



December 2009

Focus on FCC Fines

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Sponsorship in the news, again – Five years after the Armstrong Williams sponsorship flap hit the headlines, the FCC is still handing out fines. The latest fine is a \$32,000 hit to a Bethlehem, PA, TV station for receiving payments for airing five episodes of the Williams show ten times each (at \$100 a pop to the station). The fine is for violation of the sponsorship identification rules – a more elegant way of saying “payola” – and amounts to considerably more than the amount that the station originally received. It is worth noting that there is *no prohibition against receiving payment for airing any particular programming*, including the Armstrong Williams show; BUT if payment is received, the Communications Act and the Commission’s rules require that the fact of such payment be properly disclosed in on-air “sponsorship identification” announcements.

The Armstrong Williams matter was the hot topic for discussion as 2005 began. Mr. Williams was a talk-show host of his own syndicated program. It seems that Mr. Williams received money from U.S. Department of Education to promote the Bush Administration’s No Child Left Behind Act (“NCLB”). Not surprisingly, Mr. Williams’s on-air treatment of NCLB was favorable. The major PR flapdoodle initially arose when the government’s payments to Williams surfaced – since a bunch of folks didn’t cotton to the idea that the government should be paying friendly media figures (like Williams) to secretly propagandize on behalf of the administration’s pet projects. Criticism was also directed to the fact that Williams did not disclose to his audience that he was getting paid to promote the topic. However, because Mr. Williams is not an FCC licensee – he only provided programming to broadcasters – there was little that the FCC could do other than issue him a sternly-worded letter.

But to get his word out to the masses, Mr. Williams did have to use broadcast channels, which afforded the FCC targets which it could in fact reach: *i.e.*, the broadcasters who aired his programming. As part of an investigation into the broadcasts and the payments to Mr. Williams, the FCC inquired about payments that broadcasters received. It turned out that the Bethlehem, PA, TV station’s contract with Mr. Williams specified a \$100 per broadcast payment to the station for each broadcast. The station advised the FCC that this was a nominal amount and that the station likely did not advise its viewers that it had

been paid.

That was all the FCC needed. The licensee's admission that the station had received payments for broadcasting the program but had failed to disclose those payments gave the Commission an open-and-shut sponsorship identification case. The timing was inopportune for the licensee, since the FCC has in recent years been on something of a rampage about sponsorship ID violations, looking into embedded advertising, video news releases (VNRs) and the like. Because of that, the Commission was ready to roll when *L'Affaire Williams* broke across the headlines.

(For any reader who may not be *au courant* with the sponsorship ID rules, they provide that, when a station transmits any matter – music, talk-shows, endorsements – in exchange for money or other consideration, the station must let its viewers or listeners know. Specifically, the station is required to identify that the matter is sponsored, in whole or in part, and identify who paid for the sponsorship.)

The station defended itself by claiming that a \$100 payment to a television station is a nominal amount. The FCC didn't accept that excuse and held fast to its rule that *any* payment or consideration received by a station required a sponsorship disclosure. The FCC identified five programs, each broadcast ten times, in return for each of which the station received \$100 without identifying the sponsorship. The FCC initially proposed a forfeiture of \$40,000.

The station raised several other defenses including inability to pay the fine and good faith efforts by the station to prevent payola. The FCC didn't think much of those defenses, either. But the station also asked the FCC to cut it a break since it was a first time offender. The FCC looked through its records and found that the licensee had kept its nose clear FCC-wise, so it cut 20% off the station's fine. The grand total of the fine was \$32,000.

Licensees should always be certain to identify sponsors of any programming, music or other matters being broadcast. Everyone at a station should be reminded that sponsorship can arise from even the most minimal exchange of money or consideration. Again, the law does not prohibit taking money (or other consideration) in return for programming; but when such consideration does change hands, the law requires stations to make that known to their audience.

Underwriting? Yes! Advertising? No! – A rural Arizona non-profit, LPFM station signed off on a consent decree requiring it to shell out \$700 a month to the government for the next ten months and file compliance reports with the government for the next three years. The FCC had initiated an investigation back in 2007 into the possibility that the station

was airing advertisements. (LPFM licensees are, of course, noncommercial by nature. As a result, while they may broadcast underwriting acknowledgements, they may *not* broadcast advertisements.)

The FCC concedes that it can sometimes be difficult to distinguish between (a) language that is acceptable as an underwriter acknowledgement and (b) language that is unacceptable as an advertisement. Although the FCC's latest "voluntary agreement" from a station is short on specifics, it serves as a reminder that the government will target whomever it chooses, including a local non-profit council for the arts. In conjunction with the earlier case involving proper sponsorship identification, it should be a paramount task for every station to ensure that sponsorship identification procedures are properly followed and, for those stations that operate noncommercially, that underwriting announcements do not run afoul of FCC underwriting restrictions.