly limited to, the language in a satiric George Carlin routine. This case was considered by the United States Supreme Court in 1978. *FCC v. Pacifica Foundation*, 56 FCC 2d 94 (1975), *affd.* 438 U.S. 726 (1978). The Supreme Court upheld an FCC ruling that comedian George Carlin's twelve-minute monologue, "Filthy Words," broadcast at 2 p.m. when children were likely to be in the audience, was indecent. Carlin's monologue repeatedly used what became known as the "seven dirty words": fuck, shit, piss, motherfucker, cocksucker, cunt and tit. The Pacifica decision affirmed the Commission's constitutional authority to regulate indecent speech and "channel" the "repetitive, deliberate use" of words that referred to excretory or sexual activities or organs in an offensive fashion. For almost a decade after *Pacifica*, the Commission limited its enforcement of Section 1464 to those broadcasts which repeatedly used the "seven dirty words" before 10:00 p.m.

In April 1987, the Commission issued a Public Notice that expanded the definition of indecency and the FCC's enforcement policy. *Indecency Enforcement Standards*, 2 FCC Red. 2726 (1987). The Public Notice summarized three concurrently released decisions which found several broadcasts, which would not have been found indecent under the prior FCC standard, would violate the new standard. Two of the broadcasts had aired after 10:00 p.m. (Ironically, one of the broadcasts, which involved dramatic readings from a play describing gay sex, was aired by a station licensed to the Pacifica Foundation.) The Public Notice announced that the definition of indecency would no longer be limited to Carlin's "seven dirty words," but would thereafter extend to any material found indecent under a broad, "generic" definition of indecency. This expanded definition not only included graphic descriptions, but innuendo and indirect allusions. The new definition would be enforced whenever there was a reasonable risk that children would be in the audience.

On reconsideration, the FCC defined a "safe harbor" period and clarified other aspects of its new policy. Broadcasters were not given leeway to make reasonable, good faith judgments as to what was indecent. Instead, broadcasters would be strictly liable for weighing a "host of variables" that made up the "context" of the material. Variables which the broadcaster had to weigh included the "vulgar" or "shocking" nature of the

language or imagery at issue, the "manner" of presentation, consideration of whether the material in question was isolated or fleeting, and the merit of a work. The Commission hastened to add that merit was simply one of many variables, and that it was entitled to no greater weight or respect than any other variable. 2 FCC Rcd 2726 (1987).

*The Action For Children's Television ("Act") Cases: Act I.*

The Commission's indecency standard was reviewed and invalidated in part by the Court of Appeals for the District of Columbia Circuit in *Action for Children's Television v. FCC*, 852 F.2d 1332 (DC Cir. 1998) ("Act I"). The Court found itself "impelled" to affirm the "less than precise" definition of indecency, because that definition was derived from the Supreme Court's *Pacifica* decision. A determination that the standard was unconstitutionally vague would have to be left to "higher authority." Merit, the Court found, although properly a factor considered by the FCC in its analysis, did not automatically "immunize" indecent material from FCC channeling authority. The Court did, however, strike down the "safe harbor" period that had been prescribed (then midnight to 6 a.m.) as arbitrary and capricious. The Court found that the Commission had not only failed to explain how the proposed safe harbor would achieve the government's interest of helping parents supervise their children's listening, but had failed to explain what constituted a "risk" to children.

The Court remanded the case to the FCC for a "full and fair hearing" to determine an appropriate "safe harbor" period. The Court instructed the FCC to keep in mind that indecent material is protected by the First Amendment, and that "the FCC may regulate such material only with a due respect for the high value our Constitution places on freedom and choice in what people say and hear." *Act I* at 1334.

In the wake of the *Act I* decision, Congress stepped in and directed the FCC to promulgate regulations imposing a 24-hour ban on broadcast indecency.

Six months later, the Supreme Court decided *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989), which struck down a 24-hour ban on indecent telephone services. In *Sable*, the Court reaffirmed that "sexual expression which is indecent but not obscene" deserves full First Amendment protection and can only be proscribed if government chooses the least restrictive means to further a compelling governmental interest. The means chosen must be carefully tailored to achieve those ends without unnecessarily interfering with First Amendment freedoms.

In spite of the *Sable* decision, the Commission followed the Congressional directive and imposed a 24-hour ban on indecent broadcasts. The Commission declined to consider "individual station data" on grounds that "such data are unnecessary to determine children's listening and viewing habits." *Notice of Inquiry*, 4 FCC Rcd. 8358 at 8361, 8366 n. 30 (1989). The Commission instead relied on composite, national listening and viewing data to support its conclusion that there was a reasonable risk that significant numbers of children (ages 17 and under) listen to radio and view television at all times without "active" parental supervision. *Report and Order*, 5 FCC Rcd. 5297 at 5306 (1990).

### *The Action For Children's Television ("Act") Cases: Act II*

The Commission's generic definition of indecency and the 24-hour ban were again challenged in the D.C. Court of Appeals in *Action for Children's Television v. FCC ("Act II")*, 932 F.2d 1504 (D.C. Cir. 1991). Although the Court again rejected the challengers' argument that the definition of indecency was unconstitutionally vague, it struck down the 24-hour ban. The court stressed that the Supreme Court's decision in *Sable* affirmed the protected status of indecent speech and the strict constitutional standard that government regulations of such speech must satisfy. The Court again ordered the Commission to conduct a "full and fair" hearing to determine the times indecent speech could be broadcast. As part of this inquiry, the Court again instructed the Commission to consider the appropriate definition of children and what constituted a "reasonable risk" of exposing children to indecent material, program-specific audience data broken down by age group, and the scope of the government's interest in regulating indecent broadcasts.

Before the FCC could implement the court's mandate, Congress again intervened by enacting the Public Telecommunications Act of 1992. Section 16(a) of the Act directed the FCC to promulgate a rule banning indecent broadcasts from 6 a.m. to midnight. The Commission, accordingly, again solicited public comment, and issued a rule implementing the Congressional mandate.

### *The Action For Children's Television ("Act") Cases: Act III*

In *Action for Children's Television v. FCC ("Act III")*, 11 F. 3d 170 (D.C. Cir. 1993), a panel of the D.C. Circuit unanimously struck down Section 16(a) on the grounds that it was not "narrowly . . . tailored" to avoid "unnecessary abridgment of First Amendment rights." The Court found that the 6:00 a.m. to midnight ban was not the least restrictive means to advance the Commission's asserted interest of protecting children since it did not provide adults with a reasonable period during which they could "exercise a meaningful choice to view the material while still awake." *Act III* at 182. Nor had the Commission demonstrated that the government's interest in protecting children outweighs the First Amendment rights of adults and older minors in receiving such protected material.

The Court again remanded the case to the FCC to conduct a "full and fair hearing" to determine an appropriate "safe harbor" and to review and address concerns the court had raised in *Act I* and *Act II*.

### *The Action For Children's Television ("Act") Cases: Act IV*

Before the Commission acted on the *Act III* mandate, all the judges on the Court of Appeals re-heard the case, and in a 7 to 4 opinion, reversed the prior decision of the three-judge panel. *Action for Children's Television v. FCC*, 58 F. 3d 654 (D.C. Cir. 1994) ("*Act IV*"). The 6 a.m. to midnight ban on indecent broadcasts was upheld as constitutional. Because there was a reasonable risk that children would be in the audience during the restricted hours, and because, the Court held, the safe harbor period would provide an opportunity for "adult" programming, the proposed rule would effectuate the goal of protecting children from indecent broadcasts without unduly restricting the First Amendment rights of adults. The Court concluded that "although the restrictions burden

the rights of many adults, it seems entirely appropriate that the marginal inconvenience of some adults be made to yield to the imperative needs of the young." Act IV at 667.

The Court also addressed an exception in the regulations which allowed public radio and television stations that went off the air at or before midnight to broadcast indecent programming beginning at 10 p.m. The court found this distinction to be unjustified. The less restrictive approach was to enforce a 6 a.m. to 10 p.m. ban for all stations.

The Supreme Court chose not to hear an appeal of the Act IV decision (*Action for Children's Television v. FCC*, 58 F.3d 654, D.C. Cir., 1995), *cert. denied*, 516 U.S. 1043, 1996), and thus indirectly upheld the FCC's enforcement of its generic definition of indecency and the 6 a.m. to 10 p.m. safe harbor period.

## **Personal Attack Doctrine Repealed**

The "personal attack" rule provided that, if an attack was made on a person's integrity during the presentation of views on a controversial issue of public importance, the station had to inform that person or group attacked and provide a reasonable opportunity to respond. [Section 73.1920](#) The rule was under scrutiny for over ten years because of First Amendment concerns that it chilled free speech. In 1999, the Court of Appeals for the District of Columbia ordered the Commission to explain its rationale for the rule. *Radio-Television News Directors Association v. FCC*, 184 F.3d 872 (D.C. Cir. 1999). In October 2000, the same court ordered the FCC to repeal the personal attack rule after the FCC took no action to justify the rule's continued existence. *Radio-Television News Directors Association v. FCC*, 229 F.3d 269 (D.C. Cir. 2000).

On October 26, 2000, the FCC repealed the personal attack rule, but noted that it could, consistent with the D.C. Circuit's order, institute a rulemaking proceeding to reinstitute the rule if, in the future, it found that the rule was in the public interest. *In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules*, 15 FCC Rcd 20697 (2000).

## **Broadcast of Telephone Conversations**

The FCC's "telephone conversation rule" protects the privacy of telephone conversations by requiring licensees to notify any and all parties to a phone call of the station's intention to broadcast or record the conversation. This notice must be given *before* the station broadcasts or records *any* portion of the conversation. [Section 73.1206](#)

A telephone conversation begins the moment a party answers the phone. Therefore, a party's "hello" on the air or on tape before the required notification is given violates the rule. The rule requires a station to "inform" members of the public that the call is "being broadcast live" or "being recorded for broadcast" prior to the broadcast.

Express notification is not necessary when it is obvious from the circumstances that the conversation is likely to be broadcast. For instance, the rule presumes a person's awareness that a conversation will be aired if that person originates the call to a call-in show or if the person is associated with the station (such as an employee or part-time reporter).

Violations may occur when callers are given misleading information. For example, nationally syndicated shock jocks Don Geronimo and Mike O'Meara pushed the telephone conversation rule's limits too far by informing a caller she was being placed on hold, while they continued to broadcast her private (and quite personal) conversation with her sister. *Infinity Broadcasting Corp. of Washington, D.C., Licensee Radio Station WJFK-FM, Manassas, VA*, 14 FCC Rcd. 5539 (1999).

Although the caller was informed at the outset that her conversation was being broadcast live, the FCC found that she reasonably believed her "on hold" conversation was private. Even after the embarrassed caller settled a civil suit against two stations that aired the program and withdrew her FCC complaints regarding the matter, the FCC issued a \$4,000 fine to the stations. The fact that the stations were broadcasting a syndicated program rather than originating the program was also found to be irrelevant-the licensee was held responsible for the content of any material broadcast on its station, regardless of the source.

Broadcasters have periodically sought to have the telephone rule changed in order to allow stations to record or broadcast conversations that are spontaneous and unguarded. The Commission has always rejected elimination of the rule on grounds that it protects the private citizen's right to privacy. *Broadcast of Telephone Conversations*, 3 FCC Rcd. 5461 (1988).

### ***How Stations Handle the Prior Notification Rule***

The prior notification requirements outlaw "ambush interviews," in which a reporter gets on the air, telephones a party, and simply broadcasts that conversation live without telling the other party what is happening. The rule also prohibits live out-going calls to unsuspecting members of the public. An announcement that "This is Susan Smith of station WXYZ and you're being broadcast live" does not satisfy the prior notification requirement if the party called is already on the air. Stations may, however, call a party and, immediately, advise the party that the call will be broadcast, and then put the call on the air.

### ***Licensee Control During Live Telephone Broadcasts***

A licensee is generally responsible for any and all material it broadcasts. Statements by members of the public during the course of a live telephone call-in program are no exception. Programs devoted to controversial issues require a high alert. Content issues are more likely to arise during a discussion of AIDS than during a discussion of cooking techniques.

Some stations use a tape delay for live programming, regardless of the nature of the program. The technique involves recording a program, program host, guests, callers, but delaying actual broadcast by several seconds. If an inappropriate statement (such as indecent language) is made, the material can be bleeped over or cut out, and the show can still be billed as live.

Some stations use other techniques. For example, call-in programs can be handled by two or more staff. One person takes the calls and talks with them before connecting them to the person on the air. The on-air host typically makes a statement along the lines of, "Hi, you're on the air." The first staff member can thus screen the calls, give the required

## Emergency Alert System

The Commission determined that LPFM stations did not have to install EAS decoders until one year after the Commission certified an EAS decoder. *See* Amendment of Part 11 of the Commission's Rules Regarding EAS, FCC 02-64, EB Docket No. 01-66 (rel. Feb. 27, 2002) <http://mediaaccess.org/programs/LPFM/index.html>. The Commission certified a decoder in June 2002. This means that *LPFM stations must have at least a decode-only EAS unit before July 2003*. *See* the FCC's notice about certifying a EAS decoder. [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-02-2312A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-2312A1.pdf). EAS violations are costly so don't wait too long before ordering. It will not be sufficient to have an order for the equipment by July 2003. Only one decoder has been certified as of August 2002, but more may be certified this year. Contact the National Federation of Community Broadcasters ([www.nfcb.org](http://www.nfcb.org)) or Prometheus Radio Project ([www.prometheusradio.org](http://www.prometheusradio.org)) for advice on purchasing a decoder. *See* <http://www.rwonline.com/dailynews/one.php?id=1789>.

## Other Programming Concerns

The final section of the chapter discusses programming concerns still regulated by the FCC, and other concerns that have been regulated by the Commission in the past, but are now under the jurisdiction of state or federal courts.

### Use of Recorded Material

Increasingly sophisticated recording and sound delivery technology has enabled broadcasters to bring music and cultural events from every corner of the world into the living room or car of the listener. With these increased capabilities come new opportunities for abuse. A reporter may press for an interview at an embarrassing moment or record comments without the person realizing that the interview is meant for broadcast. Broadcast of conversations obtained through a telephone wiretap or through a surreptitious recording of a private conversation may violate laws that protect privacy interests.

While the FCC has rules designed to prevent such abuse, stations are also governed by federal, state, and local laws and regulations that protect private citizens from injurious invasions of privacy. Station policies on broadcast and non-broadcast use of recorded material should reflect both the Commission's regulations and a range of other legal concerns.

This section discusses rules that apply to:

- Broadcasts of recorded material that create the impression of a live broadcast
- Telephone conversations recorded for broadcast and non-broadcast use
- Recording with "hidden microphones"

*Recorded Material that Sounds Live*

Whenever a broadcaster tries to create the impression that recorded material is actually occurring live at the time of broadcast, or presents recorded material in which time is of special significance, that programming must be preceded by an announcement that the material is recorded. [Section 73.1208](#) Such an announcement prevents listeners from being misled. Programming of a public service nature need not be identified as recorded.

### *Recording of Telephone Conversations*

Although the Commission does not regulate recordings of telephone conversations for non-broadcast purposes, federal law requires that at least one party give prior consent to such a recording. *18 U.S.C. 2511* That party can be the licensee or the station personnel actually making such a recording. A number of states have enacted more stringent requirements that may require all party consent and prior consent before any use is made of such a recording.

As broadcasters devise station policies regarding recorded conversations, state and federal statutes regulating recordings of both wire and oral communications must also be taken into consideration. While these laws are generally concerned with the use of recorded conversations in a manner that would be injurious to the individual involved, they implicate the broader issue of an individual's right to privacy. Almost all jurisdictions have some laws restricting "invasion of privacy."

### *Recording Conversations*

The Commission's rules require all party consent for recordings made with a wireless microphone. A key exception is made, however, for the recording of private conversations that are not, in effect, "private" (i.e., conversations that occur in a semi-public or public place and in a manner that others would be likely or able to overhear). Restaurants, parks, and streets are all examples of such places. An office, hotel room, and other such locations fall into a gray area. Check with a lawyer for advice on how to proceed [Section 15.9](#) in these circumstances.

In situations in which a parabolic or shotgun microphone, or other devices not apparent to those being recorded, are used to record conversations, state laws may again impose more stringent requirements than are contained in federal law. In some states, for example, the interception itself may have been carried out in a legal manner, but use of the material for either non-broadcast or broadcast purposes would require all party consent.

Use of a recording of a private conversation without permission may subject a station to a suit for violation of the right of publicity. The right of publicity (sometimes confusingly called a right of privacy) is the right of every person to control the commercial use of his or her voice, image, or name. Most of the cases relate to celebrities, such as Bette Midler, who sued to stop an imitator on a TV commercial from imitating a personal, but commercially viable, attribute-her voice.

Surreptitious or undercover news gathering techniques may implicate any number of non-FCC legal issues. For example, in Greensboro, North Carolina, in 1992, an ABC television series, *PrimeTime Live*, sent undercover producers to get jobs with the grocery store, Food Lion, so that they could secretly record unsanitary meat-handling practices with hidden video cameras and microphones. After some of the footage was used in a broadcast of *PrimeTime Live*, Food Lion sued ABC and the *PrimeTime Live* producers and reporters for millions in damages, claiming fraud, breach of duty of loyalty, trespass, and unfair trade practices. *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505 (4th Cir. N.C. 1999). The court held that ABC had illegally trespassed because the journalists had used misrepresentation to gain access to parts of the store that were off-limits to regular customers. Had the filming taken place in an area open to the public, such action would not have constituted a trespass.

### *Editing Recorded Material For Broadcast Use*

Editing inevitably affects the nuances of recorded material and may radically transform the substance. Many people are shocked to hear only a snippet of an interview in which they expounded at length on some topic. A simple release form that clearly gives a station permission to record, edit and broadcast a taped interview will establish a station's right to use the recorded material. A sample release form is [attached](#). Permission to use recorded material for broadcast does not, of course, obligate the broadcaster to use that material-unless such a restriction was explicitly agreed to by both parties.

While the Commission and the courts recognize the problems associated with editing material, broadcasters have generally been afforded great discretion. A quote from Chief Justice Burger sums up this widely held sentiment: "For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors-newspapers or broadcast-can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values." *Columbia Broadcasting System v. Democratic National Comm.*, 412 U.S. 94, 124-25 (1973).

### *Pre-Recorded Telemarketing Messages*

The Telephone Consumer Protection Act of 1991 (the "TCPA") restricts the use of certain telemarketing messages. The TCPA is a consumer protection statute enacted to protect the privacy rights of residential telephone subscribers.

The FCC's rules implementing the TCPA, [Sections 64.1200](#) and [68.318](#), place numerous restrictions on the use of an artificial or prerecorded voice to deliver a message over the telephone. Such calls must not be made to emergency lines, guest or patient rooms of hospitals, or to telephone numbers assigned to paging services, cell phone services, or similar services for which the called party is charged for the call. These restrictions also apply to autodialing systems regardless of whether a recorded message is used. If an artificial or pre-recorded telephone message is delivered by an autodialing system, the message must identify the entity on whose behalf the call is made at the beginning of the

message and state the telephone number or address of such entity during or after the message. Other restrictions further limit autodialing.

The TCPA and the related FCC rules should be consulted before executing any telemarketing plan, particularly one that includes an automatic telephone dialing system or an artificial or prerecorded voice.

#### *Interception of Wire or Radio Transmissions*

Broadcasters should obtain written permission to make use of any material transmitted over police, fire, FAA, and similar frequencies used in the preparation or airing of broadcast programming. The transmission need not be used as over-the-air programming in order to violate the Communications Act. Simple interception of the message requires permission.

Written authorization should be obtained from the licensee of the frequency and kept in the station's records. Stations regularly reach agreements that authorize monitoring of either specific frequencies or all frequencies used in the licensee's community.

Federal law treats unauthorized use or interception of these transmissions in the same manner as wiretapping and electronic eavesdropping. Sanctions include prison and fines *47 U.S.C. Section 705*.

#### **Drug Lyrics**

The broadcast of lyrics that glorify or promote the use of drugs is subject to the same standards applied by the Commission to other broadcasts: licensees are expected to exercise responsible discretion. There is no outright ban on the broadcast of drug lyrics, but a broadcaster could jeopardize its license by failing to exercise reasonable judgment in this area.

The Commission has said that ". . . selection of records is a matter for the licensee's judgment. Licensees could reasonably and understandably reach differing judgments as to whether a particular record promotes drug usage. Such an evaluation process is one solely for the licensee. The Commission cannot properly make or review such individual licensee judgments. At renewal time, the Commission's function is solely limited to a review of whether a licensee's programming efforts, on an overall basis, have been in the public interest." *Licensee Responsibility to Review Records Before Their Broadcast, Memorandum Opinion and Order, 31 FCC 2d 377 (April 16, 1971)*.

The FCC's policy on drug lyrics is a sleeper. Although drug lyrics were a hot topic in the 1960's and 1970's, the issue does not regularly receive much FCC attention. It is important for broadcasters to remember that the FCC's policy is still on the books and that it can be reactivated in times of intense public concern regarding record lyrics.

#### **Authorization and Release**

Date: \_\_\_\_\_

(Station) \_\_\_\_\_ is a not-for-profit organization that operates noncommercial radio station (Station) \_\_\_\_\_ in (City of License) \_\_\_\_\_ .

By signing this Authorization and Release I give (Station) \_\_\_\_\_ permission to record and to broadcast my voice and likeness, in analog or digital format; preserve the work in any medium; edit, reproduce, archive, webcast, and promote the work and create derivative works or compilations; distribute the work to other noncommercial radio broadcast stations or noncommercial radio networks; utilize the work for promotional and public relations purposes; and incorporate the work or any portion in one or more compact discs for premium and promotional use. (Station) \_\_\_\_\_ shall own all right, title, interest, and copyright in the work.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

## VIII. Record Keeping Requirements for Low Power Stations

### Political File

LPFM stations must keep a record of how they handle all requests for airtime by and on behalf of qualified political candidates. [Section 73.1943](#) The term "legally qualified candidates" is defined by [Section 73.1940\(d\)](#). The following types of information must be recorded:

- All requests for airtime made by or on behalf of candidates for public office (whether or not the request was granted);
- Notes showing if and when the spots actually aired;

Other requirements:

- The political file must be "maintained for public inspection at an accessible place in the station's community" (*Low Power Radio, First Report & Order*, ¶ 176);
- Records should be placed in the file as soon as possible;
- Information must be kept for two years.

### Posting of Station License

"The station license and any other instrument of station authorization" must either be posted in a conspicuous place or kept in a binder or folder at the place the license holder "considers ... the principal control point of the transmitter." *See* 47 C.F.R. § 73.1230. If the license is posted it must be in a conspicuous place and all of the terms must be visible. If the license is placed in a binder or folder the documents must be readily available and easily accessible. *See id.*

### Station Log

LPFM licensees must maintain a station log. Station logs verify that the station is being properly operated because the licensee must examine the operation before making log entries. Logs must be retained for at least two years from the date of last entry and must be made available to the FCC upon request. *See* Section 73.878. Each log entry must include the time and date of observation and the name of the person making the entry.

The station log must include the following information:

- a. Any extinguishment or malfunction of the antenna structure obstruction lighting, adjustments, repairs, or replacement to the lighting system, or related notification to the FAA. *See* 73.877, C.F.R. § 17.48 and 73.49.
- b. Dates and a brief explanation of station outages due to equipment malfunction, servicing, or replacement.
- c. Operations not in accordance with the station license; and
- d. EAS weekly log requirements. *See* § 73.877.

*\*Compliance with EAS regulations are waived until July 2003.*

In addition to the above station log entries, those who own antenna structures that are registered with the FCC and have been assigned lighting specifications must make and log daily antenna observations. Owners can visually observe the antenna lights or observe an automatic indicator designed to register any failure of the lights. If the owner has installed an automatic alarm system that detects and notifies the owner of any failure of the lights the daily inspections are not necessary. Owners must inspect the automatic equipment at least every three months to make sure that it is working properly. *See* C.F.R. § 17.47.

The owner of the registered antenna structures must telephone the nearest Flight Service Station or Office of the Federal Aviation Administration if any of the top steady lights or flashing obstruction lights on the antenna structure go out or are not functioning properly and is not corrected in 30 minutes. *See* C.F.R. § 17.48.

## **Rebroadcast Agreements**

Before a station can rebroadcast another station's signal, it must obtain the written consent of the licensee that originated the program. [Section 73.1207](#). See the "Rebroadcasts" section of [Chapter VI: Programming Regulations](#). This requirement does not apply to messages originating in the Amateur and Citizen's Band services.

A copy of the written consent must be retained in the station's files. LPFM stations should keep this with their political file or their station log. While the FCC does not specify a retention period, at a minimum, such consent must be retained for as long as the station is engaged in the rebroadcast activity, and probably should be kept until final FCC action on the renewal application following the last rebroadcast covered by the agreement.

## **IX. Operating Requirements**

This chapter reviews a variety of operating requirements, including:

- Station Identification Announcements
- Share-Time Agreements
- Restrictions on Retransmitting Full Power Signals
- Lotteries
- Contests
- Subsidiary Communications Authorizations ("SCAs")
- Call Signs
- Special Temporary Authorizations and Waivers

### **Station Identification**

All broadcast stations are required to make periodic station identification announcements. While stations may identify themselves informally (e.g., "You're in tune with FM 90") at

any time, stations must also make announcements that meet prescribed requirements concerning timing and content.

Station identification announcements must be made:

- At the beginning and ending of day if the station does not broadcast 24-hours per day [Section 73.1201\(a\)\(1\)](#)
- Hourly, as close to the "top of the hour" as feasible, at a natural break in program offerings [Section 73.1201\(a\)\(2\)](#)

Each required station identification announcement *must* include the station's assigned call letters immediately followed by the community or communities specified in the station's license. [Section 73.1201\(b\)](#) When airing a required station ID, the station has the option of inserting the name of the licensee or its frequency, or both, between the call letters and the community of license. No other sequence is permissible.

#### *Acceptable IDs*

- KAAA, Anytown
- KAAA, 88.1 FM, Anytown
- KAAA, University of Anytown, Anytown
- KAAA, Anytown, your public radio station

#### *Unacceptable IDs*

- In Anytown, this is KAAA
- FM 88, Anytown
- KAAA, the listener-supported broadcast service of the University of Anytown  
KAAA, public radio for Anytown

The unacceptable IDs are unacceptable only for the required top-of-the hour or sign on/sign off ID. They would be fine for other announcements.

The optional identification of a station's frequency may be made in any number of ways, such as: "FM 90.1," "90.1 Megahertz," "90.1 on your FM dial," or "Channel 211."

#### *Identification of Other Communities*

A station may include in its official station identification the names of any additional community or communities it serves, so long as the community to which it is licensed is named first. For example, a station licensed to Anytown could identify itself as "KAAA, Anytown, Neartown, and Fartown."

#### *Simultaneous Announcements*

If the same licensee operates AM broadcast stations in the 535-1605 kHz band and in the 1605-1705 kHz band, and both stations are licensed to the same community and simultaneously broadcast the same programs, station IDs may be made jointly for both stations [Section 73.1201\(c\)\(2\)](#).

### *Satellite Operation*

When the programming of a station is rebroadcast simultaneously over the facilities of a terrestrial satellite (or "repeater") station, the originating station may make station identification announcements for the satellite station. [Section 73.1201\(c\)\(3\)](#).

### **Share-Time Agreements**

A share-time agreement is a means by which two separate entities share a single broadcast frequency. This happens, for example, when two LPFM applicants "share points" and obtain a license together. A share-time agreement may be entered into voluntarily or imposed by the FCC. Under a share-time agreement, each party holds its own license from the FCC. Each enjoys all the rights and each must meet all the obligations of a licensee, with the exception that the license for each licensee specifies operations only during certain hours. In some share-time situations, the two licensed parties share station facilities, or some part of the facilities, such as the transmitter and antenna. In other situations, the two parties operate with separate studios, at different power levels and from different transmitter locations.

A licensee may propose a voluntary share-time arrangement for its frequency at any time. The FCC uses involuntary time-sharing to resolve proceedings between mutually exclusive applicants, each of whom seeks a permit to construct a new station. For a discussion of the use of time-sharing to resolve proceedings involving mutually exclusive applications, see [Chapter XI](#). The FCC may also require a licensee to share its channel if the licensee does not meet minimum operating requirements.

### **Restrictions on Retransmitting Full Power Signals**

LPFM stations are prohibited from retransmitting full power radio broadcast signal either terrestrially or via satellite. *See* 73.879.

### **Hours of Operation**

The FCC requires that all LPFM stations operate at least 36 hours a week. The station must operate at least 5 hours a day, 6 days a week. Stations licensed to educational institutions are not required to operate on Sunday and are exempt from the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods. *Section* 73.850.

### **Lotteries**

Section 1304 of the U.S. Criminal Code prohibits the broadcast of any "advertisement of or any lottery or any information concerning a lottery." 18 U.S.C. §1304 Although the "anti-lottery statute" and the implementing FCC regulation, [Section 73.1211](#), are still "on the books," their enforcement has been greatly limited by numerous exemptions and by judicial decisions. For the most part, state law has replaced federal law with respect to the broadcast of lotteries, and stations should be familiar with relevant state law. Many states

permit non-profit organizations to conduct lotteries, subject to certain conditions, or the grant of a lottery permit.

*Definition Of A Lottery*

[Section 73.1211\(b\)](#)

- When prizes can be won
- The extent, nature and value of prizes
- Terms and conditions of how winners can select prizes
- Procedures for breaking ties

#### *When Material Contest Terms Should Be Disclosed*

The obligation to disclose material terms arises at the time the audience is first told how to enter or participate in the contest and continues thereafter. Material terms need not be disclosed each time the contest is announced, but should be disclosed periodically throughout the duration of the contest. The FCC has ruled that airing contest rules only in overnight time periods is not reasonable and has fined stations for failure to make adequate disclosure of contest rules. CBS, Inc., 9 FCC Rcd. 705 (1994).

#### *Potentially Misleading or Deceptive Terms*

The following are some of the practices the FCC has found to be deceptive or improper:

- Failing to give a full and accurate description of the terms of the contest
- Changing the rules or material terms of the contest or promotion without prompt, repeated notice to the public
- Applying arbitrary or inconsistent standards for judging winners
- Providing aid or assistance to some contestants, but not all
- Failing to supervise the conduct of the contest adequately
- Failing to assure each contestant a fair and equal opportunity to win the prizes announced
- Predetermining or prearranging winners in games of chance
- Failing to award prizes as announced or within a reasonable time after completion of the contest or promotion
- Failing to provide procedures for breaking ties between winners
- Creating the appearance that contestants won prizes of equal value, when only one contestant actually won the grand prize
- Creating the appearance that prizes can be won at times that they cannot be
- Giving the false impression that non-cash winners were cash winners
- Disseminating false clues
- Distortion in other programming, such as news, to promote a contest

#### *Practical Suggestions*

The rules in every contest or promotion should provide: (a) a time period in which the prizes must be claimed or used (e.g., the time period within which a trip must be taken); (b) a warning that no substitutions for prizes or travel arrangements will be permitted; and (c) a statement that the station is not liable for the failure of any third-party provider of the prize (e.g., a travel agent) to satisfy its obligation to furnish the prize. If the prize involves travel or other potential risks, it is wise to require the prize winner to release the station from liability for any injury the prize winner may suffer by accepting the prize.

Do not exaggerate the nature of the prizes or chances of winning. Hyperbole can cause trouble. For example, if a "travel" prize includes only hotel accommodations, but not transportation, terms such as "vacation" or "trip" should be avoided, since they suggest

that transportation is included. *Randy Jay Broadcasting Co.*, 64 FCC 2d 1121 (1977). A station's promotion of its "\$100,000 People's Choice Contest," which appeared to indicate that \$100,000 worth of cars would be given away as prizes, was declared misleading when, in fact, the prize was one car worth substantially less than that amount. *Stoner Broadcasting System, Inc.*, 7 FCC Rcd. 3574 (1992).

### *Documentation*

Documentation regarding the contest is a station's best defense against complaints. Make up a separate file for each contest. This file should not be included in the local public file. The following materials, however, should be regularly preserved in that file:

- Rules and eligibility requirements for the contest
- Verification as to when the rules for the contest were broadcast or other wise disseminated
- Promotional materials relating to the contest or promotion, such as broadcast copy, recordings or air-checks of the copy as it was broadcast, print advertisements, billboard and poster layouts, direct mail pieces, bumper stickers, and promotional merchandise
- A listing of prizes awarded and the names, addresses (and in the case of prizes with a value of more than \$599, Social Security numbers) of the winners
- Prize receipts signed by winners
- Personal releases allowing the station to use the name, voice and/or image of contest winners for promotional purposes
- Any written complaints or internal memoranda concerning complaints about the contest
- Recordings of any on-air telephone calls that were an element of the contest

The standard fine for violation of the FCC's contest rule is \$4,000.

### *Non-FCC Liability*

A station's most significant exposure may not be FCC sanctions, but lawsuits from disgruntled contestants. Such liability can drastically be reduced by taking a number of precautions:

- Impose realistic and legitimate eligibility restrictions on every contest or promotion. The first restriction should be that no station employee, and no family member of station employees, should be eligible to be a contestant.
- If age is a material term (such as in a car giveaway), be sure to include age restrictions among the eligibility qualifications.
- In any contest involving physical participation by contestants, obtain a full liability release from *all* contestants before they are permitted to participate.

Those participating in a contest should be advised that they do so at their own risk. Often, particularly at station-sponsored dances or other events involving large gatherings of people, it is difficult to have every participant sign a release. In such cases, station management

should consider the use of admission tickets or vouchers that contain disclaimers and notices of potential risk for the ticket bearers.

A broadcaster could also be liable for a defect in a product that is awarded as a prize (e.g., a champagne bottle that explodes). In order to limit this liability, have each prize winner sign a form that releases the station from liability.

Historically, contests that resulted in personal and property damage involved such common themes as:

- Treasure or scavenger hunts on public or private property
- Events which attract large crowds and divert local authorities and police from other duties
- Competitions requiring contestants to travel specified distances in short periods of time, or that disrupt traffic flow or encourage traffic violations
- Discharging objects from the back of moving vehicles or from aircraft, particularly during a large assemblage of people (e.g., dropping a football or money over a stadium during a football game)
- Nuisance calls by the contestants calling randomly selected numbers in search of a specific slogan or response from the answering party
- Competitions requiring the accumulation and deposit of materials or items (e.g., scrap metal) in such a way as to obstruct access to commercial establishments or public offices

### *Criminal Liability*

Section 508 of the Communications Act prohibits the broadcast of contest information where the outcome has been predetermined. A station that gives a contestant secret assistance in a contest of purported intellectual skill may be subject to criminal sanctions. 47 U.S.C. § 308.

### *Tax Aspects Of Contests And Promotions*

Prizes and awards may be taxable income under the Federal Internal Revenue Code. Here are the *general* tax considerations of contests and promotions:

- With few exceptions, amounts received as prizes from contests must be included in the winner's gross income. If a prize is not money, but goods or services, the fair market value of the goods or services is the amount to be included in gross income.
- The broadcast licensee must report to the IRS the identity of contest winners and the amounts awarded to them on MISC Form 1096. The report must include (1) the name and address of the prize recipient, and (2) the aggregate amount of payments to that recipient. This reporting requirement is triggered whenever the *aggregate* amount given to a recipient in one year is \$600 or more. In addition, a copy of IRS Form 1099 MISC must be provided to prize recipients by January 31 of the year following the calendar year in which a prize is awarded.

- The obligation to report income occurs when the amount or prize is credited or set aside for the recipient. Therefore, regardless of when the recipient claims the prize, the obligation to report the income arises when the broadcast station makes the prize available.

## **Good Engineering Practices**

Section 73.508 specifies that subpart B- Rules 73.201-73.333 are applicable to LPFM stations. Even though some of the rules in the below sections are not listed in subpart G they are still applicable to LPFM due to 73.508.

## **Multiplex Transmissions**

An AM or FM channel accommodates "side channels" as well as the main channel which carries the station's programs. The side channels can be used by one or more "subcarriers" without disruption of the main channel service. Making multiple uses of the broadcast channel is called "multiplexing."

*FM Subsidiary Communications Services and AM Carrier Services*

### ***FM And AM Multiplex Transmissions***

The technical standards for FM multiplex subcarriers, except those used for stereophonic sound broadcasts, are found in [Section 73.319](#) of the FCC Rules. The technical standards for AM multiplex subcarriers, except those used for stereophonic broadcasting, are found in [Section 73.127](#).

### ***FM stereophonic sound broadcasting***

Noncommercial FM stations do not need authority from the FCC to transmit in stereo, but must install proper equipment, pursuant to [Sections 73.322 and 73.1590](#) of the FCC's Rules. Specifications governing FM stereophonic sound transmission standards are found in [Section 73.322](#).

AM stations may transmit stereophonic programs only upon installation of type-accepted transmitting equipment and required measuring equipment, to assure that such transmissions conform to the required modulation characteristics. While the FCC does not specify composition of the transmitted stereophonic signal, the signal must comply with occupied bandwidth limitations, must be compatible with AM receivers using envelope detectors, and must comply with pertinent international agreements. [Section 73.128](#)

### **Call Signs**

Four letter call signs beginning with the letter K are assigned to stations located west of the Mississippi River. Call signs beginning with the letter W are assigned to stations located east of the Mississippi River. [Section 73.3550\(e\)](#) Stations operating in different broadcast services and under common control (e.g., commonly named AM and FM, FM and TV stations) can ask to use the same call sign. Low Power FM stations are assigned four letter call signs in the same manner as described above, followed by the suffix "-LP." [Section 73.3550\(f\)](#)

Requests for new or modified call signs must be made via the FCC's Broadcast Call Sign Reservation and Authorization System found on the FCC's website at <http://gullfoss2.fcc.gov/prod/callsign/prod/main.html>. [Section 73.3550](#) Paper requests for new call signs or call sign changes are no longer accepted. Licensees and permittees may use this online system to:

- Determine the availability of any call sign
- Select an initial call sign for a new station
- Change a station's call sign
- Modify an existing call sign to add or delete an "-FM" or "-TV" suffix
- Exchange call signs with another licensee or permittee in the same service
- Reserve a different call sign for a station being transferred or assigned

Applicants may request a call sign of their choice as long as the call sign requested is not assigned to another entity. The Commission will grant a request for a call sign assigned to a station in another service (e.g., a TV or AM station) if the FM applicant certifies that the other station has consented to the use of its call sign. If an applicant wishes to use a

call sign assigned to the Coast Guard, it must make a request to the Coast Guard to release the call sign to the FCC. After it is released, the broadcaster may apply for the call sign. No application fee is charged for call sign requests for noncommercial stations.

Stations that choose to modify their call letters can request an "effective date" for the change as long as that date falls within forty-five days of the Commission's receipt of the request for change. [Section 73.3550\(j\)](#)

## **STAs and Waivers**

Although FCC regulations are rigorously enforced, the Commission recognizes that equipment breakdowns occur, that unique technical situations may demand an exemption from normal requirements, and that special situations may warrant operation outside of the rules. Generally, any noncompliance with FCC technical rules requires notification to the Commission, particularly in situations that involve extended periods of time.

When protracted rather than temporary relief from an FCC requirement is needed, a waiver of an FCC rule may be possible. Waivers can be granted for a specific one-time situation or may grant a licensee the equivalent of a permanent exemption. The Commission has granted waivers of interference standards, main studio location requirements, EAS equipment requirements, requirements for monitoring transmitter operations, and the prohibition on point-to-point messages outside emergency situations.

A request for a waiver may be made by letter, by telephone, or in person with Commission staff. A waiver does not take effect until FCC notification that the waiver is granted, although such notice can be retroactive in effect. The Commission can modify or revoke a waiver without prior notice.

In many cases, FCC staff have informal guidelines about the extent to which they will bend the rules, such as the maximum amount of interference that will be tolerated even when all parties agree, or the maximum amount of time a station will be given to rectify a troublesome situation. Since these guidelines are unpublished, one learns of them only through studying previous cases and learning about specific situations.

Before applying for an STA or a waiver, discuss the problem with an engineer, attorney, the manager of another station in a similar situation, or other appropriate parties and find out what showing in support of the waiver or STA request the FCC will expect.

## X. Technical Regulations

The “Technical Rules” section in Chapter XII of the NFCB Public Radio Handbook gives an excellent overview of the technical rules that apply to LPFM stations. This chapter goes into some more detail about those technical rules and explains the special LPFM interference complaint process.

### Modulation

Modulation should be maintained at as high a level as is consistent with good engineering practice (i.e., without distortion) but at no more than the maximum limits outlined below. The FCC suggests that modulation generally should not be less than 85% on peaks of frequent recurrence, but notes that lower levels may be necessary to avoid objectionable loudness or to maintain the dynamic range of the material being broadcast. The maximum limits [Section 73.1570](#) are as follows:

- F 100% on peaks of frequent recurrence. Stations that broadcast in stereo
- N and also use their subcarriers for subsidiary services may increase their peak modulation up to 110% (0.5% for each 1.0°/ subcarrier injection modulation).

### Frequency

Each broadcast station is authorized to operate on a specific frequency and may not deviate from that frequency by more than the following limits: [Section 73.1545](#)

- F Plus or minus 2,000 Hz. Stations operating at 10 watts or less are
- N allowed a deviation of plus or minus 3,000 Hz.

### Operational Requirements

At one time, the FCC required that a licensed "duty operator" be in charge of the transmitter whenever a station was on the air. Those requirements were eliminated as of December 2, 1995. Broadcast stations may now be operated on an unattended basis without prior FCC approval. [Section 73.1300](#)

It is important to note that permitting stations to operate on an unattended basis does not mean that the FCC has eliminated the human factor altogether. A human presence is still required during normal business hours as part of the FCC's main studio rules, See [Chapter IX](#). Unattended operation does not excuse a station from complying with EAS requirements, designating a Chief Operator or assuring that the station satisfies all technical specifications.

## **Required Technical Measurements**

AM and FM stations are required to make periodic tests and measurements of equipment. The records of these tests and measurements must be made available to the FCC on its request, but are not required to be placed in the station's Public Inspection File.

## **AM and FM Equipment Performance Measurements**

All AM and FM stations (except Class D stations authorized at output power of ten watts or less) must make proof-of-performance measurements of each main transmitter as follows:

- Upon installation of FM subcarrier or stereo [73.297](#) and [73.593](#).

## **FM Stations: Subchannel Tests**

FM stations are required to make certain tests upon installation of multiplex subcarrier (SCA) generators. These tests should show compliance with crosstalk and bandwidth limitations. Records of these tests must be kept on file at the station. [Sections 73.297](#) .

## **Painting and Lighting Requirements**

The construction permit and license for a station may contain conditions for painting and lighting of the radio tower. These conditions are designed to satisfy Federal Aviation Administration (FAA) requirements that promote air safety. [Section 17.21](#) through [17.58](#) and [73.1213](#) Details of FAA requirements are provided in FAA Advisory circulars titled "Obstruction Marking and Lighting" (AC 70/7460-13) and "Specification for Obstruction Lighting Equipment" (AC 150/5345-43E). Both are available on the FAA homepage <http://www.faa.gov>.

## **Applicability of Painting and Lighting Requirements**

Antenna structures must be painted and lighted when they exceed 200 feet (60.96 meters) in height above ground or when they are close enough to an airport or heliport to present an aeronautical danger. Applicants may seek to have painting and lighting conditions modified by explaining why the painting and lighting conditions are not needed to assure air safety. [Section 17.21](#)

## **Painting and Lighting Requirements**

Painting and lighting requirements vary, depending on the tower's height; its proximity to other structures, airports, and population centers; and other factors.

In general, towers that are required to be painted must have an alternating pattern of white and aviation-orange color bands equal to approximately one-seventh the height of the tower. The band may not be more than 100 feet or less than 1.5 feet wide. Orange bands are required at both the top and the bottom of the tower.

Lighting specifications vary with the height of the tower and may require fixed or flashing red beacons or high intensity strobe lights.

## **Authorized Power**

The FCC has established minimum and maximum power limits for "full-service" broadcast stations. (The power limits for "secondary" stations, such as Class D stations, translators and boosters, are discussed later in this chapter.)

## **Minimum Power Requirements**

In September 2000, the FCC created the Low Power FM ("LPFM") service and authorized two classes of LPFM stations. LP100 stations must operate with minimum facilities of 50 watts ERP at 30 meters HAAT and maximum facilities of 100 watts ERP at 30 meters HAAT.

The second class of LPFM station, LP10 station, must operate with at least 1 watt ERP (no minimum HAAT) and with maximum facilities of 10 watts ERP at 30 meters HAAT.

## **LPFM Interference Complaint Process**

The FCC set up an interference complaint process to address the remote possibility that an LPFM station could cause significant interference. *See* § 73.810. This section gives a general overview of the interference complaint process. If a listener does lodge an interference complaint against your LPFM station you should seek the advice of an experienced communications law attorney.

The complaint process is only in areas where interference is most likely to occur—when an LPFM station operates on a third adjacent channel and its transmission facilities are located inside the predicted 60 dBu contour of a full-power station. *See Low Power Radio Reconsideration Order*, MM Docket No. 99-25, FCC 00-349, at ¶65. The process is initiated if at a minimum 30 individuals or 1% (which ever is less) of the full power stations' audience complain to the full power or low power station within one year of the LPFM station's first transmissions. *See id.*

Listeners may make complaints directly to the LPFM station or to the full power station. The complaint must include an sworn statement made in writing describing the type of interference and the location. LPFM stations are required to promptly forward such complaints to the affected full power FM stations. Full power stations are likewise required to promptly forward copies of bona fide complaints that they receive to the affected LPFM station.

The interference complaint process is a two stage process. Initially, the FCC rules outline that the LPFM and full-power stations are supposed to work together to identify and resolve legitimate complaints. The LPFM station may take this opportunity to resolve the problem in a variety of ways. For example the LPFM station can provide low-cost filters to listeners, alter its transmissions, or purchase new radios for listeners. FCC field office staff will assist in resolving complaints. *See id.* at ¶67.

If the LPFM station is unable or fails to remedy the situation, the complaint process enters stage two. The FCC has 90 days to resolve the problem. The FCC will investigate

to determine the cause of the interference. The FCC may withdraw or alter the LPFM license if there is no other remedy. *See id.* For more information on the interference complaint process, please see “Summary of Complaint Process” by Romilda Crocama, Benjamin N. Cardozo School of Law, Yeshiva University, available at [www.mediaaccess.org](http://www.mediaaccess.org).