

Unprecedented Fine for Violation of Non-Commercial Restrictions

By [Peter Gutmann](#)

In an unusual decision, the FCC has levied a substantial fine against a non-commercial educational television station for its repeated broadcast of paid advertising.

Over the years, many for-profit broadcasters have expressed dismay over the increasing amount of commercialism which they perceive in announcements aired by ostensibly non-commercial stations. The problem seems to have worsened lately, perhaps partly in reaction to the general economic pressures faced by educational broadcasters and governmental hesitation to heavily subsidize them.

The line between prohibited advertising and permissible underwriting and donor acknowledgements has become increasingly blurred. The general standard is a distinction between language that merely identifies and that which promotes. The Commission considers comparative or qualitative descriptions, price information and inducements to act as the hallmark of an advertisement. Given the difficulty of applying this abstract principle to practical situations, when the Commission has found that the line has been crossed, it generally tends to uphold an educational licensee's reasonable good faith judgment and rarely issues a sanction more severe than an admonishment.

In the recent case, the Commission fined a foreign-language television station in San Francisco \$10,000. The magnitude of the fine sets a new high-water mark for this type of violation. Although the licensee filed an extensive defense of its actions, the Commission rejected all of its claims. These included assertions that translation of the Asian-language texts did not take into account cultural differences; that viewers could consider the spots to be merely informative; that some of the ads were run inadvertently through inadequate oversight; that some of the descriptive terms used were value-neutral descriptions of products rather than attempts to promote or compare their merits; that many of the spots were intended to be perceived as humorous rather than objective; and that the contents were factually accurate.

There is one factor which may weigh against the ultimate significance of the fine - the licensee was found to have broadcast *1,911 illegal advertisements!* Thus, while the overall amount may be unprecedented, the penalty per advertisement seems rather trivial in comparison to the revenues which the licensee amassed and presumably may retain. The decision has not yet become final, and so Commission staff is hesitant to discuss whether it is intended to send some sort of sign to public broadcasters or whether the case must be viewed strictly upon its facts, some of which were unique. Not the least of these is that the case arose not from an outside complaint but rather when the licensee brought the matter to the Commission's attention (as part of a cable must-carry dispute) by seeking a declaratory ruling that its actions had been proper.

One aspect of the case, though, does have general policy significance. A commercial station, concerned with the situation, had claimed that the placement, duration and frequency of the spots constituted substantial interruption of regularly scheduled programming, in violation of a specific restriction imposed upon educational broadcasters by the Communications Act. The staff held that even though up to four 30-second spots had been broadcast each half hour, they occurred at natural program breaks and thus did not "unduly disrupt" the flow of regular educational programming.

We will keep you advised of further developments. In the meantime, much of the tension between commercial and non-commercial broadcasters remains in this area.

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