



To All Broadcast Clients

June 16, 2005

FCC ENLISTS VIEWERS AND LISTENERS TO REPORT PAYOLA VIOLATIONS

In a move likely to cause a flood of complaints, the FCC is encouraging television viewers and radio listeners to report any perceived violations by broadcasters of the FCC's payola rules. The FCC's action follows heightened concern within the agency that broadcasters are overlooking or ignoring the requirement to disclose sponsored program material.

Commissioner Adelstein likened the FCC's effort to "a Neighborhood Watch program" that will help the Commission "enforce the law and deter future violations."

To aid in this effort, the FCC issued a new fact sheet that recites the FCC's payola rules; no new rules have been adopted. The fact sheet explains how members of the public can report suspected violations of these rules by broadcasters. A copy of the fact sheet is attached.

The FCC's payola standards are grounded on the principle that the public has the right to know who is attempting to influence it by program content. These standards are highly subjective, however, and complaints could

prompt numerous, highly involved investigations by the Enforcement Bureau, similar to those undertaken recently to enforce the FCC's (similarly subjective) indecency rules.

Given the new awareness of payola concerns, and risk of enforcement action, we urge that you review the sponsorship identification requirements with all station personnel involved in the selection, production or preparation of program material, and that you also review your payola policies to ensure that they are understood by your employees and that your efforts to implement these policies are appropriately documented.

If you have any questions regarding the FCC's payola rules and the steps your stations should be taking to implement appropriate policies in this area, please contact any attorney in our office.

Leventhal Senter & Lerman PLLC

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.

Background

Federal law, including Federal Communications Commission (FCC) rules, requires that employees of broadcast stations, program producers, program suppliers and others who have accepted or agreed to receive payments, services, or other valuable consideration for airing material must disclose this fact to the broadcast licensee airing the material. This is required so that broadcasters have the information they need to disclose to their audiences that the material was paid for.

What the Rules Say

The Communications Act and the FCC's rules require the following:

- When a broadcast licensee has received or been promised payment for the airing of program material, then, at the time of the airing, the station must disclose that fact and identify who paid for or promised to pay for the material. All sponsored material must be explicitly identified at the time of broadcast as paid for and by whom, except when it is clear that the mention of a product or service constitutes sponsorship identification.
- Any broadcast station employee who has accepted or agreed to accept payment for the airing of program material, or the person making or promising to make the payment, must disclose this information to the station prior to the airing of the program.
- Any person involved in the production or preparation of a program who receives or agrees to receive payment for the airing of program material must disclose this information. Broadcast licensees must make reasonable efforts to obtain from their employees and others they deal with for program material the information necessary to make the required sponsorship identification announcements.
- The information must be provided up the chain of production and distribution before the time of broadcast, so the station can air the required disclosure.
- These rules apply to all kinds of program material aired over radio and television stations. Some may also apply to cablecasts.

What You Can Do if You Think the Rules Have Been Violated

The FCC acknowledges that broadcasters play a critical role in providing information to the communities and audiences they serve.

If you suspect a broadcaster has violated the FCC's rules, you can file a

complaint with the FCC. To assist the FCC in its review, the complaint should include the following:

- Details of the content of the broadcast;
- The date and time of the broadcast;
- Why you believe that payment or other consideration was provided, requiring the airing of a sponsorship identification announcement;
- The call sign of the broadcast station involved;
- The fact that no sponsorship identification was aired; and
- Any documents that you believe establish any of the foregoing.

You may direct your complaint, by mail, to:

Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Room 4-C330
Washington, DC 20554

You may also e-mail your complaint to the
FCC's Consumer & Governmental Affairs Bureau at
fccinfo@fcc.gov,

or

by telephone at

1-888-CALL-FCC (1-888-225-5322) voice

or

1-888-TELL-FCC (1-888-835-5322) TTY.

To assist the FCC in processing your complaint more quickly, we encourage you to make your submission in writing or by e-mail.