Underwriting Requirements

By: John Crigler

GSB Contact:

John Crigler
Washington, D.C.
jcrigler@gsblaw.com
202-298-2521

ANCHORAGE

BEIJING

NEW YORK

PORTLAND

SEATTLE

WASHINGTON, D.C.

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 noncommercial stations from airing any "advertisement." An advertisement is defined as programming material, broadcast in exchange for remuneration, that promotes a service, facility or product which is offered on a "for-profit" basis. The FCC's underwriting policies have evolved out of the tension between a required identification and a prohibited promotion of underwriters. Please note that this memo is limited to announcements regarding for-profit entities and their products, services or facilities. Different considerations apply to announcements on behalf of non-profit entities, political candidates and advocacy groups.

The FCC's Underwriting Requirements

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

1) Sponsor ID. All announcements aired in exchange for consideration must contain an appropriate on-air sponsorship identification.
2) Consideration. Consideration can take many forms, including money, in-kind donations, or program material itself (e.g. national programs with embedded announcements).
3) Content. The announcement may include the location, telephone number, email address of the underwriter and an established logo or tagline that is not promotional.
4) Value-Neutral. Any description of goods or services must be value neutral. The more adjectives or detailed descriptions an announcement contains, the more likely the announcement will be promotional.
5) Duration. While the Commission has not imposed a temporal restriction on announcements, it has found that the longer announcements are, the more likely they are to be promotional. Announcements of more than 30 seconds duration are suspect.
6) No Program Interruption. Announcements (a) may not interrupt "regular programming;" and (b) may not substantially alter or suspend regular programming in

order to conduct fundraising activities for another entity. The FCC has not defined an "interruption."

Content to Avoid

The FCC has identified four categories of promotional announcements. They are:

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 to Buy

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 violations of the underwriting requirements. Fines were assessed in each of the following cases because the broadcaster repeatedly violated the Commission's underwriting policies:

1) <u>Ongoing and Repetitive</u>: Fine of $20,000 was imposed for eleven for-profit entity announcements over a year; ten messages, containing comparative and qualitative language, were repeated approximately 3,149 times.

2) <u>Distinguishing between Underwriter and Competitors</u>: Fine of $2,500 was issued for two underwriting announcements aired over 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) <u>Invite or Urge Patronage</u>: Fine of $5,000 was imposed for eight underwriting announcements over a week

period because the announcements induced patronage with phrases such as “how about doing something fun…let me suggest a visit to [underwriter].”

4) Price Information: Fine of $2,500 was assessed for four underwriting announcements over a two day period because the underwriter 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,” “we have it here,” and “beautiful Harley Davidson light trucks.”

6) Comparative Language: Fine of $20,000 was imposed for eight underwriting announcements over a year and two-month period in which the station aired announcements containing qualitative language such as “made only with the freshest ingredients” and “[underwriter] takes pride in their honest and reliable service.”

Conclusion

The guiding purpose of these policies is to preserve the noncommercial nature of noncommercial broadcast stations. While noncommercial broadcasters are allowed to make good faith judgments about the application of FCC requirements, that judgment must be based on a reasoned analysis of FCC policies and rulings, not on the broadcaster’s intuition. Be smart.

If you have any questions, contact John Crigler at jcrigler@gsblaw.com or at 202-965-7880. You may also contact any of the other attorneys in the Communications and Information Technology Group listed below.

Garvey Schubert Barer Communications and Information Technology Group

Colin B. Andrews
candrews@gsblaw.com
202-298-1736

John Crigler
jcrigler@gsblaw.com
202-298-2521

Brad Deutsch
bdeutsch@gsblaw.com
202-298-1793

Judy Endejan
jendejan@gsblaw.com
206-816-1351

Arthur H. Harding
aharding@gsblaw.com
202-298-2528

Erwin G. Krasnow
ekrasnow@gsblaw.com
202-298-2161

Melodie A. Virtue
mvirtue@gsblaw.com
202-298-2527