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Focus on FCC Fines

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Jury hits station with a \$16.5 million verdict – While this column usually limits itself to the subject of the FCC taking money from broadcasters, a recent jury award in California merits mention. In that case, an on-air contest went horribly wrong and resulted in the death of a contestant, a 28-year old mother of three.

In January, 2007, a Sacramento station ran a contest billed as “Hold Your Wee for A Wii”. A Wii, of course, is a popular Nintendo video game console with an approximate retail value of \$250. The contest, which was conducted in the station’s studios, required contestants to drink water continuously – eight bottles of water every ten minutes – without using the bathroom. The last contestant to vomit or urinate would win the \$250 Wii.

As the contest began, one of the on-air personalities questioned whether the contest could result in water poisoning or death. In addition, while the contest was running, concerned listeners called the station and warned that contestants could die. As the contest drew to a close, one of the contestants complained on the air that she was sick. One of the on-air personalities agreed that the contestant looked sick while another jeered at her that “this is what you feel like when you are drowning”. Station staff members laughed. During the contest, one of the on-air personalities also joked that “they [the contestants] signed waivers and we are not responsible.”

Tragically, the contestant died. Last month, a 12-member jury found the station responsible for the death and awarded the surviving family \$16.5 million. The failed defense by the station was that the death was unforeseeable and that the station staff acted without consulting upper management. (In the wake of the incident the station’s licensee had fired three DJ’s, two on-air personalities, the show’s producer, the promotions manager and the station manager.)

Most contests covered in this column involve an FCC fine for incomplete rules, supposedly inadequate prizes, or improperly conducted contests. In virtually all such cases, the problem boils down to a lack of careful planning by the station. Such planning should include attention to each and every aspect of the contest – the way it is to be conducted, the way it is to be promoted, the way winners will be determined, the

availability of the promised prize(s), etc. Stations should be particularly attuned to any possible adverse effects – on the public generally, or on individual contestants – that might be caused by their contests. The California case serves as a bleak reminder of what can happen when such care is not taken.

FCC has change of heart – Two months ago, we reported in this column about a Southern California FM station that faced a \$5,000 fine for forgetting to include an end-of-message code after transmitting an EAS test. The station is a non-commercial broadcaster which voluntarily serves as the local primary station for the EAS network. In that capacity, the station volunteers to send emergency messages, weekly and monthly tests to other local radio stations in order to assist in emergency preparedness.

At the end of any EAS message or test it transmits, a local primary station is required to send a signal to let downstream stations know that the message is over. Following one test, station personnel forgot to send this “end-of-message” signal and, as a result, several stations dutifully continued broadcasting the primary station’s programming, advertisements and all. After an investigation, the FCC notified the primary station that it would be liable for a \$5,000 fine. The station was given 30 days to pay up or defend itself.

This month the FCC seems to have had a change of heart: it cancelled the fine. However, the Feds did formally admonish the station and require that it prepare and submit a compliance report which must be certified by an officer of the company.

GPS is good for more than just directions – A Colorado radio station was fined \$3,200 for listing the wrong coordinates on its license for a studio-transmitter link. The coordinates were off by one minute and 38 seconds in latitude and 35 seconds in longitude – a discrepancy which amounted to about two miles. The FCC was aware of the difference because they bring along GPS devices when they conduct station inspections.

The station explained to the FCC that when they applied for the STL license, they had taken the reference coordinates from an undated survey map provided by their landlord. The FCC did not budge, specifically noting the wide availability of handheld GPS devices. The FCC also rejected the station’s defenses that the coordinates were only “slightly off” and that the station was acting in good faith. (Five seconds appears to be the FCC’s level of tolerance.)

In doling out the fine, the Commission observed that the licensee had filed for the STL in the Fall of 2007. While the licensee claimed to have relied on its landlord’s survey for the coordinates, the licensee did not know when that survey was conducted. The clear

implication of the Commission's ruling is that, in this day and age of readily-available GPS equipment, an applicant specifying a new transmitter site cannot rely on second-hand, historical sources for the site's coordinates. While such sources might turn out to be accurate, they might not – as happened here.