

# Say What? FCC Fines NCE Broadcaster for Underwriting and Sponsorship ID Violations

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In 1972, comedian George Carlin famously released a bit on the seven “Filthy Words” you can never say on the public airwaves. The bit became the subject of a landmark Supreme Court decision, *FCC v. Pacifica Foundation*, in which the Supreme Court affirmed the FCC’s ability to regulate indecent broadcasting. Community standards have evolved in the interceding half-century since Carlin’s bit, and today you might get away with some of the seven words. For Non-Commercial Educational (NCE) broadcasters, however, there remains an additional, less well-defined set of words that can get you in trouble – i.e., those that promote for-profit entities. Pacifica Foundation, Inc. (Pacifica), licensee of NCE radio station WBAI-FM in New York (WBAI) (and the subject of the 1970s indecency action), learned the hard way when the FCC fined it \$25,000 for underwriting and sponsorship ID violations.

## Background

The FCC’s Sponsorship ID Rules require radio and TV stations to identify on-air the sponsor of any paid program. Specifically, Section 73.1212 mandates that stations announce when they broadcast any sponsored programming and name the sponsor of such programming. According to the FCC, this requirement furthers transparency and prevents the public from being misled.

The Underwriting Rules, meanwhile, prohibit NCE stations from airing “advertisements,” defined as promotional announcements broadcast in exchange for payment from for-profit entities. While financial support for programs that is received from donors must be acknowledged on-air, these so-called “underwriting” acknowledgements must be for identification purposes only and not

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promote the donor's goods or services. In particular, the FCC has interpreted this rule to prohibit qualitative or comparative descriptions; price information; calls to action; and inducements to buy, sell, rent, or lease.

### **Objections**

In response to the filing of WBAI's 2022 license renewal application, the Commission received a Petition to Deny and several Informal Objections claiming that Pacifica aired programs on WBAI over the course of nearly eight years that violated the Sponsorship ID and Underwriting Rules. The Petitioner, for example, alleged that several WBAI program hosts repeatedly promoted on-air nutritional supplements sold by Gary Null, another WBAI host. Commentary cited by the Petitioner included statements such as: "5166203602 is the number to call to get nitric cell stuff. Gary Null's new stuff ... only for WBAI listeners nitric cell stuff for \$90 pledge to WBAI. And to help this listener sponsored station, call in the phones are open now." The Petitioner further claimed that "Gary Null retains much of the proceeds from products and services offered on his shows" and that "these infomercials hawking products and services sponsored by WBAI hosts constitute *the entire subject matter of programming.*"

### **Consent Decree**

On April 23, 2024, the FCC released an order announcing that it had entered into a Consent Decree with Pacifica. The Commission did not specifically address in the Consent Decree any of the allegedly problematic statements raised by objectors, but it did conclude that Pacifica had impermissibly promoted for-profit products and services in spots that contained comparative and qualitative descriptions, pricing information, calls to action, and other inducements to buy. As a result, Pacific must pay a \$25,000 fine, implement a compliance plan, and submit annual compliance reports to the Commission. The Commission also imposed a two-year renewal term on WBAI.

George Carlin tested the limits of speech and society with his comedy. NCE broadcasters would be well-served not to similarly test the limits of the FCC's Sponsorship ID and Underwriting Rules.

Wiley's seasoned Communications Enforcement & Compliance team has extensive experience counseling clients on FCC compliance and responding to enforcement actions. Should you have questions or would like assistance developing compliance materials related to the Sponsorship ID or Underwriting Rules, please reach out.