PUBLIC NOTICE

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FCC ENFORCEMENT ADVISORY

COVERT MANIPULATION OF RADIO AIRPLAY BASED ON ARTIST PARTICIPATION IN PROMOTIONS OR EVENTS VIOLATES FCC PAYOLA RULES

The Enforcement Bureau (Bureau) of the Federal Communications Commission issues this Enforcement Advisory to ensure that radio broadcasters do not violate federal law when they have artists perform at radio station events or festivals. As detailed below, neither broadcast licensees nor their personnel can compel or accept unreported free or unreported reduced fee performances by musicians in exchange for more favorable airplay.

In issuing this Enforcement Advisory, we remind broadcast licensees that a practice known as "payola" is not only a violation of the United States Criminal Code, but may also subject broadcasters to sanctions under the Communications Act of 1934, as amended (Act). In particular, this Enforcement Advisory addresses payola in connection with the covert manipulation of radio airplay by a broadcast station licensee or broadcast station personnel based on an artist's agreement to participate in a broadcast station's promotion or event, often without receiving any compensation or expense reimbursement for the appearance.

Payola is the unreported payment to—or acceptance by—employees of broadcast stations, program producers, or program suppliers of any money, service, or valuable consideration to achieve airplay for any programming. Section 507 of the Act requires those persons who have paid, accepted, or agreed to pay or accept such payments to report that fact to the station licensee before the involved matter is broadcast. In turn, section 317 of the Act requires the licensee to announce that the matter contained in the program is paid for, and to disclose the identity of the person furnishing the money or other valuable consideration.

Both section 317(c) of the Act and section 73.1212(b) of the Commission's rules require that each licensee "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals" information to enable the licensee to comply with the sponsorship identification requirements of section 317 of the Act. The "reasonable diligence" standard can require a higher duty of care by stations whose formats or other circumstances make them more susceptible to payola. Thus, for example, we would expect stations that report to record charting services to demonstrate greater diligence to prevent improper conduct by its principals and employees than would a station with an all-news format. It may fall short of "reasonable diligence" if the licensee of such a reporting station does nothing more than require its employees to execute affidavits stating that they will not violate laws and regulations prohibiting payola.

Moreover, broadcast stations that host promotions or events that include artists (whether or not the artists are compensated for the appearance) must take appropriate steps to ensure that all such promotions or events comply with the payola requirements and general public interest components in the Act and the FCC's rules and avoid agreements that covertly increase the amount of airplay based on an artist's performance or appearance at a station's promotion or event. As the Commission has previously stated, "[w]hen payola causes stations to broadcast programming based on their financial interests at the expense of community responsiveness, the practice is inconsistent with localism."[2] It is important to note, however, that an artist's decision to appear at a station's promotion or event without compensation is permissible, provided that the appearance and any associated station broadcasts otherwise satisfy the requirements of the Act and the FCC's rules, including but not limited to section 317 of the Act and section 73.1212 of the Commission's rules.

Failure to make the reports required by section 507 of the Act can subject the violator to criminal penalties of a fine of up to $10,000 or imprisonment of up to one year, or both.

The Commission notes that licensees play a critical role in preventing payola, and the Commission's enforcement staff will consider investigating substantive allegations of payola that come to its attention. In many situations a station may be a victim of payola practices. The Commission emphasizes, however, that a broadcaster's failure to comply with section 317 of the Act and 47 CFR section 73.1212(b) of the Commission's rules may result in the imposition of administrative sanctions, including monetary forfeiture.

Media inquiries should be directed to 202-418-0500 or MediaRelations@fcc.gov.

For additional information about this Advisory, send an e-mail to EnforcementAdvisories@fcc.gov.

To file a payola complaint with the FCC, send an e-mail to PayolaComplaints@fcc.gov. In addition, you may visit https://consumercomplaints.fcc.gov or call 1-888-CALL-FCC. To report a crime, contact your local law enforcement office or the FBI. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

Issued by: Acting Chief, Enforcement Bureau

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[2] *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12437, para. 33 (2004).