



THE BOTTOMLINE

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What to do



when a "Letter of Investigation" follows an indecency complaint

ASK THE EXPERT: ATTORNEY JOHN BAGWELL

Q: If we receive a letter from the FCC concerning an allegedly indecent broadcast, what are the initial steps we as broadcasters should take?

A: With a single indecency violation costing up to \$325,000, broadcasters should take any indecency-related inquiry from the FCC very seriously. Typically, the FCC will initiate its investigation of an indecency complaint by sending the subject station a "Letter of Inquiry," asking the station to respond to a number of specific questions regarding the complaint's allegations. While each indecency investigation involves different circumstances, there are certain steps that a station should take if it receives an indecency Letter of Inquiry or other investigative letter.

Given the serious nature of these investigations, a station should immediately notify its FCC legal counsel and provide a copy of the Letter of Inquiry. Experienced FCC legal counsel can work with the station in investigating the circumstances regarding the alleged violation and assist the station in crafting a response to the Commission's inquiry letter. As Letters of Inquiry often require a quick turnaround (e.g., 30 days or less), the station's legal counsel may be able to obtain any necessary extensions of the response deadline (e.g., due to the complexity of the allegations, vacations or other absences of relevant employees, etc.). Counsel may also be able to cut the response process short by recognizing certain factors regarding the investigation, such as that the broadcast in question occurred during the overnight "safe harbor" hours.

The Station should also carefully review the FCC Letter of Inquiry to make certain that any special requirements or actions required by the letter are taken promptly. For example, the Letter of Inquiry may require the station to produce certain tapes or documents related to the allegations. Once a Letter of Inquiry is received, it is important that no documents or material related to the complained of broadcast be deleted or disposed of. As well, all relevant station records, including the public file, and email and voicemail storage, should be reviewed to determine whether other complaints were received by the station concerning the broadcast in question, and whether the station undertook any internal review at the time of the broadcast.

These articles are intended only as a general discussion of the issues and should not be regarded as legal advice.

For additional details or advice about a specific situation, please consult legal counsel direct

The station should also make certain that all relevant personnel are immediately informed of the Letter of Inquiry. This would include notifying not only the appropriate station management personnel, but may also involve notification of on-air talent or production staff responsible for the creation and storage of programming and related documentation (such as “dump logs” of material deleted from a live show prior to broadcast).

Responding to an FCC Letter of Inquiry regarding an indecency complaint is likely to require a significant amount of time and investigation by the station. Starting the investigation and response process as promptly as possible, with legal counsel experienced in responding to indecency complaints, will help enable the station to provide as complete and accurate a response as possible.



Q: Do pledge breaks need to be fully captioned? Some colleagues say that the standard supers we all use (e.g., “pledge now” “support this station” etc.) are sufficient in that they convey the message of the breaks. I suspect that may not be the case.

A: As a general rule, 100% of all new English-language programming must contain closed captions.

However, the FCC’s rules provide that *live* portions of a noncommercial broadcaster’s fundraising activities that use automated software to create a *continuous captioned message* will be considered as captioned. This permits the hosts to engage in live banter while audience members who typically rely on closed captioning continue to receive related content. This continuous-looped content could note that the station is taking a pledge break and provide information as to how station contributions can be made, including through TTY technology.

As well, the FCC’s rules provide that programming: (i) that is locally produced by television stations; (ii) that has no repeat value; (iii) that is of local public interest; (iv) that is not news programming; and (v) for which the “electronic news room technique” of captioning is not available, is exempt from the closed captioning requirements.

The FCC has not specifically addressed whether this exemption applies to noncommercial television pledge breaks, some public broadcasting stations rely on this exception for pledge breaks rather than insert closed captioning. Stations seeking to rely on this exemption for pledge break programming should note that it only applies to programming produced by the station itself. Moreover, the Commission interprets the “no repeat value” requirement as meaning that the programming will not be broadcast on more than one station, including co-owned or LMA’d stations. If a particular pledge break is simulcast or to be rebroadcast on multiple stations, the break would not be eligible for this exception.

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John Bagwell is an attorney at [Leventhal Senter & Lerman, PLLC](#), in Washington, DC., who counsels broadcasters on a variety of regulatory, operational, and transactional issues.

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THE IMPORTANCE OF BALANCING WORK AND LIFE

By Mary Collins TVNEWSDAY



“The new HR reality more closely resembles the world of professional sports, where free agents sign with teams that have a reputation for success. In the workplace, that track record is measured by how well the company supports its employees' desire for a rich, full life outside of work.”

“Failing to support employee needs for maintaining a work-life balance is a leading cause for spiraling rates of absences and sick days. ([Read more here.](#))

YOUR ANNUAL DUES ARE DUE

As your organization’s designated PBMA representative, you will receive the invoice for the annual dues. PBMA streamlines membership management by holding all members to the same June/July renewal period. Thank you in advance for prompt payment.



MEMBER INQUIRY: PRODUCER RIGHTS FORM

On behalf of his executive director of programming & original production, NJN controller Sam Braun asks his fellow PBMA members about producer rights forms. If you have a template to share, please contact Sam at sbraun@njn.org or

609-777-5018. Thanks for your help. If you have a query for members, please let us know. (Email to lisa@pbma.org)



TELEPHONE TOOLKIT SEMINARS' SUMMER & FALL LINEUP

PBMA Telephone Toolkits are audio seminars that deliver up-to-the-minute information and live interaction with experts in a variety of areas. The seminars continue throughout the summer and fall covering the following topics:



August 21 at 3:00 pm ET
[Best Practices for the Nonprofit Sector](#)
with Elizabeth Pilacik from Asher & Co, Ltd.

September 18 at 3:00 pm ET
[Financial Management for Experienced Managers](#)
with Erin Moran, Public Radio Capital

October 23 at 3:00 pm
[Teambuilding](#)
with Tom Livingston, Livingston & Associates

Registration fees are \$125 per site. "Per site" registration means you can pay a single fee, and gather as many people as you'd like around the speakerphone. Details: www.pbma.org/toolkits.htm

PBMA Telephone ToolKits are produced by the Board of Directors' Professional Development Committee, chaired by Esperanza Flury of WXPB/Philadelphia. If you have ideas for future ToolKits, remember to send them to eflury@xpb.org



JOB OPPORTUNITIES

President/CEO, KPTS, Wichita, KS

Search reopened. All applications received previously will be automatically be considered without reapplication. President and CEO reports to governing board of trustees; responsible for 25 full-time staff, 10,000 contributing members, and a \$2.7 million annual budget; content direction for three program services; solicitation of major gifts; and effective representation and advocacy of KPTS to its viewers and constituent groups. <http://www.netaconsulting.org/KPTSCEO-Sept12.pdf>

Department Business Administrator KUHF-FM/KUHT-TV / Houston, TX

The Department Business Administrator will serve as the financial and business operations manager for KUHF-FM, KUHT-TV and the Association for Community Broadcasting. CPA preferred. Public broadcasting experience is a plus. Responsibilities include managing the administrative, financial, budgetary, and human resources operations of a large and very complex university department. Interested candidates should go online for further information. All applications must be submitted online – posting number 063431. <https://jobs.uh.edu>

General Manager, WGPU / Ft Myers, FL ([description](#))

WGPU operates on over a \$7 million annual budget with a staff of 40 employees. The GM provides strategic direction and effective management of the joint operations of WGPU Public Media: WGPU-TV; WGPU/WMFO-FM, expressions magazine and wgpu.org. WGPU-TV is consistently ranked among the five most watched public television stations nationally, and WGPU/WMFO-FM is ranked among the top five out of 40 most listened to stations in the market.

President / CEO, KSMQ Public Service Media / Austin, MN ([description](#))

KSMQ provides public television service to southern Minnesota and northern Iowa. The President and CEO reports to the KSMQ Board of Directors. Major areas of responsibility include overseeing daily operations, providing management direction to department heads, and developing and implementing strategies to enable KSMQ to better serve the region. KSMQ has a staff of 14 and an operating budget of \$1.2 million.

Executive Director, Broadcasting Service, WSIU / Carbondale, IL

Applicants should at least 7 years of substantial work experience in a senior administrative capacity in broadcasting required. Proven leadership in administration, strategic and financial planning, fundraising, board development, entrepreneurial ventures, oral and written communication, and commitment to diversity required. Familiarity with the policies and procedures of a university licensee. Deadline: August 1, 2008 or until filled. <http://www.pbma.org/WSIU-ExecDir-080108.pdf>

Chief Development Officer, KVPT / Fresno, CA

Executive management position for medium-sized, community licensee. Oversees all fundraising activities and a 15-member development staff. BA Degree plus 5 yrs. mgmt. exp., strong analytical and interpersonal skills required. Job description and downloadable application form at www.kvpt.org. Submit to [pbrotherton\(at\)kvpt.org](mailto:pbrotherton(at)kvpt.org).

General Manager, WYSO Public Radio 91.3 / Yellow Springs, OH

Responsible for providing leadership, direction, oversight and planning of all WYSO operations. WYSO-FM is a 37,000-watt noncommercial radio station licensed to the Board of Trustees of Antioch University and broadcasts from studios in a University building in Yellow Springs, Ohio. Please submit a cover letter, resume and 3 current professional references to: Karen Snyder, SPHR, Antioch University, 150 East South College St., Yellow Springs, OH 45387, Attn: WYSO General Manager, Fax 937-769-1377, [ksnyder\(at\)antioch.edu](mailto:ksnyder(at)antioch.edu). For a full job description, visit www.antioch.edu or www.wyso.org.

Television News Director ,Wisconsin Public Television / Madison, WI

Creative. Ethical. Smart. An exceptional journalist. If this describes you as a newsroom leader, then consider this chance to lead an experienced team of award winning producers and reporters covering the state of Wisconsin. Wisconsin Public Television, based in Madison, is seeking a News Director/Executive Producer to lead its state-wide organization. Beyond politics there's culture, features, nature, music and more. Please visit: www.wpt.org/about for details. Betsy Nelson, 821 University Avenue, Madison, WI 53706. 608-262-5221. EOE

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THE PBMA CONFERENCE: MAY 26 - 29 IN TAMPA**

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