

## FCC Enforcement Monitor

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

### *FCC Fines Texas Low Power Noncommercial Educational Station \$20,000 for Airing Advertisements.*

The FCC recently imposed a \$20,000 fine for the broadcast of impermissible advertising on a low power noncommercial educational FM radio 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 that 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.

After receiving a complaint regarding announcements which aired on the station in July 2003, the FCC requested that the station provide information regarding these announcements. Prior to the station’s response, further complaints were submitted regarding announcements made in August 2004. After reviewing the announcements, the Commission found that eight of the announcements violated the prohibition on advertising because “they invite or urge business patronage, distinguish favorably the respective underwriters from their competitors by stating or implying that they offer superior service, products or price, and describe their underwriters through comparative and qualitative references made either directly or by customer testimonials.” Specifically, the following violations were found:

<b>Violation Found by the FCC</b>	<b>Announcement Language</b>
Invites business patronage and distinguishes the shop from its competitors.	“Post Net is your one-stop shop for black and white [and] color copies...You can stop by one of our two locations. Or you may call [telephone number].”
Contains claims of superior service and qualitative characterizations.	“Christian Brothers takes pride in their honest and reliable service.”
	“G&F came out that day and the service was terrific.”
	“Having the...character and integrity to do what we [i.e. Jonestreet] say we’re going to do.”
	“Our [i.e. Sock Hop’s] dedicated, friendly staff loves children and provides a safe atmosphere for you and your child.”
	“[I]t’s [i.e., Schlitterbahn] been named America’s number one water park...filled with cutting edge attractions.”
	“A unique eatery” “[M]ade with only the freshest ingredients” “[F]un family environment” “When you need a break they[’ve] got the right food

	and it's a really great place" "[T]heir world-famous pepperoni rolls"
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Additionally, the FCC noted that many of the announcements were over thirty seconds in length. While there is no formal limit on the length of a permissible underwriting announcement, the FCC has generally found that the longer the announcement, the more likely it will contain impermissible material. Accordingly, a fine of \$20,000 was assessed.

### **FCC Fines Arkansas AM Radio Station \$7,200 for Public Inspection File Violations**

The FCC recently imposed a \$7,200 fine for failing to comply with the FCC's public inspection file rules. Section 73.3526(e)(12) of the FCC's Rules provides that issues/programs lists "shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the program shall include...the time, date, duration, and title of each program in which the issue was treated."

In January 2004, an Arkansas radio station filed a license renewal application in which it indicated that the station had not placed all required documentation in the station's public inspection file at the appropriate times. Specifically, the station indicated that:

Information relating to the licensee's efforts to provide programming covering local issues [had been] placed in the Station's public file. However, it is not possible to determine whether the information was placed in the public file at the appropriate times. In addition, the presentation of the information did not, in most cases, include sufficient information to comply with the Commission's rules i.e. [it] failed to provide a narrative description of the topic covered, or the specific date and time and duration that the program was aired... In response [to the public file compliance certification,]...complete issues/programs lists...were not placed in the public file from October 10, 1996, through January 10, 2003.

After a \$9,000 fine was proposed, the station argued that the fine should be reduced. First, the station argued that its efforts to comply with the rules by placing incomplete information in the station's file should mitigate the gravity of the violation. Second, the station cited its voluntary disclosure of the missing issues/programs lists along with its remedial efforts to recreate some of the lists and to ensure future compliance. Third, the station argued that the fine should be cancelled because it is inconsistent with the fines issued to other licensees in similar situations. The FCC rejected all of these arguments, but reduced the fine to \$7,200 based on the station's past history of compliance with the FCC's rules.

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