

## **CONTESTS: THE ROAD TO HELL IS PAVED WITH GOOD INTENTIONS**

You have a great promotion and sales package rolled into one. The local electronics dealer has made a deal with his supplier to provide five new HD, 60 inch digital flat screen TVs for a contest promotion and you only have to be sure that the model gets mentioned, and that the copy makes clear that there is no DTV converter required. It seems the distributor thinks that the NTIA/FCC push for DTV converter box coupons and the \$900 million dollars Congress funded for it is getting so much attention, that this would be a great way to capitalize on the public awareness created by that program. The GM thinks it's a great idea; you're authorized to give a promotional rate if the station can be identified as a co-sponsor of the giveaway.

The promotion gets planned, the station advertises the five giveaway screens, but when the time comes to announce the winners, the distributor RENEGS!! It produces only two TVs. It says, "Sorry, that's all we have right now . . . all we can afford." What to do? Can you express your regrets, award the two and make a quick exit?

Well, no.

First, it is a long-held principle that the licensee is responsible for the information that goes over its air and that responsibility cannot be relinquished to another. (regarding accuracy, see column (May 23, 2008 - *The Skinny On False Weight-Loss Advertising ... And Other Big Fat Lies*) It is also clear that where the station is involved in planning, organizing or promoting the contest in any way, then in the eyes of the FCC it becomes responsible for the proper on-air promotion and the conduct of the contest. That includes just mentioning the station as a co-sponsor, as in such as "Jones Electronics and KZZZ bring you . . ."

Section 73.1216 of the Commission's rules is quite clear regarding a station's obligations: "A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description may be false, misleading or deceptive with respect to any material term." Material terms include those factors which define the operation of the contest and which affect participation. Material terms generally include:

- instructions on how to enter or participate;
- eligibility restrictions;
- entry deadline dates;
- whether prizes can be won;
- when prizes can be won;
- the extent, nature and value of prizes;
- basis for valuation of prizes;
- time and means of selection of winners; and/or tie-breaking procedures.

These terms should to be disclosed when the audience is *first* told how to enter or participate and they need to be periodically rebroadcast on the station conducting the contest.

When the broadcaster is involved in any way in promoting or conducting a contest, even when it is not an actual promoter, it has the responsibility to ensure that the contest is conducted substantially as announced. An exception arises when the licensee is not actually involved in planning, promoting or conducting a contest, and its only involvement was announcing the contest winners. In that event, a broadcaster may be off the hook.

The Commission has held that a prize donor's failure to honor its promise does not relieve the station of its duty to conduct a contest as advertised and to honor its promise to the public. The "extent, nature and value of prizes" are material terms under Section 73.1216, and, consequently, in our example, the number of televisions awarded is a material term of the contest. A failure to award all the televisions would result in failure to conduct its the contest substantially as advertised and, thus, would violate Section 73.1216.

In fact, that is what the Commission recently held in *Multicultural Radio Broadcasting Licensee, LLC*. It found that Multicultural violated Section 73.1216 of the Commission's rules in its Station Anniversary Contest. Specifically, it found that Multicultural failed to conduct the contest substantially as advertised, awarding two prizes instead of five. The cancellation of a pre-announced contest, or a change in the prizes or odds of winning caused by a change in the number of prizes violates the rule because the contest is not then conducted "substantially as announced." Whenever conducting a contest, the broadcaster is responsible for awarding the announced contest prize, even when a co-sponsor fails to do so.

So what prize do *you* get from the FCC if you fail to conduct the contest as announced, or fail to award all the promised prizes? Well, the base forfeiture for violation of 73.1216 is a fine of \$4,000, and it can go up for multiple or repeated violations.

And remember this, too – proof of actual deception is not necessary for a violation of the contest rules. Even an innocent deviation from the announced rules can lead to liability.