



FCC Regulation: Selected Topics

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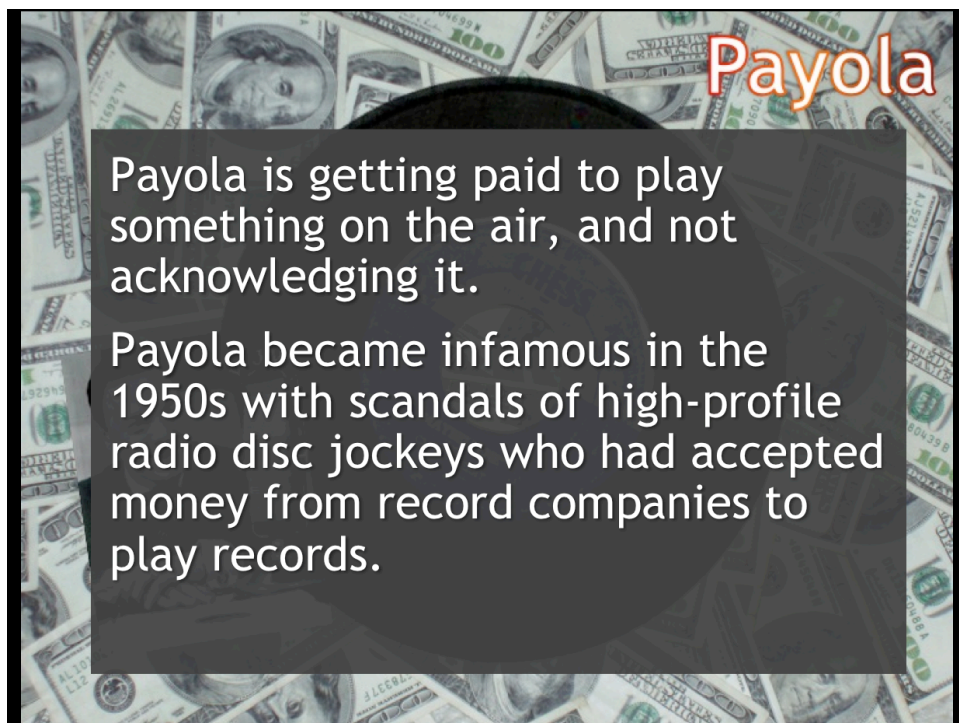
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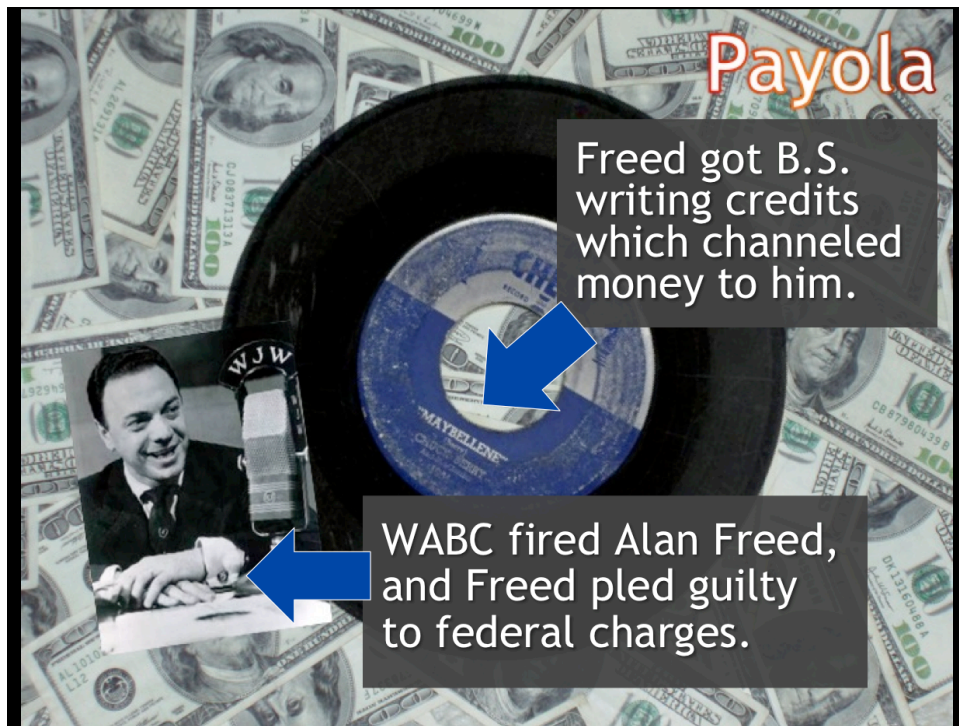


FCC Regulation - Selected Topics: Payola



Payola is getting paid to play something on the air, and not acknowledging it.

Payola became infamous in the 1950s with scandals of high-profile radio disc jockeys who had accepted money from record companies to play records.



Regulated by federal law.

Enforced by FCC

Enforcement process is driven by complaints from the public (including watchdog groups and competitors).

Applies to broadcasting.

Limited application to cablecasting.

§ 317



§ 317 of the Communications Act (47 U.S.C. § 317) requires broadcasters to disclose to their listeners or viewers if matter has been aired in exchange for money, services or other valuable consideration. The announcement must be aired when the subject matter is broadcast. An FCC rule specifies broadcaster responsibilities in making the sponsorship identification: 47 C.F.R. § 73.1212

§ 317 ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST.



(a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast. ...

(b) [Disclosure must be made by station even if payment was to an employee, announcer, etc.]

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section....

§ 507



§ 507 of the Communications Act (47 U.S.C. § 507) requires that when anyone provides or promises to provide money, services or other consideration to someone to include program matter in a broadcast, that fact must be disclosed in advance of the broadcast, ultimately to the station over which the matter is to be aired. Both the person providing or promising to provide the money, services or other consideration and the recipient are obligated to make this disclosure so that the station may broadcast the sponsorship identification announcement required by § 317.

Up to \$10,000 in fines and one year in prison.

Common factual contexts



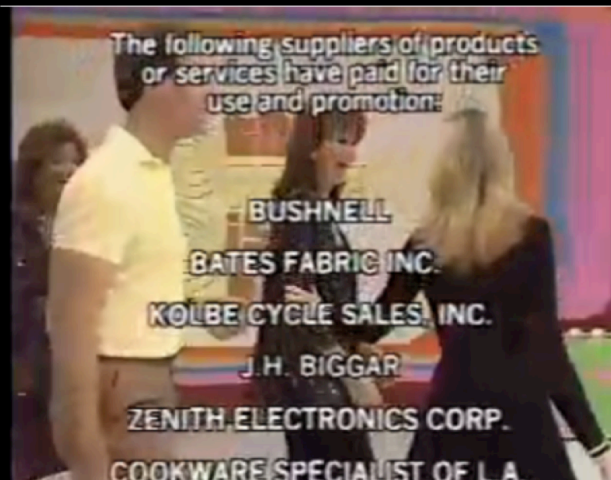
- Being paid by the record company for playing records
- Free pizza for the DJ
- Product placement in scripted television
- Game show prizes



Disclosure
is the key to
avoiding liability.



The Price Is Right - March 18, 1987



The Price Is Right - March 18, 1987



In the Matter of Fox Television Stations, Inc.
Licensee of Station KMSP-TV Minneapolis

NAL/Acct. Number: 201132080023

File Number: EB-06-IH-3709

July 7, 2011





FCC Regulation -
Selected Topics:

Broadcast of False Facts

Rules

Broadcast of
False Facts

Licensees cannot broadcast false information concerning a crime or catastrophe if:

- The licensee knows the information is false, and
- The licensee knows beforehand that broadcasting the information will cause substantial public harm which
 - will begin immediately and cause direct and actual damage to the property, health, or safety of general public,
 - or divert law enforcement or public health and safety authorities from their duties.

Effect of Disclaimers

If a disclaimer is presented in such a way that is reasonable under the circumstances, and which clearly characterizes the program as fiction, the program will be presumed to not pose foreseeable public harm.



FCC Regulation -
Selected Topics:

Cable Carriage

Cable Carriage

In general

- Generally, cable system can choose which channels to offer, subject to:
 - Must carry rules
 - Local franchise authority regarding public, educational, and governmental channels
 - Basic tier requirement
 - Tier buy-through prohibition

Cable Carriage

Must-carry rule

- Broadcast TV stations have the right to force cable systems to carry their signal for free.
- Broadcast systems are not required to supply their signal to cable systems and may require cable systems to pay a fee for carriage.
- Remember: It's not "must supply." Must-carry is a right belonging to broadcasters, not cable systems.

Cable Carriage

Basic tier requirement

- Cable systems must offer a basic service tier, that is the minimum that a subscriber must receive.
- Basic tier must include all local channels electing must-carry and all PEG channels included per local franchise agreement
- Cable system may include more channels, but is not required to.

Cable Carriage

Tier buy-through prohibition

- If a cable system offers a-la-carte selection of channels or pay-per-view programming, the cable system cannot require purchase of a higher tier than basic cable to be eligible to buy.
- Channels need not, however, be offered on an a-la-carte (per-channel) basis, and may be grouped together in expanded tiers.

Cable Carriage

Local franchise agreement regarding PEG channels

- The local government may negotiate to require, as part of the franchise agreement, carriage of public, education, and government access channels.
- Includes
 - Local public access
 - C-SPAN



FCC Regulation -
Selected Topics:

Equal Time and Political Campaign Ads

Equal Time and Political Ads

Key provisions:

§ 312 - Reasonable access for
federal candidates' ads

§ 315 - Equal time

Equal Time and Political Ads

Reasonable access for ads for federal office - § 312

Section 312 [47 U.S.C. §312] Administrative sanctions.

(a) The Commission may revoke any station license or construction permit

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(f) For purposes of this section:

(1) The term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

(2) The term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

Equal Time and Political Ads

Equal Time - § 315

Basic provisions

Section 315 [47 U.S.C. §315] Facilities for candidates for public office.

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provision of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any -

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views of issues of public importance.

Equal Time and Political Ads

Equal Time - § 315

Basic provisions

Section 315 [47 U.S.C. §315] Facilities for candidates for public office.

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provision of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any - [EXCEPT]

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views of issues of public importance.

Equal Time and Political Ads

Equal Time - § 315

Rate limitations

Section 315 [47 U.S.C. §315] Facilities for candidates for public office.

(b) CHARGES

(1) IN GENERAL. - The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed -

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

Equal Time - § 315

Negative ad requirements

Section 315(b)(2)

(A) **IN GENERAL.** - In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraphs (C) or (D).

(B) **LIMITATIONS ON CHARGES.** - If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

Equal Time - § 315

Negative ad requirements

Section 315(b)(2)

(C) **TELEVISION BROADCASTS.** - A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds -

- (i) a clearly identifiable photographic or similar image of the candidate; and
- (ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) **RADIO BROADCASTS.** - A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.





FCC Regulation -
Selected Topics:

Station Identification

Station Identification

Call letter basics

All radio-frequency broadcasting station have unique call letters.

Call letter are the official names of the stations, as far as the FCC is concerned.

Stations are free to adopt nicknames as well.

Station Identification**Call letter format**

Originally, radio stations could choose K or W, and either three letters or four.

Then, four letters required, K required for west of Mississippi River, W for east.

There are heritage exceptions.

Can add -TV, -FM, or -DT for co-owned stations.

Mexican stations begin with X.

Canadian stations begin with C.

Station Identification**Station identification requirements**

Broadcast stations must identify their call letters and city of license as close as possible to the top of the hour.

Other information can be added - on radio, before or after.



FCC Regulation -
Selected Topics:

Closed Captioning

Closed Captioning

Closed captioning

The visual display of the
audio portion of video
programming.

Requirements set forth in 47
C.F.R. § 79.1

Closed Captioning

47 C.F.R. § 79.1

- FCC enforced
- Complaint driven
- No private right of action
- Exemptions
 - Automatic
 - Waiver

Closed Captioning

History

In 1993, built-in decoders required on all new analog TVs.

In 2002, built-in decoders required on all new digital TVs.

In 1996, Congress requires programming distributors to close caption, with phase-in.

Now fully phased in.

Closed Captioning

General scope

Subtitles can be used in lieu of closed captioning.

Programming in languages other than English or Spanish is (generally) exempt.

Closed Captioning

Requirements

As of 2006, all new English-language programming must be captioned.

As of 2008, 75% of pre-rule English programming must be captioned.

From 2005, 30% of Spanish-language programming must be captioned - per channel, per quarter.

As of January 1, 2012, 75% of programming in Spanish must be captioned - per channel, per quarter.

Closed Captioning

Automatic Exemptions

PSAs, promos, etc., shorter than 10 min.

2 a.m. to 6 a.m. programming

Locally produced non-news programming
with no repeat value.

New networks, for first four years.

<\$3M revenue channels

Plus a few other random exceptions.

Closed Captioning

Waiver Exemptions

Can petition the FCC for a
waiver based on “undue
burden”

Automatic exemption while
petition is pending