

Failure to Promptly Award \$396 Contest Prize Results in \$8K Penalty for Broadcaster

April 17, 2024

If you're a contestant in a radio or TV contest, it's important to follow the rules of the contest, lest you be disqualified. Likewise, if you're a broadcaster conducting an on-air contest, it's important to follow the rules of your contest, lest you be fined by the FCC (or, for that matter, a state regulator). A radio station in California learned that lesson the hard way recently when the FCC fined it \$8,000 for failing to award a \$396 prize within the 30-day period specified in the contest rules.

Violation of the FCC's Contest Rule

On April 12, 2024, the FCC's Enforcement Bureau issued a Notice of Apparent Liability for \$8,000 against KXOL Licensing, Inc. (KXOL), licensee of radio station KXOL-FM in Los Angeles, California. The FCC found that KXOL violated Section 73.1216 of its rules, which requires that licensees fully and accurately disclose material contest terms and conduct contests as advertised. The rules for KXOL-FM's 2019 "Mega Bomba" contest specified that winners would receive their prizes within 30 business days of completing required documents. KXOL received the winner's required documents on January 16, 2020, and therefore had until March 2, 2020, to award the \$396 cash prize. But KXOL did not actually award the prize until more than a year later, in May 2021.

The Commission rejected KXOL's justifications for its "undue delay" in awarding the cash prize, including challenges allegedly owing to the outbreak of the COVID-19 pandemic and a ransomware attack. Notably, the Commission emphasized that both the pandemic and the ransomware attack occurred after KXOL's March 2, 2020, deadline for awarding the prize. Thus, while those issues may have compounded the delay, they "did not cause the underlying failure to"

Authors

Kathryne C. Dickerson
Partner
202.719.7279
kdickerson@wiley.law
Stephanie Rigizadeh
Associate
202.719.4736
srigizadeh@wiley.law

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award the prize by the deadline established by the contest rules.

Forfeiture

The Commission's proposed \$8,000 fine includes a \$4,000 base forfeiture for Contest Rule violations and an upward adjustment of an additional \$4,000 based on "the nature and circumstances" of KXOL's violation. The FCC explained that this upward adjustment serves as a "deterrent and not simply a cost of doing business for KXOL," whose parent company Spanish Broadcasting System, Inc. reported an annual revenue of \$156 million on its most recently available 10-K. Consequently, the Commission justified its upward adjustment because it expects that "large or highly profitable companies ... pay higher forfeitures for violations of the Act and the Commission's rules."

Broadcasters conducting on-air contests should craft contest rules carefully and abide by them. Material changes to the rules must be announced on-air within 24 hours of the change and periodically thereafter until the contest ends. State law may also dictate the time period in which prizes must be awarded or other contest terms. Wiley's seasoned Communications Enforcement & Compliance team has extensive experience counseling clients on FCC compliance and responding to enforcement actions. Please reach out with questions.