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Communications Advisory

FCC Fines Television Licensee \$4,000 for Violations of Contest Rules

The FCC recently fined a television licensee \$4,000 for violations that occurred during a contest run by the station in 2004. The FCC determined that the station failed to conduct the contest substantially as announced and advertised, a violation of Section 73.1216 of the Commission's Rules. It was discovered during the investigation that the licensee excluded multiple entries from consideration, misplaced legitimate entries, and failed to award all announced prizes.

In August 2004, the FCC received a complaint from a viewer alleging that the station engaged in a number of improprieties during a contest run earlier in the year. The complainant alleged that the station had excluded his multiple entries and thereby reduced his chance of winning. In addition, the complainant claimed that a number of the prizes were never awarded. The Commission responded by sending a letter of inquiry to the licensee asking for information about the contest. The licensee in its response explained that the contest involved one grand prize, a 2004 Dodge automobile, and 15 second-place prizes (two tickets to a Florida theme park). The rules required participants to complete entry forms at any one of 15 Dodge dealerships in the area and did not limit the number of entries per contestant. The participants were also required to attend the drawing in order to win.

The licensee conceded in its response that station personnel did not conduct the contest according to the announced rules. Station employees were under the mistaken impression that a contestant could only enter once, and therefore destroyed all multiple entries. Of the 15 area dealerships the station announced as participating, only nine actually did, causing further confusion. Entries from two of the participating dealerships were lost somewhere in transit; one dealership failed to return the entries by the deadline and two dealerships received no entries at all. In addition, the licensee claimed that attendance on the day of the drawing was light, resulting in no second-place prizes being awarded as no one was there to claim them. In fact, the station had to draw 13 entries for the grand prize in order to find a winner who was actually in attendance.

After the first contest debacle, the station decided to hold another contest aimed at rectifying those mistakes by properly applying the rules as originally announced for the first contest. However, the second contest was not advertised or promoted. All known entries were included, and the participants were notified by mail prior to the

second drawing. A second automobile was awarded as well as all 15 pairs of amusement park tickets. The complainant argued that the entire process had not complied with the announced rules and had unfairly harmed his chance of winning.

In response, the Commission determined that the licensee failed to conduct the contest substantially as announced and had therefore violated section Section 73.1216 of its Rules. The base forfeiture amount for contest-related misconduct is \$4,000. The Commission stated that “although the licensee violated our rules, it took reasonably prompt remedial action prior to learning of our investigation.” Therefore, the Commission concluded that the base forfeiture amount was appropriate in this instance.

FCC Fines Telecommunications Carrier \$20,000 for Failure to Adequately Respond to FCC Inquiries

The FCC fined a telecommunications carrier \$20,000 for failing to respond to multiple Commission requests for information in violation of Sections 4(i), 4(j), 218 and 403 of the Communications Act of 1934. These provisions afford the Commission broad authority to investigate entities it regulates. On three separate occasions, the company in question failed to respond or responded inadequately to Commission inquiries.

The company, based in North Carolina, offers local and long distance service in North Carolina and Florida. In March 2004, the audit staff of the Commission’s Enforcement Bureau sent a letter to the company requesting information pertaining to its compliance with Section 64.1195 of the Commission’s Rules. This rule section requires all telecommunications carriers that provide interstate services to register with the FCC. This registration in turn allows the FCC to monitor the entry and operation of carriers to ensure that they do not engage in fraud or otherwise evade federal oversight. The company sent an “inadequate” response to an initial FCC letter and as a result, the FCC issued a Letter of Inquiry in October 2004 seeking the information. Again, the company responded in a manner that the FCC found inadequate. In its response, made on two separate days in December 2004, the company failed to include a number of the required elements: a sworn answer to numerous questions about the company’s filing and payment obligations relating to the Universal Service Fund; company documents relating to the Universal Service Fund payments from 2002 onwards; and an explanation about how the documents that were included were responsive to the Commission’s Letter of Inquiry. In total, the company failed to respond to the majority of the FCC’s questions. Repeated calls from FCC staff also failed to elicit an adequate response. As a result, the FCC sent a warning letter to the company in March 2005 directing it to respond in full or face enforcement action. The company responded by faxing a one-page document to the FCC that in no way answered any of the Commission’s questions. After receiving no further information, the FCC issued a second warning letter to the company in July 2005 which cited the inadequacies of the company’s prior responses and again noted the possibility of enforcement action. The company was apparently unmoved and failed to respond.

Failing to respond to Commission inquiries can result in fines of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000. The base forfeiture amount for failing to file the required FCC forms or to supply requested information is \$3,000. The base forfeiture amount for failing to respond to a Commission communication is \$4,000. The Commission determined that “the failures to respond to a Bureau LOI in the circumstances presented, warrant a substantial increase to the base amount.” Hence, the Commission assessed a fine of \$20,000. In addition, the Commission ordered the company to respond fully to the October Letter of Inquiry within 30 days of the release of the order. The Commission pointedly informed the company that failure to respond would constitute an additional violation that could result in additional forfeitures and/or the revocation of the company’s authorization to operate common carrier services.

FCC Fines Radio Broadcaster \$12,000 for Public Inspection File Violations

The FCC fined the licensee of three radio stations in California \$12,000 for public inspection file violations. Section 73.3526 of the Commission’s Rules requires that licensees maintain a complete public inspection file for each station, including copies of all quarterly issues/programs lists for the license term. In this case, the stations’ public inspection files were missing significant numbers of quarterly issues/programs lists.

In November 2005, an agent from the FCC's San Diego office conducted an on-site inspection of the public inspection files for the three co-owned radio stations. The inspection revealed that each station's public file was missing quarterly issues/programs lists from 2000 to the present. The agent proceeded to inquire as to the whereabouts of the quarterly issues/programs lists. The stations' chief engineer indicated that he had no idea where the lists might be.

The stations' renewal applications had been filed on August 1, 2005, and the licensee had certified in Section III, Question 3 of each application that the public inspection files for all three stations contained the material required by Section 73.3526. As a result of the certification in the renewal filings, the FCC concluded that the violations were indeed willful. Because the Chief Engineer had no idea where the quarterly lists might be found, the FCC also determined that the violations were repeated. The base forfeiture amount for public inspection file violations is \$10,000. However, the FCC concluded that the public inspection file contained a portion of the required items, so "a downward adjustment to \$4,000 per station" was warranted in the case. The total assessed fine was \$12,000. Surprisingly, the FCC did not pursue the issue of whether the applicant had falsely certified that its public inspection files were complete in submitting its license renewal applications, and granted license renewals to all three stations.

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