

\$12,000 Consent Decree Payment Demonstrates FCC Concerns About Sponsorship Identification Policies

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July 26, 2011

A consent decree entered into by a radio broadcaster, which included a **\$12,000 "voluntary contribution"** to the US Treasury, demonstrates once again the FCC's concerns about **sponsorship identification issues**. The week before last, we wrote about the FCC fine levied on a television broadcaster for not including sufficient sponsorship information when a "video news release" was broadcast on a local television station without disclosing that the video footage had been produced by the automobile company whose products were featured. The recent FCC Report on the Information Needs of Local Communities (formerly known as the Future of Media report) also focused on the need for more disclosure in connection with sponsored material carried on broadcast stations and other media (see our summary here). With a long outstanding Rulemaking proceeding on these issues that remains unresolved (see our summary here), the Commission almost appears as if it is setting its policies in these areas through case law rather than through the rulemaking process.

In this most recent "payola" case, a complaint was lodged against a Texas radio station owned by Emmis Broadcasting alleging that the host of one music program was receiving compensation from a local music club, a local record store, and a manager of local bands in exchange for featuring music on the show. The allegation contended that other local bands could not get their music played on this show without sponsoring Station events hosted by this particular personality. The Consent Decree does not resolve the question of whether these allegations were true, but instead requires that the licensee make the voluntary contribution, adopt procedures to make sure that Station employees are aware of the requirements of the sponsorship identification rules, and report to the Commission on a regular basis on the actions taken by the licensee to ensure compliance with the FCC rules. In addition to general requirements that the Station educate its employees about the sponsorship identification rules, the Consent Decree also contained conditions setting forth rules governing the relationship that station employees could have with record labels, even though the decree makes no mention of any allegations of improper consideration having come from record companies. These conditions were ones that appear to have come from consent decrees entered into with a number of broadcasters 4 years ago in the last major FCC payola investigation (which we wrote about here).

This Consent Decree, together with the other recent Commission actions targeting sponsorship issues, reminds broadcasters to be careful to disclose anything of value received by a station in exchange for any on-air content. As I've warned broadcasters many times, it's not the fact that you were paid to say something on the air that is a problem; it's the lack of disclosure of the payment. If the message that is conveyed about the product or service is not clearly a commercial message, then you need to disclose the sponsorship. Even in a traditional commercial, if it is not clear who bought the commercial, disclosure needs to be made in connection with the commercial itself (where, for instance, the sponsor is not the actual provider of the product or service, e.g. where an ad for a store is bought by the mall owner and not the store itself).

So watch your employees to make sure that, if they get something for free in exchange for any on-air mention, they need to disclose that the free stuff that they got. If your on-air DJ got free donuts from the bakery next to the station in exchange for saying on-the-air how good they were, mention that they got the donuts for free. If a TV station got a doctor from a local hospital to be an on-air commentator on health issues as part of a deal for the hospital to buy ad time, mention that the health segment of the news was sponsored. Even if you get free tickets to a concert with the understanding that you'll give them away on-air and promote the show - mention that the promoter gave you the tickets when you give them away. Disclose the free stuff - and avoid the need to negotiate a consent decree like that done in the recent case.