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Reference Memo

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Underwriting Requirements

Overview

The Communications Act contains two distinct and sometimes competing requirements concerning underwriting acknowledgements. Section 317 requires all stations to identify sponsors of broadcast programs by announcing, at the time of broadcast, that the program material was "paid for or furnished by" the sponsor. Section 399B prohibits public stations from airing any "advertisement." An advertisement is defined as programming material, broadcast in exchange for remuneration, which promotes a service, facility or product which is offered on a "for-profit" basis.

The FCC's Underwriting Requirements

The FCC allows public broadcasters to air enhanced underwriting announcements for for-profit entities under the following conditions:

1) <u>Sponsor ID</u>. All announcements must contain an appropriate on-air sponsorship identification.

2) <u>Content</u>. The announcement may include the location, telephone number, and email address of the underwriter, and a logo or tagline that is not promotional.

3) <u>Value-Neutral</u>. Any description of goods or services must be value neutral. The more adjectives used or the more intricately detailed an announcement is, the more likely the announcement is promotional rather than purely identifying.

4) <u>Short Duration</u>. While the Commission has not imposed a length restriction on announcements, it has found that the longer announcements are, the more likely they contain material that is more than "identification only."

5) <u>No Program Interruption</u>. The FCC requires that (a) the announcement may not interrupt "regular programming;" and (b) that public stations may not substantially alter or suspend regular programming in order to conduct fundraising activities for another entity.

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Caution on Consideration. Be aware that the consideration can take many forms, including money, a program, or anything of value.

Content to Avoid

To help broadcasters draw the line between "identification" and "promotion," the FCC has given examples of four general categories of promotional announcements:

Price Information

1) Announcements containing price information. Any mention of value associated with a product or service is prohibited. This includes statements about interest rates, money down, or any other indication about savings or value associated with a product or service.

   E.g., "7.7% interest available now!"

Call to Action

2) Announcements containing a call to action.

   E.g., "Stop by our showroom to see a model."

   "Try Product X the next time you buy motor oil."

Inducement

3) Announcements containing an inducement to buy, sell, rent, or lease.

   E.g., "Be one of the first fifty visitors and receive a free gift!"

   "Six months free service!"

   "A bonus is available this week only!"

Comparative or Qualitative Language

4) Announcements containing comparative or qualitative language.

   E.g., "The finest in Chrysler and Plymouth automobiles."

Announcement Analysis

The FCC will issue higher fines for repetitive and continuous violations of the underwriting requirements. Fines were assessed in each of the following cases because the broadcaster violated the Commission's underwriting policies:

1) Continuous and Repetitive: Fine of $20,000 was imposed for eleven for-profit entity announcements over a year period because ten messages, containing comparative and qualitative language, were repeated approximately 3,149 times.

2) Distinguishing between Underwriter and Competitors: Fine of $2,500 was issued for two underwriting announcements aired for a three month period because messages contained language that impermissibly distinguished the underwriter's business from its

competitors, such as "quality craftsmanship" or "the best cleaning system," in a "unique environment."

3) Invite or Urge Customers: Fine of $5,000 was imposed for eight underwriting announcements over a week period because, among other improper language, the announcement induced patronage by using phrases such as "how about doing something fun…let me suggest a visit to [underwriter]."

4) Pricing Information: Fine of $2,500 was assessed for four underwriting announcements over a two day period because, along with comparative and qualitative language, the underwriter also referenced price by showing an image of rice with the following price information: "$11.45 – 15 lbs."

5) Qualitative Language: Fine of $12,500 was issued for four underwriting announcements over a ten month period because several announcements used qualitative language, such as "knows about tires" or "we have it here" or "beautiful Harley Davidson light trucks."

6) Qualitative Language: Fine of $20,000 was imposed for eight underwriting announcements over a year and two month period because, along with comparative language, the underwriter also used qualitative language such as "made only with the freshest ingredients" or "[underwriter] takes pride in their honest and reliable service."

Conclusion

The FCC underwriting policies are continuously evolving. The guiding purpose of these policies is to preserve the non-commercial nature of public stations. While public broadcasters are given permission by the FCC to make good faith judgments about what each requirement entails, a broadcaster is advised to keep announcements short and value neutral.

If you have any questions, contact Melodie Virtue at mvirtue@gsblaw.com or at 202-298-2527. You may also contact any of the other attorneys in the Communications and Information Technology Group listed below.

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