

FCC CHECKLIST FOR ON-AIR RADIO PERSONNEL



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Legal Department
National Association of Broadcasters

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WILLIAM W. WALKER

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INTRODUCTION

This checklist highlights important FCC rules and policies that all on-air radio* personnel should know. It is intended as an introduction for beginners or a refresher course for the pros. The checklist is accurate as of March 1, 1981. Changes in the rules, however, will occur from time to time and it is your responsibility to keep current on those developments. There are several ways you can assure keeping up-to-date: 1) get on the routing list for memoranda and other informational materials from the NAB Legal Department and your station's communications counsel; 2) read the trade press each week; and 3) request that your station subscribe to NAB's *Legal Guide to FCC Broadcast Rules, Regulations, and Policies* with the update service. The *Legal Guide* contains a much more extensive discussion of each topic. Under each heading in this checklist you will find a reference to the pertinent chapter of the *Legal Guide*, as well as to applicable statutes and regulations.

*Television personnel should refer to another NAB publication available through NAB's Publications Department: *FCC Sensitivity Training Guide for TV Program Directors*.

FCC's Radio Deregulation Decision in A Nutshell

Several rules and regulations affecting commercial radio broadcasters were eliminated by the FCC's Report and Order in the radio deregulation rulemaking proceeding. The following is a summary of the FCC's decision:

1) Nonentertainment Programming Guidelines

The FCC is eliminating the staff processing guidelines indicating minimal allowable percentages of nonentertainment programming (previously 8% for AM and 6% for FM) and retaining a generalized obligation for commercial radio stations to offer programming responsive to public issues.

2) Ascertainment

The *1971 Ascertainment Primer* and the *Renewal Primer* will be eliminated. Licensees seeking renewal are only obligated to determine the issues facing their community and they may do so by any means which are likely to apprise them of the issues.

3) Commercial Guidelines

The FCC is eliminating processing guidelines relating to maximum limits on commercial time, leaving it to marketplace forces to determine the appropriate level of commercialization.

4) Program Length Commercials

The Commission will no longer adhere to its policy on program length commercials.

5) Program Logs

Program logs will no longer need to be maintained or made available for public inspection.

6) Issues/Programs List

The only record of programming that will be required will be an annual listing of five to ten issues that the licensee covered, together with examples of programming offered in response thereto. This record must be placed in the station's public file.

Contests and Promotions

(*Legal Guide*: Chapter IV, pages 29-30; 47 U.S.C. §§312, 503, and 509; 47 C.F.R. §73.1216)

A station cannot broadcast a contest that misleads the audience. The rules must be made clear from the very beginning, and the station must follow the rules to the letter. The licensee must disclose "any material term" of the contest rules or operation. It cannot misrepresent the chance of winning, for example.

Avoid contests which may create a public nuisance. For example, creating situations which would tie up traffic or jam telephone circuits of a given government agency.

The Commission will also hold a station accountable for so-called "treasure hunt" contests that might cause a member of the audience — attempting to find the treasure — to trespass on private property, commit traffic violations by trying to get to a particular location in a short time (or by tying up traffic at the location), or otherwise endanger people or property.

Serious violations of the contest rules could in some cases subject the licensee to criminal penalties and provide grounds for the revocation of the license.

Defamation — Libel and Slander

The First Amendment shields broadcasters from government regulation of much of what is said over the air. In some instances, however, editorial opinions expressed by broadcasters over the air may be subject to laws affecting defamation (libel and slander). It is important that on-air personnel understand these principles in order to avoid unwarranted lawsuits.

Defamation is a false spoken (slander) or written (libel) statement, about a person or group, which damages the person or group in the eyes of a majority or significant minority of your community. As in all principles of law, there are exceptions, defenses and "technicalities." The truth of the matter asserted, however, is almost always an absolute defense. State laws control this area, creating differences from state to state.

On-air personnel should be cautious when broadcasting potentially damaging information about persons or groups in the community. If questions arise, contact local counsel.

For a review of the laws affecting defamation and invasion of privacy, contact the NAB's Publications Department for a copy of *The Editorial Director's Desk Book*.

Drug Lyrics

(*Legal Guide*: Chapter II, page 68)

Songs about drugs should be cleared for airing by the licensee prior to broadcast. Whoever screens records should be familiar with slang expressions about drugs so that he or she can identify records requiring special clearance. Some communications lawyers believe that under the First Amendment, the licensee can broadcast almost any drug-related song. However, the licensee may not incite people to use drugs where that activity is illegal. This is an extremely difficult legal distinction to draw, and may require consultation with an attorney.

Emergency Broadcast System

(*Legal Guide*: Chapter V, pages 33-34; 47 C.F.R. §73.901 - 73.962)

Be certain that all operating personnel (DJs, newscasters, and engineers) are thoroughly familiar with EBS procedures and that these procedures are periodically reviewed. Remember, the Emergency Broadcast System depends not only on industry planning but also on the knowledge and competence of "the person on the board" when an emergency strikes.

As noted above, in its Radio Deregulation decision, the FCC eliminated logging requirements for commercial radio stations — Emergency Broadcast System tests are now required to be noted on the operating log.

Engineering Operator Licensing

(FCC Report No. 15833, July 17, 1980, Docket No. 20817)

Recent deregulation moves by the FCC eliminated Third Class Operator Permits, and First Class Operator licenses also may be eliminated in the near future. Persons operating AM and FM transmitters need only hold a Restricted Radiotelephone Operator Permit. Operators currently holding a Third Class Permit may apply for a lifetime Restricted Operators Permit at the expiration of their current Third Class Permits. No examination is required for a Restricted Permit.

To apply for a Restricted Permit, complete FCC Form 753 — "Restricted Radiotelephone Operator Permit Application." The three-part form should be filled out completely and parts one and two submitted to the Commission. The third part will serve as a 60-day temporary permit.

Operator permits must be posted at the transmitter or extension meter locations, or in the case of a Restricted Permit (wallet size), the operator may carry the permit on his or her person.

Fairness Doctrine

(*Legal Guide*: Chapter II, pages 13-15 and 52-60)

Under the Fairness Doctrine, a licensee must devote a "reasonable amount" of broadcast time to the discussion of public issues and when a controversial issue of public importance is presented, a licensee must afford "reasonable opportunity" for the presentation of contrasting points of view. The Commission affords licensees considerable discretion as to (a) the different shades of opinion to be presented, (b) the format, and (c) the spokespersons and allocation for each major point of view. For example, opposing views need not be presented on the same program or even in the same series of programs, so long as an effort is made in good faith to present contrasting views in the station's overall programming. Appendix II-B of the *Legal Guide*, entitled "Summary of the 1974 Fairness Report," contains an outline of the FCC's policies on such topics as editorial advertising, countercommercials, and ballot propositions. Try to resolve disputes at the local level and thereby deter disgruntled parties from filing a complaint with the FCC.

Lotteries

(*Legal Guide*: Chapter IV, pages 31-40; 18 U.S.C. §1304; 47 C.F.R. §73.1211)

Broadcasting information promoting a lottery is a criminal offense and a violation of FCC rules. There are only two exceptions — state-operated lotteries and certain fishing contests.

The three elements of a lottery are 1) the award of a valuable **prize**, 2) where the winner is selected in whole or in part by **chance**, and 3) where some payment must be made or other **consideration** furnished by anyone who wants to participate. For example, a person who pays an admission fee to enter a fairground would be deemed to have furnished "consideration" for participating in a contest sponsored by the promoters of the fair. Consideration also may be present if large expenditures of time or energy are required. For example, "consideration" may also be present if an automobile dealer requires a person to take a demonstration ride in a new automobile in order to win a prize. Many apparently innocent give-aways turn out to be lotteries. If a prize is being awarded, and the element of chance appears to play a part in selecting the recipient, you should check with the management (and probably with the station's attorney) to see if a lottery is present.

The NAB Legal Department recently published a manual that fully explains the Commission's rules governing lotteries and contests — *Lotteries and Contests: A Broadcaster's Handbook* (available through the NAB Publications Department).

Loud Commercials
(*Legal Guide*: Chapter IV, page 10)

You should avoid loud commercials. Appendix IV-B of the *Legal Guide* contains the FCC's Statement of Policy Concerning Loud Commercials, which sets forth various methods by which loudness may be controlled.

Mechanical Reproduction Announcements
(*Legal Guide*: Chapter III, page 1; 47 C.F.R. §73.1208)

No recorded program material in which the element of time is of special significance, or in which an affirmative effort is made to create the impression it is live, may be broadcast without an appropriate announcement at the beginning of the program that it is recorded.

Watch out for recordings of "live" events such as concerts, speeches, and news events. These events are likely to require a mechanical reproduction announcement unless the element of time is not of significance.

This rule does not, however, apply to recorded announcements of a commercial, promotional, or public service nature.

Network Clipping
(*Legal Guide*: Chapter IV, page 13)

On-air radio personnel should be cautious not to "clip" network radio programs. "Network clipping" is the failure of the licensee to fulfill its contractual obligation to the network with which it is affiliated or to a syndicator by certifying that specified material was broadcast in full when there were, in reality, cancellations or deletions. What concerns the FCC with this practice is not the "clipping," but rather the false certifications submitted by affiliated stations. This is part of the fraudulent billing rule. The "clipped" material could be commercials, program content, network identifications, or any other network-originated transmission which the station had contracted to broadcast.

Obscene or Indecent Material

(*Legal Guide*: Chapter II, page 67; 18 U.S.C. §1464)

The broadcast of obscene or indecent material is prohibited by law and carries a maximum penalty of a \$10,000 fine or a two-year jail sentence, or both. It can also cause a revocation of the broadcaster's license.

If the material to be broadcast describes "in terms patently offensive as measured by contemporary standards for the broadcast medium, sexual or excretory activities and organs" (the FCC's definition in the George Carlin case), then it is "indecent" and may not be broadcast when large numbers of children are likely to be in the audience — that is, any time except late night. An occasional expletive — the isolated use of four-letter words and the like — does not fall within the ban. "Indecent" language aired during the coverage of a news event (a trial, public meeting, etc.) also is exempt from the ban, although it is good policy to warn the audience that such material contains language which may be offensive to some segments of the audience.

If the material also appeals to the prurient interest of the audience, it may be "obscene" and its *broadcast at any time is prohibited*. However, when airing paid political announcements, the station is prohibited from censoring the text of the ad, even if it includes "obscene" or "indecent" language.

If there is a chance that the FCC might consider any part of the broadcast indecent or obscene, the material must be checked with the appropriate station officials before airing. This is a licensee decision — not one for the individual employee.

Operating Logs

(47 C.F.R. §73.1820)

Except where automatic equipment records information for the operating log, remember to enter;

1. The time the station goes on and off the air;
2. The time tower lights are turned on and off, or if automatically controlled, the time of the daily check of proper operation (unless an automatic alarm system meeting FCC specifications is installed), and any failure of the lighting system;
3. The time EBS alerts are received and transmitted.

Remember to sign the log and record the date and time when going on and off duty. AM and FM stations have additional, but different, entries that are required. It is suggested that all operators fully familiarize themselves with FCC Rule 73.1820.

Payola, Plugola, and Conflicts of Interest
(*Legal Guide*: Chapter IV, pages 43-45; 47 U.S.C. §317 & 508)

The acceptance of cash, travel, meals, or other benefits in exchange for plugging a record or other product on the air is a danger sign of payola or plugola. Payola is accepting or agreeing to accept anything of value in return for mentioning a product (such as a record) on the air. Payola is forbidden by the Communications Act and carries a penalty of a \$10,000 fine and a possible one-year jail sentence.

Plugola is the use or promotion on the air of goods or services in which the person responsible for including the promotional material in the broadcast, such as the licensee itself or a program producer or performer, has a financial interest. Such announcements (in contrast to payola) are permissible if management is aware of what is going on and the announcer involved discloses his or her own interest, if any. Proper sponsorship identification is required. (*See: **Sponsorship Identification, below.***)

If an air personality has an interest in a business outside the station, the station must insulate him or her from the program selection process, at least to the extent that choice of program materials (for example, which records to play) might relate to the outside business interest (for example, concert promotions or record distributorships).

Point-to-Point Communications
(*Legal Guide*: Chapter II, page 71)

Except in emergencies, a radio station may not broadcast a message intended primarily for a specific individual or group (such as a sales meeting). This applies whether the message is in code or not. In an emergency (for example, a hurricane), a broadcast station may be used to get emergency messages to fire, police, other civil authorities and to individuals in distress.

Incidentally, commercials should not be broadcast during "emergency operations" such as when a daytime-only radio station broadcasts at night following a flood or earthquake. (*See Chapter V, pages 28-29 of the *Legal Guide*.*)

Political Broadcast

(*Legal Guide*: Chapter II, page 62)

Issues arising under political editorializing rules, Sections 312 and 315 of the Communications Act, and the Fairness Doctrine (which may apply in certain campaign situations) are tricky — common sense and logic are not sufficient to fathom the FCC correct answers. You should have on hand the FCC's primer, "The Law of Political Broadcasting and Cablecasting" (reprinted in the August 16, 1978, edition of the Federal Register). An excellent guide is the NAB's *Political Broadcast Catechism* (which appears on pages 22-62, Chapter II, of the *Legal Guide*) — the index is a good starting point in finding the pertinent FCC policies. Some states, such as Texas, have their own election laws and, accordingly, stations should check their state regulations. Prior to each primary, special, and general election, review the pre-election checklist which appears on pages 19-20, Chapter II, of the *Legal Guide*. Keep in mind that federal candidates are guaranteed "reasonable access" and that all legally qualified candidates are entitled to equal opportunities and the lowest unit charge 45 days before primaries and 60 days before general elections. In order to qualify for the lowest unit rate, a candidate's voice must appear in the commercial.

Public Inspection Files

(*Legal Guide*: Chapter V, pages 1-2; 47 C.F.R. §73.3526)

The FCC requires licensees to maintain certain records in a file for public inspection during regular business hours (usually 9:00 am to 5:00 pm). While the station may require personal identification (names and addresses) of those wishing to inspect the files, the station may not require information about their organizational affiliations or their intended use of the information gathered from the files.

Upon request, stations are further required to make photocopies (at requestor's expense) of materials contained in the files. Duplicating materials in the files should be arranged through the station manager.

Rebroadcasting Telephone Conversations

(*Legal Guide*: Chapter II, page 70; 47 C.F.R. §73.1206)

Before you broadcast or record a telephone conversation for later broadcast, you must expressly notify the other party that the conversation will be taped or broadcast (or both). The conversation begins when the other party answers the telephone. Therefore, unless notification is given before the call is made, do not start taping or broadcasting the call until the other party has been notified. Although the rules do not specifically require the consent of the party being taped or broadcast, it is advisable to give the party the opportunity to expressly consent to the taping or broadcast of the conversation. This applies to "cash calls" and similar contests whereby the listener is to answer the phone with a specific phrase or the station's call letters.

Prior notice and consent, however, is not required during an "open mike" show where it can be presumed that the "call-in" party is aware that he or she is being or likely will be broadcast.

Sponsorship Identification

(*Legal Guide*: Chapter III, pages 5-6; 47 U.S.C. §317; 47 C.F.R. §73.1212)

Whenever a station receives anything of value in exchange for broadcasting certain material (however short), a sponsorship identification announcement must be made. Failure to make a required sponsorship announcement is considered a serious offense by the FCC. For example, some stations broadcast short "teaser" announcements designed to catch the audience's attention; the sponsor's identity is not revealed until announcements broadcast later in the advertising campaign. This violates the FCC's rules. (Be familiar with the FCC's 36 interpretive rulings on sponsorship identification which appear in Appendix III-B of the *Legal Guide*.)

Problems can also arise if a station coproduces a local concert, promotes the concert on the air, and fails to indicate on the air that the station is a co-sponsor. Similarly, a station could receive free tickets in exchange for promoting a local concert. This fact must be revealed in on-air promotional announcements. On the other hand, if the station has no financial or management interest in a concert, it is misleading for the station to say that it is "presenting" or "sponsoring" the concert. The statement that station WZZZ "welcomes" group X, however, has been ruled to be acceptable.

Station Identification Announcements

(*Legal Guide*: Chapter III, pages 2-3; 47 C.F.R. §73.1201)

The FCC requires that each station make identification announcements at the beginning and ending of each day, and hourly, as close to the hour as feasible at a natural break in the programming.

The official ID must contain the station's call letters followed immediately by the name of the city of license specified in the station's license. In addition, the licensee's name and the station's frequency may be included between the call letters and the city of license. Note that this is the only extra matter that may be included between the call letters and the city of license. Thus, "This is WQRM, Mellish Broadcasting Incorporated, 540 on your AM dial, Fall River" would be acceptable. Not acceptable would be "WQRM, Mellish Broadcasting, 540 on the lowest end of your dial with the highest sound from Fall River."

Tower Lights

(*Legal Guide*: Chapter V, page 29; C.F.R. §17.48)

The FCC requires that you report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any extinguishment or improper functioning (e.g., not flashing when it should be or vice versa) of any top steady burning light or any flashing obstruction light, regardless of where it is located on the tower, if not corrected within 30 minutes. The FAA must also be notified when repairs are made.

Keep the FAA's phone number posted and be sure all personnel who may have occasion to check the tower lights know the procedure for notifying the FAA of the tower light failure or improper operation.

Unauthorized Communications and Rebroadcasts

(*Legal Guide*: Chapter II, pages 69-71; 47 U.S.C. §605; 47 C.F.R. §73.1207)

The program of another broadcast station may not be rebroadcast without receiving the written consent of the originating station. If possible, this consent first should be obtained in writing. If that is not possible, oral consent should later be confirmed in writing.

Stations originating emergency communications under a detailed State EBS operational plan are deemed to have conferred rebroadcast consent.

