
FCC Enforcement Monitor

by Scott R. Flick and Emily J. H. Daniels

FCC Upholds \$9,000 Fine for Noncommercial FM Radio Station Airing Advertisements

The FCC recently upheld a \$9,000 fine for the broadcast of impermissible advertising on a noncommercial educational FM station. Section 73.503(d) of the FCC's Rules prohibits noncommercial stations from airing promotional advertisements on behalf of for-profit entities. Advertisements are defined by the Communications Act as program material broadcast which is intended to "promote any service, facility, or product" of for-profit entities. Although contributors to non-commercial stations may receive on-air acknowledgements, the FCC has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or businesses.

In initially assessing the fine, the FCC held that the characterization of Tastee Freeze as "tasty fresh" and the description of Prindle GMAC Real Estate as "we're all about family" and "we love selling real estate" were impermissible uses of qualitative terms and attempts to induce business patronage. The licensee subsequently challenged the fine, seeking reconsideration of both findings. The licensee argued that the announcements in question were substantially similar to two announcements which the FCC had previously found to be acceptable. In the first prior ruling, the FCC had found that the phrase "excellent service" was permissible because the phrase was part of an established corporate slogan. The FCC found that this case did not apply to the instant scenario because there had been no showing that the phrases at issue are part of either a Tastee Freeze or Prindle GMAC Real Estate slogan. In the second prior ruling, the FCC had found that the phrase "daily lunch specials" in a restaurant's underwriting announcement did not make the announcement impermissible. The FCC found no similarity between this case and either announcement in question, specifically finding that the exhortation to listeners to consider Tastee Freeze when "planning a special occasion" invited patronage rather than simply describing a daily special. Finding that reconsideration was not warranted and that the fine imposed was appropriate based on the circumstances surrounding the violations, the FCC upheld the fine of \$9,000.

FCC Fines New York AM Radio Station \$12,800 for Failing to Sign Off at Sunset, Failing to Maintain Daytime Operating Power, Failing to Maintain an Operational Emergency Alert System, and Failing to Maintain a Complete Public Inspection File

In May 2007, following a complaint, an Enforcement Bureau agent inspected a New York AM daytimer station, which are generally required to cease operating at local sunset time. The agent monitored the station's power before and after local sunset, determining that the station remained on the air with programming after local sunset time and did not reduce power after sunset. The agent subsequently visited the station's main studio and transmitter site. During that inspection, the agent discovered that the station was operating at only 33% of its daytime authorized power. During this inspection, the agent also

found that the station did not maintain an Emergency Alert System (“EAS”) log. The operator on duty admitted to the agent that he had been employed at the station for three years and had never conducted an EAS test and did not recall the last time the station had received an EAS test. The agent then inspected the EAS equipment and determined that it was not functioning. Finally, the agent also reviewed the station’s public inspection file and found that it did not contain any quarterly programs/issues lists for the last two years.

Section 503(b) of the Communications Act provides that a station’s failure to comply with the terms and conditions of its license is grounds for sanctions against the licensee. Section 73.1745(a) of the FCC’s Rules provides that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified.” Section 11.35(a) of the FCC’s Rules states that “EAS participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring transmitting functions are available during the times the stations and systems are in operation.” Finally, Section 73.3526(e)(12) of the FCC’s Rules requires that a list of programs demonstrating a radio station’s most significant programming treatment of community issues during the preceding three month period be placed in the public inspection file on a quarterly basis. The list must include a brief narrative describing the issues addressed, as well as the time, date, duration, and title of each program in which a particular issue was addressed. Based on violations of these rules, the FCC initially proposed a fine of \$16,000. However, because of remedial efforts undertaken by the licensee (which the FCC normally does not accept as a basis for reducing a proposed fine), the FCC reduced the fine assessed to \$12,800.

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