



May 2017

Promoting Public Interest: Exploring Why Radio Broadcasters Must Serve the Public Interest When Conducting Contests and Promotions

Lynn David Long
Cedarville University, lynndavidlong@cedarville.edu

Recommended Citation

Long, Lynn David (2017) "Promoting Public Interest: Exploring Why Radio Broadcasters Must Serve the Public Interest When Conducting Contests and Promotions," *Channels: Where Disciplines Meet*: Vol. 1 : No. 2 , Article 2.
Available at: <http://digitalcommons.cedarville.edu/channels/vol1/iss2/2>

Promoting Public Interest: Exploring Why Radio Broadcasters Must Serve the Public Interest When Conducting Contests and Promotions

Browse the contents of [this issue](#) of *Channels: Where Disciplines Meet*.

Abstract

Where is the line drawn? This paper seeks to answer that question by exploring the delicate responsibility of radio broadcasters to serve the public interest in promoting their station through contests and events. By examining key cases and orders from the Federal Communications Commission, we gain an understanding of the purpose of public interest and broadcasting, and how broadcasters protect the integrity of their stations by serving that interest.

Keywords

Media law, Radio, public interest, promotions, contests

Creative Commons License



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Follow this and additional works at: <http://digitalcommons.cedarville.edu/channels>



Part of the [Communications Law Commons](#), and the [Radio Commons](#)

Promoting Public Interest: Exploring Why Radio Broadcasters Must Serve the Public Interest When Conducting Contests and Promotions

Lynn Long

Communication — Cedarville University

Introduction

Radio broadcasting stations seek out advertising as an important and often sole source of revenue. However, advertising through radio has expanded from the traditional selling of commercial time. According to the *Radio Advertising Bureau* (2016a), “off-air sales grew 11% over last [year]...to exceed the \$2 [billion] mark” (para. 2). Off-air advertising includes revenue generated from “gate receipts, signage, concessions, sponsorships, merchandising and print activities” (Radio Advertising Bureau, 2016b, §Radio Revenue Sector Definitions, para. 4). Off-air advertising is commonly practiced through promotions which can involve a contest either broadcasted on-air or held online via a station’s website. These off-air advertising opportunities allow stations to share their brand with their audiences while building diverse sources of revenue.

Yet, central to any radio station’s operation is the fiduciary role (trustee of the public) of the station in relating to its listening audience. The Federal Communications Commission (FCC or the Commission) has established that broadcasters serve the “public interest,” defined in this modern age as “universal access, public safety, competition, and consumer protection” (Wheeler, 2014, para. 1). This is applied to every facet of a radio station from programming to promotions. It is applied through 47 C.F.R. 73.1216 which gives the FCC authority to regulate contests and promotions. Within this statute are important aspects to public interest being served through contests and promotions. Compliance is compulsory for radio broadcasters. Stations that have shown negligence in their efforts to attract the largest possible audience to their promotion or contest have faced monetary forfeitures or denial or revocation of license renewal.

Contest and promotions are growing as an important source of revenue for radio stations (Radio Advertising Bureau, 2016a, para. 2). History has shown that certain negligent actions by stations have provoked FCC regulation of contests and promotions. Therefore, it

is imperative that anyone involved in a radio station's sales or promotions department be familiar with the actions that have provoked the regulation of contests and promotions. A study of some of these rules and regulations point to one central theme: promotions and contests must be defined by detailed, truthful operation to serve the public interest in safety and accessibility.

The Definition of Public Interest

Understanding the underlining theme of contest and promotion regulation begins with public interest. Public interest has been a cornerstone argument for the FCC to justify regulating broadcasters, especially with contests and promotions. A definition of public interest for promotion and contest regulation centers on two key components: safety and accessibility.

The Commission commands compliance with rules and regulations especially when the safety of the public is concerned. Therefore, safety stands as a key part for a definition of public interest as applied to promotions and contests. Broadcasters are required to fulfill a fiduciary role in the community because they use a resource, the electromagnetic spectrum, to communicate with typically large groups of people. Broadcasters who communicate anything potentially harmful to the community's safety are seen as neglecting their fiduciary role in serving the public interest.

This is evident in a recent decision by the FCC where the Commission acted against a Sacramento station whose controversial contest resulted in the death of a contestant. The station did not comply with certain FCC standards while operating the contest that required informing the contestants of the dangers associated with the contest. Station personnel even ignored listeners' advice when callers grew concerned that the contest was negatively affecting the health of contestants. In its hearing designation order, the Commission viewed the negligence displayed by the station regarding the contest as "conduct...contrary to the public interest duty and a breach of [the station's] core obligations as a public trustee" (*Entercom License, LLC*, 2016, 16). The Commission pointed to the station's fiduciary responsibility to serve its listeners and how the contest, instead, clearly put them at risk.

Safety of the public extends from just individual listeners or contestants to other areas where the safety of the public is concerned, including property. The Commission has been concerned with promotions or contests that "adversely" threaten public interest by causing harm to public buildings, parks, private property, or divert police due to the extreme nature of the promotion (*Contests and Promotions Which Adversely Affect the Public Interest*, 1966, p. 464). The FCC stated these types of promotions "raise serious question about the sense of responsibility of the broadcast licensee involved" (*Contests and Promotions Which Adversely Affect the Public Interest*, 1966, p. 464). Therefore, the Commission wants

licensees to carefully consider the potential consequences of any contest or promotion they host or advertise.

The 1966 Public Notice stemmed from some similar instances in which station contests put not only promotion participants at risk but also led to the damage of public property. When radio station KWK in St. Louis ran two treasure hunt promotions, participants damaged a local park by digging for buried treasure and had to be separated by police when multiple individuals found the treasure (*KWK Radio, Inc.*, 1963, p. 1067). The Commission believes that any communication from a broadcaster that leads to “infringement of public or private property rights” goes against the fiduciary responsibility of serving the public interest (*Contests and Promotions Which Adversely Affect the Public Interest*, 1966, p. 464). Safety, pertaining to public interest, means stations must look after the well-being of the individuals in the community they serve as well as the property in that community.

Safety is only a part of the definition of public interest pertaining to promotions and contests. The other piece is accessibility or equal opportunity for the public to participate in a contest operated by the broadcaster. This is the “fairness” aspect of a broadcaster’s fiduciary role expressed through promotions. The broadcaster is serving the community, and if the broadcaster is awarding prizes to only certain persons in the community or only allowing certain persons to participate, then this is going against the fiduciary role. In a follow-up to the 1966 Public Notice, the Commission stated “contests should be conducted fairly...and that failure to do so falls short of the degree of responsibility expected of licensees” (*Failure of Broadcast Licensees to Conduct Contests Fairly*, 1974, p. 1056). At issue was the fact some participants of various station promotions were not being granted equal opportunity or accessibility to participate.

Radio station KWK failed in this area as the FCC found the station to be “perpetuating a fraud on its listeners” when they made listeners call in to the station in under sixty seconds to claim a prize on a phone line that was constantly busy, preventing listeners from claiming their prize (as cited in *KWK Radio, Inc.*, 1963). KWK did not allow opportunity for contestants to fully participate, going against the latter part of the definition of public interest. Accessibility does not just pertain to individuals participating but also includes equal access to the information regarding the contest, called the “material terms (47 C.F.R. 73.1216 (2015)).

Before finishing the definition of public interest, it is important to explain the “detailed” component necessary for running promotion and contests that are under the definition. The controlling regulation for contests is section 73.1216 of Title 47 in the U.S. Code. Broadcasters must answer to the following:

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 over the air or on the Internet. No contest description shall be false, misleading or deceptive with respect to any material term (47 C.F.R. 73.1216 (2015)).

Broadcasters who do not abide by these rules fail in their responsibility to serve the public by allowing accessibility to information. Broadcasters create accessibility by “Periodic disclosures broadcast on the station” and “[w]ritten disclosures on the station's Internet Web site, the licensee's Web site, or if neither the individual station nor the licensee has its own Web site, any Internet Web site that is publicly accessible” (47 C.F.R. 73.1216 (2015)). Further, broadcasters must make sure that all information is included, thus the need for “detailed” promotions and contests.

Returning to the definition of public interest by exploring accessibility, the Commission has made clear the public interest must be served through equal access to contest and promotional information with requirements to broadcast all contest rules on-air or written on a website. The website disclosure option was not available until 2015 (*Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, 2015). Even when web-based information was provided but was not yet an option for disclosing material terms, if stations failed to disclose all terms through “periodic broadcasts,” then the Commission faulted them for not serving the public interest (47 C.F.R. 73.1216 (2015)).

AMFM included a brief mention of a contest as a part of a promotional spot about their rewards program, and the FCC labeled it as a broadcast of a contest susceptible to section 73.1216 (*AMFM Broadcasting License, LLC*, 2009, p. 1529). The station announced winners of their rewards program before the advertised ending of the contest in the commercial. Though the contest was vaguely referenced in the rewards program commercial, the FCC found the station's argument “unavailing” (*AMFM Broadcasting License, LLC*, 2009, p. 1532). The Commission has repeatedly argued for clear direction by disclosing all contest rules.

Clear Channel Communications, Inc. (now iHeartMedia) paid \$22,000 for its Los Angeles stations when a contest was held on the station's websites. Those stations ran advertising about the contest but directed listeners to the website and did not broadcast the contest rules. Thus, according to previous Commission policy, the stations did not properly disclose the rules, again, because websites were not permitted as discloser platforms until 2015. The Commission stated to Clear Channel that “we caution that the imposition of even higher forfeitures may result in the future if such misconduct persists” (*Clear Channel Communications, Inc.*, 2012, p. 348). The precedent of equal access through proper communication channels has not changed although websites are now available as a discloser platform for material terms.

Promotions and contest regulation must provide clear explanations of contest rules. This is explicitly stated in section 73.1216: “[B]roadcast licensees [are] to comply with their obligation to disclose material contest terms either by broadcasting those terms or by making them available in writing on a publicly accessible Internet website” (*Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, 2015, p. 10468). Thankfully, recognizing the ability of broadcasters to utilize websites as a place to provide complete contest and promotion rules and information, the FCC amended §73.1216, allowing “licensees to satisfy their disclosure obligation by posting material contest terms on the station’s website” (*Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, 2015, p. 10468). The focus here is for broadcasters to be clear with any contests.

Truthful and Detailed

Accessibility means equal opportunity for the audience to participate but also requires full disclosure of all information relating to a contest. Pairing the two components, the definition of public interest as applied to contests and promotions stands as ensuring the safety and accessibility for the community the broadcaster serves.

Having examined the definition of public interest as applied to contests and promotions, it is important to define the remaining components of the thesis statement: truthful, detailed contests and promotions. Detailed was defined earlier by the explanation of disclosing the “material terms” in section 73.1216 (47 C.F.R. 73.1216 (2015)). Attention will now be directed to the “truthful” component.

Communicating the details of any contest begins with truthfulness. The FCC has ordered that “[n]o contest description shall be false, misleading or deceptive” (47 C.F.R. 73.1216 (2015)). The Commission stated in 1974 that broadcasters who practice the following fail “the degree of responsibility expected of licensees:”

- (1) [D]isseminating false or misleading information regarding amount or nature of prizes;
- (2) failing to control the contest to assure a fair opportunity . . . to win . . .
- (3) urging participation . . . at times when it is not possible to win . . .
- (4) failing to award prizes, or failing to award prizes within a reasonable time;
- (5) failing to set forth and accurately the rules and conditions for contests;
- (6) changing the rules or conditions of a contest without advising the public or doing so promptly; and
- (7) using arbitrary or inconsistently applied standards in judging entries (*Failure of Broadcast Licensees to Conduct Contests Fairly*, 1974, pp. 1056-1057).

Truthfulness is at the center of these standards as broadcasters are expected to be fair and honest in their promotional conduct. Their conduct must comply with those standards. When a DJ on KDKA jokingly informed his audience that every thirteenth caller of the hour would receive one million dollars, the FCC took action, accusing the station of

“broadcast[ing] information about a contest without fully and accurately disclosing all material terms” and found “that [the station was]...liable for a forfeiture in the amount of \$6,000” (*CBS Radio East, Inc.*, 2009, p. 1293). This was deemed appropriate action by the Commission because in serving the public interest, KDKA was expected to be honest with their contest operation.

Greater Boston Radio Inc. (2013) was forced to pay a \$4,000 fine after their contest failed to mention that grand prize winners would be leased a car and not given one outright as contest spots seemed to suggest. The FCC stated that licensees have an “obligation” to inform the audience about material terms throughout the contest period (*Greater Boston Radio Inc.*, 2013, p. 1953). Again, truthfulness must be in every contest and promotion for it to serve the public interest of safety and accessibility.

As the Greater Boston Radio Inc. forfeiture argued, detail is linked to truthfulness. Entercom in Wichita also missed some minor details that later hurt the station as the on-air personality incorrectly denied a contestant a prize which the FCC found as “failing to award the cash prize as required under the rules of the...contest and by failing to broadcast the material terms of the contest” (*Entercom Wichita License, LLC*, 2009, p. 1270). This is another extension of truthfulness as laid out in the 1974 public notice.

The material terms command broadcasters to be detailed in their contests and promotions as it makes operating truthful promotions much easier. The Commission sees detailed, truthful promotions as serving the public interest because this enables broadcasters to carefully consider and protect the safety and accessibility of the community they serve. Thus, the reason for broadcasters to operate promotions is defined by detailed, truthful action to serve the public interest.

The Future

What does the future hold for broadcasters as they seek to capitalize on growing off-air revenue streams? As technology enables stations to reach their audiences in varied ways, broadcasters must be careful not to break any regulations regarding other means of communication. iHeartMedia had to pay a hefty settlement after allegedly violating the Telephone Consumer Protection Act by sending unsolicited advertising text messages to listeners without their consent (*Willis v. iHeartMedia, Inc.*, <http://www.radiotextmessagesettlement.com/>). Sales representatives for licensees are increasing their efforts to combine traditional and digital advertising (Radio Advertising Bureau, 2016a, para. 3). However, as iHeartMedia learned the hard way, stations must be cautious. *TV Week* (2016) reported on the FCC’s recent decision which “barred Comcast, Verizon, and other Internet service providers from automatically tracking the Web-surfing activity of consumers” (para. 1). This could affect how sales representatives seek to

combine digital and traditional advertising but ultimately reveals there is regulation everywhere. Stations must be careful to meet those regulations or face monetary forfeitures, license renewal denial, or even license revocation.

Leadership of KWK had their license revoked for operating unfairly and promoting the damage of a local park. Ownership of KDND is awaiting the ongoing Commission investigation to find out if their license will be revoked because their actions “failed to serve the public interest” (*Entercom License, LLC*, 2016, p. 2.). The total amount of the forfeitures for the cases mentioned in this paper alone is \$42,000. These severe consequences are issued if broadcasters neglect operating fair, honest, and detailed promotions and contests. To serve the public interest, station personnel must keep the opportunity, accessibility and most importantly, safety of the people and property involved in mind. If they do not, they will find it difficult to capitalize on diverse and growing sources of revenue if the audience does not want to participate because they think the station is dishonest or because the FCC fines away the profits.

References

- AMFM Broadcasting License, LLC, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1529 (2009)
- Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests, Report and Order, 30 FCC Rcd 10468 (2015)
- CBS Radio East, Inc., Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1293 (2009)
- Clear Channel Communications, Inc., Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343 (2012)
- Contests and Promotions Which Adversely Affect the Public Interest, Public Notice, 2 FCC 2nd 464 (1966)
- Entercom License, LLC, Hearing Designation Order and Notice of Opportunity for Hearing, FCC 16-153, __ FCC Rcd __ (October 27, 2016) Retrieved from http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1027/FCC-16-153A1.pdf
- Entercom Wichita License, LLC, Forfeiture Order, 24 FCC Rcd 1270 (2009)
- Failure of Broadcast Licensees to Conduct Contests Fairly, Public Notice, 45 FCC 2nd 1056 (1974)
- Greater Boston Radio, Inc., Forfeiture Order, 28 FCC Rcd 1951 (2013)
- KWK Radio, Inc., Initial Decision of Hearing Examiner Forest L. McClenning, 34 FCC 1050 (1963)
- Radio Advertising Bureau. (2016a, March 31). *Digital, off-air platform revenues hit new highs* [Press Release]. Retrieved from http://www.rab.com/public/pr/revenue_detail.cfm?id=140
- Radio Advertising Bureau. (2016b). *Annual Revenue trends*. In *Radio Revenue*. Retrieved from Radio Advertising Bureau website: <http://www.rab.com/public/pr/rev-pr.cfm?section=press>
- TV Week. (2016, October 28). Report: The FCC drives a stake through the heart of the \$77 billion online ad business. *TV Week*. Retrieved from <http://www.tvweek.com/tvbizwire/2016/10/report-the-fcc-drives-a-stake-through-the-heart-of-the-77-billion-online-ad-business/>

Wheeler, T. (2014, January 30). Access and public safety: Enduring elements of the public interest [Blog post]. Retrieved from <https://www.fcc.gov/news-events/blog/2014/01/30/access-and-public-safety-enduring-elements-public-interest>