

1984

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Recommended Citation

James A. Albert, *The Federal Regulation of Broadcast Station Contests, or ... What's the FCC Doing in the Cash Call Jackpot?*, 15 Loy. U. Chi. L. J. 261 (1984).
Available at: <http://lawcommons.luc.edu/lucj/vol15/iss2/10>

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The Federal Regulation of Broadcast Station Contests, or . . . What's the FCC Doing in the Cash Call Jackpot?

James A. Albert*

INTRODUCTION

In the early 1950's, the burgeoning popularity of television forced radio stations to compete for audiences. In response to the increasing competition presented by television, radio station programmers began airing contests to attract listeners. These contests proved to be so successful in attracting larger audiences over the years, that today, contests are an integral part of radio programming.¹ In fact, radio stations that have the greatest lis-

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1. Today, television stations rarely employ contests. Contests are primarily utilized by radio stations because of their success in attracting a larger listening audience. For example, when Los Angeles radio station KFWB switched its format to popular music, thousands of balloons were pushed from the windows of office buildings to promote the change in the station's format. One-dollar bills and fifty-dollar bills were attached to many of the balloons. In fact, one of every five balloons contained cash. C. HALL, *THE BUSINESS OF RADIO PROGRAMMING* 135 (1977). As Claude Hall, the radio-TV editor for *Billboard* magazine recalls: "Traffic was tied up for hours over about 200 square miles. But everyone quickly knew about rock 'n roll music on KFWB. It became the No. 1 station in Los Angeles as fast as people could switch radio dials." *Id.*

When Chicago's WMAQ radio station switched to a country music format in January of 1975, it launched contests that continue today. The station's slogan, "WMAQ is gonna make you rich" is broadcast so often each day that it has become the station's broadcasting signature. WMAQ contests have been effective for the station and "millions of dollars" have been won by listeners, all of which has "made a big impact on Chicago." Telephone interview with Stephen Krasula, Promotions Department, WMAQ Radio, Chicago, Illinois (Oct. 7, 1982).

In 1977, another Chicago radio station, WLS, responded to the fervor created by the contests conducted by WMAQ by employing a high-stakes "Music Radio Game." Prizes included 30 Hawaiian vacations, 20 Chevrolet automobiles, 31 motorcycles, a home, 100 vacations to Disney World and \$40,000 worth of stereo equipment. C. HALL, *supra*, at 135.

tening audiences have demonstrated that it is in their best interest to conduct at least one contest at all times.²

However, in the 1950's, as the popularity of both radio and television contests increased, so did the incidences of contest-rigging.³ In response to the television quiz show scandals of the 1950's, Congress, through amendment of the Communications Act of 1934 ("Communications Act"), created greater statutory controls over contests conducted by broadcast licensees.⁴ Also, the Federal Communications Commission ("FCC") which regulates radio and television broadcasting, assumed a more active role in regulating radio and television contests.⁵ Today, because of the pervasiveness of broadcast contests, the FCC's regulatory activities in this area have assumed increasing importance and visibility.

The Commission often metes out severe penalties to licensees that violate the prohibitions of the Act or FCC regulations pertaining to contest conduct. Yet, many broadcasters have argued that the contest decisions⁶ of the FCC are confusing and inconsistent,⁷ and thus, they are uncertain as to what contest conduct the government expects of them.

The purpose of this article is to fully illumine the legal framework within which broadcast stations must operate contests. This article discusses the requirements that contest formats must follow so as not to violate the Communications Act of 1934⁸ and the regulations,⁹ policy statements¹⁰ and precedent of the FCC. The range of sanctions that the FCC can impose on a licensee for contest violations is then examined. Next, FCC decisions which are a representative sampling, exemplifying the range of FCC responses to contest violations by broadcast licensees are examined. These decisions are analyzed

2. W. PECK, RADIO PROMOTION HANDBOOK 11 (1968).

3. See *infra* notes 11-12.

4. Communications Act Amendments, 1960, Pub. L. No. 86-752, 74 Stat. 889 (codified as amended in scattered sections of 47 U.S.C.).

5. See 47 C.F.R. § 73.1216 (1982). See also *FCC Outlines Law to Penalize All TV Quiz Riggers*, ADVERTISING AGE, Feb. 15, 1960, at 2.

6. See *infra* notes 60, 63, 65, 72 & 75.

7. As a result of purported inconsistencies in the decisions of the FCC, broadcasters have tried, unsuccessfully, to assert their ignorance of the law as a defense to a charge of contest misconduct.

8. 47 U.S.C. §§ 151-609 (1976 & Supp. V 1981).

9. See 47 C.F.R. § 73.1216 (1982).

10. Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests

in an attempt to harmonize their results and to anticipate future FCC responses to contest violations. This article concludes that although it is not possible to predict with precision how the FCC will respond to any particular contest violation, the presence or absence of certain factors may influence the FCC in determining the severity of the sanction it may impose on a broadcast licensee.

BACKGROUND

Standards of Conduct in Broadcasting Contests

By 1959, television quiz shows had become a popular part of American culture.¹¹ In that year, however, the country was jolted by the revelation that some of the big-money quiz shows had been rigged.¹² Congress responded to the quiz show scandals by

Fairly, 39 Fed. Reg. 10,652, 45 F.C.C.2d 1056 (1974); Public Notice re Contests and Promotions Which Adversely Affect the Public Interest, 31 Fed. Reg. 2568, 2 F.C.C.2d 464 (1966).

11. Millions of Americans tuned their black and white television sets to contest shows which featured celebrities such as Vincent Price, Edward G. Robinson, Dr. Joyce Brothers, and ordinary citizens such as housewives, policemen and teachers as these contestants fiercely competed for tens of thousands of dollars on each show. J. FIREMAN, *THE ULTIMATE TELEVISION BOOK* 89-93 (1977). A 1955 broadcast of *The \$64,000 Question* attracted a viewing audience of more than 55 million people—a television milestone. *Id.* at 91. By 1956, *The \$64,000 Question* had become, based on television ratings, the most popular television show in America. *The Busy Air*, *TIME*, June 18, 1956, at 84. *Twenty-One*, which premiered on network television in 1956, was to become one of the most popular prime-time programs in television history. *Twenty-One* joined a galaxy of other popular television quiz shows which included *The \$64,000 Question*, *The \$64,000 Challenge*, *Dotto*, and *The Big Surprise*. J. FIREMAN, *supra*, at 91. Supreme Court Justice William O. Douglas was even recruited to draft a question which was used on *The Big Surprise*. *The Week in Review*, *TIME*, Nov. 7, 1955, at 77.

By the mid-1950's, quiz show mania had swept the country. In 1957, the three major television networks responded to the mass popularity of the quiz shows by devoting 75 one-half hour periods each week to quiz programs. Cotler, *The Question About Quiz Shows*, *N.Y. Times*, Dec. 1 1957, § 6, at 90, col. 2.

12. An investigation of quiz shows unearthed evidence that U.S. District Attorney Frank S. Hogan later characterized as establishing "a national fraud whereby television quiz shows have been constantly misrepresented to millions of citizens as honest tests of the contestants' knowledge and skill." Murphy, *Hogan Asks Judge to Air TV Findings*, *N.Y. Times*, July 14, 1959, at 1, col. 7. Hogan stated that, in truth, the quiz shows had been flashy hoaxes constituting "large-scale evil." *Id.*

When contestant Charles Van Doren won \$129,000 on *Twenty-One*, *Time* magazine elevated him to posterity by adorning its magazine cover with his visage, accompanied by the legends "Quiz Champ Van Doren" and "Brains v. Dollars on TV." *The Wizard of Quiz*, *TIME*, Feb. 11, 1957, at 44. However, Van Doren later testified when the quiz show frauds were discovered, that not only had he been supplied with answers to quiz questions but that he had also been coached to stammer and act as though he couldn't quite

amending the Communications Act, adding section 509.¹³ Section 509(a) makes it unlawful for any person to "engage in any artifice or scheme" so as to predetermine the outcome of a contest.¹⁴ Section 509(a) also makes it illegal for any person to even *participate* in the broadcast of any contest if that person has a reasonable ground for believing that the contest may be rigged in any way.¹⁵

remember the answer to a question until just before the time limit in which to answer expired. *A Sad Ending to the Quiz Era*, BROADCASTING, Nov. 9, 1959, at 39. Twenty-One contestant Herbert Stempel testified that he was told by the producers of the show to purposely lose to Van Doren. J. FIREMAN, *supra* note 11, at 92. Contestants who had appeared on other rigged quizzes came forward with similar testimony.

The nation was stunned by the news that the quizzes had been fixed. President Eisenhower expressed the prevailing outrage of the American people when he criticized the deception and rigging of the contests as a "terrible thing to do to the American people." *Id.* at 93. Dave Garroway, the host of the Today television show, actually cried on the air upon hearing the shattering news of the contest riggings. *Id.*

13. Communications Act Amendments, 1960, Pub. L. No. 86-752, § 9, 74 Stat. 897 (codified at 47 U.S.C. § 509 (1976)). Section 509 of the Communications Act was renumbered as § 508 by the Act of Dec. 8, 1980, Pub. L. No. 96-507, § 1, 94 Stat. 2747.

14. Section 509(b)(1) defines the term contest as follows:

The term "contest" means any contest broadcast by a radio station in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

47 U.S.C. § 509(b)(1) (1976).

15. Section 509(a) prohibits the following conduct in broadcast contests of knowledge, skill or chance:

(a) Influencing, prearranging, or predetermining outcome

It shall be unlawful for any person, with intent to deceive the listening or viewing public—

(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.

(4) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done

Violations of section 509(a) can lead to the imposition of a variety of sanctions by the FCC. Section 509(c) provides for the imposition of criminal penalties for violations of that section.¹⁶ Section 503(b) expressly authorizes the FCC to impose monetary forfeitures of up to twenty-thousand dollars for violations of section 509(a).¹⁷ In addition, the Commission has held that acts which violate section 509(a) are contrary to the "public convenience, interest, or necessity."¹⁸ Therefore, pursuant to sections 307, 309 and 312 of the Communications Act,¹⁹ the Commission can sanction a licensee who violates section 509(a) by issuing a short-term renewal of its license²⁰ or even revoking or denying the renewal of the violator's license.²¹

The FCC has broadly construed the scope of section 509(a)'s prohibitions against contest misconduct when imposing sanctions on broadcasters for violations of its provisions. However, despite the interpretation the FCC has accorded section 509(a), some instances of contest improprieties simply do not fall within the prohibitory language of that section which forbids predetermining the *outcome* of a contest through any artifice or scheme. For example, radio stations have broadcast advertisements which have misled the public as to the value of prizes to be awarded.²²

or is going to do any act or thing referred to in paragraph (1), (2), or (3) of this subsection.

47 U.S.C. § 509(a) (1976).

16. Section 509(c) provides that "[w]hoever violates [509(a)] shall be fined not more than \$10,000 or imprisoned not more than one year, or both." 47 U.S.C. § 509(c) (1976).

17. 47 U.S.C. § 503(b) (Supp. V 1981).

18. See, e.g., *Oil Shale Broadcasting Co.*, 68 F.C.C.2d 517 (1978); *La Fiesta Broadcasting, Inc.*, 59 F.C.C.2d 1175 (1976); *Lawrence County Broadcasting Corp.*, 45 F.C.C.2d 881 (1974).

19. Section 307(d) authorizes the Commission to issue a short-term license renewal or to refuse to renew a license when "public interest, convenience, or necessity would be served by such action." 47 U.S.C. § 307(d) (1976) (Section 307(d) of the Communications Act was redesignated as § 307(c) by Communications Amendments Act of 1982, Pub. L. No. 97-259, § 12, 96 Stat. 1093.). Section 312(a)(2) authorizes the FCC to revoke the license of a broadcaster if conditions exist which would warrant a refusal to grant a license on an original application. *Id.* § 312(a)(2). Section 309(a) requires the Commission to refuse to grant a license on an original application if public interest, convenience, or necessity would not be served by granting such license. *Id.* § 309(a).

20. See, e.g., *Oil Shale Broadcasting Co.*, 68 F.C.C.2d 517 (1978); *La Fiesta Broadcasting, Inc.*, 59 F.C.C.2d 1175 (1976).

21. See, e.g., *Star Stations, Inc.*, 51 F.C.C.2d 95 (FCC refused to renew the licenses of five radio stations because of misconduct, including violations of § 509.), *aff'd*, 527 F.2d 853 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 992 (1976); *Santa Rosa Broadcasting Co.*, 9 F.C.C.2d 644 (1967) (license revoked for willful violations of § 509(a)).

22. See, e.g., *Henkin, Inc.*, 29 F.C.C.2d 40 (1971) (Broadcaster stated that the winner of a contest would receive "the keys to a new Impala." The winner of the contest received a

Nevertheless deceptive contest advertising does not violate section 509(a) because the advertisements do not predetermine the outcome of the contest. Thus, the FCC must utilize other provisions of the Communications Act in addition to section 509 to insure that broadcasters properly conduct public contests.

One such provision is section 312(a)(6) which allows the FCC to revoke a broadcaster's license if it engages in any scheme to defraud by means of radio or television communication.²³ Therefore, fraudulent contest activities by a broadcaster need not result in the predetermination of the outcome of a contest to fall under section 312(a)(6)'s prohibition. Other provisions of the Communications Act also give the FCC authority to sanction licensees who violate these provisions through contest misconduct. Sections 312(a)(3) and (4) empower the FCC to revoke the license of any licensee who willfully or repeatedly violates the terms of its license or any provision of the Communications Act.²⁴ Section 312(a)(2) authorizes revocation of a broadcaster's license if conditions exist which would warrant refusal by the FCC to grant an original license or renew a license.²⁵ Another provision of the Communications Act, section 308(b), allows the Commission to consider a licensee's character in determining whether to grant or renew a license.²⁶ Pursuant to this provision, the FCC has considered the contest improprieties occurring at one radio station in denying the renewal of the license of another geographically distant station which was owned by the same corporation.²⁷

set of keys, but no car.); *Eastern Broadcasting Corp.*, 14 F.C.C.2d 228 (1968) (Broadcaster stated that \$100,000 could be won, when the actual odds of any person winning were "infinitesimal.").

23. 47 U.S.C. § 312(a)(6) (1976) (incorporating 18 U.S.C. § 1343 (1982)).

24. *Id.* § 312(a)(3)-(4).

25. *Id.* § 312(a)(2).

26. Section 308(b) provides in pertinent part: "All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station. . . ." *Id.* § 308(b).

27. See *Star Stations, Inc.*, 51 F.C.C.2d 95, *aff'd*, 527 F.2d 853 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 992 (1976); *Melody Music, Inc.*, 36 F.C.C. 701 (1964), *rev'd on other grounds*, 345 F.2d 730 (D.C. Cir. 1965). In *Melody Music*, the Commission denied the renewal of a radio station's license because two of its owners, Barry and Enright, had participated in the production of a television quiz show which had been rigged. The Commission, in denying renewal of the radio station's license, stated that because of Barry and Enright's involvement in the television quiz show, they "lack[ed] the required character qualifications to be licensees." *Id.* at 706.

On review, the appellate court reversed the Commission's decision. The court noted that the Commission had not sanctioned NBC for its involvement in the production of

Finally, the Communications Act's requirement that licensees must broadcast "in the public interest"²⁸ has given the Commission the widest latitude in sanctioning broadcasters for contest improprieties which might not fall within the scope of section 509(a)'s prohibitions, such as airing contest-related advertisements which mislead or deceive the public,²⁹ failing to adequately supervise station personnel with regard to station contests,³⁰ or conducting contests which threaten public safety or private property.³¹

In an attempt to clarify and enforce a licensee's obligations regarding the broadcast of contests pursuant to the Communications Act, the FCC has issued regulations and public notices. Section 73.1216 contained in the *Code of Federal Regulations*³² specifies that when broadcasting or advertising a contest, a licensee must fully disclose the terms of the contest and must not describe any material term in a false, misleading or deceptive manner.³³ The contest must also be conducted substantially as

the quiz program which Barry and Enright produced. The court remanded the case to the Commission directing it to explain the different treatment accorded NBC and the appellants for the same conduct. On remand, the Commission once again held that renewal of the license would not serve the public interest because of the applicant's character. However, the Commission issued a short-term renewal of the station's license contingent on Barry and Enright selling out their interests in the radio station. *Melody Music, Inc.*, 2 F.C.C.2d 958 (1966).

For a discussion of the character requirements of licensees, see Sharp & Pively, *Can the Broadcaster in the Black Hat Ride Again? Good Character Requirements for Broadcast Licensees*, 32 FED. COM. L.J. 173 (1980).

28. See *supra* note 19. The FCC has implied that contest frauds are ipso facto contrary to the public interest. See *KWK Radio, Inc.*, 34 F.C.C. 1039, *reconsideration denied*, 35 F.C.C. 561, *aff'd*, 337 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965).

29. See, e.g., *Henkin, Inc.*, 29 F.C.C.2d 40 (1971); *Eastern Broadcasting Corp.*, 14 F.C.C.2d 228 (1968).

30. See, e.g., *SJR Communication, Inc.*, 45 F.C.C.2d 928 (1974); *Pacific and S. Co.*, 44 F.C.C.2d 629 (1973); *KOLOB Broadcasting Co.*, 36 F.C.C.2d 586 (1972).

31. See, e.g., *Honeyradio, Inc.*, 69 F.C.C.2d 833 (1978); *Action Radio, Inc.*, 51 F.C.C.2d 803 (1973); *Eleven Ten Broadcasting Corp.*, 32 F.C.C. 706, *reconsideration denied*, 33 F.C.C. 92 (1962), *aff'd sub nom. Immaculate Conception Church v. FCC*, 320 F.2d 795 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 904 (1964).

32. 47 C.F.R. § 73.1216 (1982).

33. The notes after the regulation state that for purposes of § 73.1216, "material terms" include those factors that affect contest participation and define its operation:

Although the material terms may vary widely depending upon the exact nature of the contest, they will generally include: 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.

In general, the time and manner of disclosure of the material terms of a con-

advertised. An example of a situation where a broadcaster was found to have violated section 73.1216's prohibitions was where a radio station did not disclose the contest prizes to be awarded to successful contestants until after the winners were selected.³⁴ The same broadcaster also violated section 73.1216 by failing to fulfill a promise the station made during the contest that all winners would automatically qualify for a subsequent contest the station intended to conduct.³⁵

Some licensees charged with deceptive contest advertising have argued that although the advertisements may have given listeners the wrong impression regarding details of their contests, their advertisements nonetheless were not technically false.³⁶ For example, one broadcaster in response to a charge of deceptive contest advertising, insisted that if its listeners had paid close attention to what was said on-the-air concerning the contest, then they would not have been misled by the broadcaster's advertisements.³⁷ However, the Commission has held that if the "net impression of the announcements has a tendency to mislead the public, that is enough" to constitute deceptive contest advertising.³⁸ Moreover, the FCC has indicated that it will consider such factors as the age and lack of sophistication of any particular audience in determining whether an advertisement is deceptive or misleading.³⁹

test are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.

Id.

34. United Broadcasting Co., No. 78-838, memo decision 4530, at 3 (FCC Nov. 30, 1978).

35. *Id.*

36. See, e.g., Eastern Broadcasting Corp., 14 F.C.C.2d 228 (1968) (advertisements stated that \$100,000 was being "offered" and "given away" when actually the chances of the station giving that much away were so infinitesimal as to be nonexistent).

37. T/R Inc., 38 Rad. Reg. 2d (P & F) 1310, 1311 (1976) (advertisements stated that selected contestants would only be *eligible* to win, not that they would win).

38. *Eastern Broadcasting*, 14 F.C.C.2d at 229. The Commission has held that hyperbole or ambiguity may be considered deceptive in certain circumstances. See *WMJX, Inc.*, 85 F.C.C.2d 251, 269-70 (1981).

39. See *Channel 20, Inc.*, 43 F.C.C.2d 1075 (1973) (announcement that kids could win "a bike a day" was misleading to youngsters who were not sophisticated enough to

The FCC has also published two public notices which specifically concern a broadcaster's obligations in conducting contests.⁴⁰ The first notice was prompted by complaints made by the public to the FCC concerning disorderly "treasure hunt" contests and publicity hypes that employed announcements designed to "scare" listeners about imaginary dangers.⁴¹ The 1966 *Public Notice* warned licensees to refrain from broadcasting any type of contest that might infringe upon property or privacy rights, create traffic congestion or other public disorders, or alarm the public about fictitious dangers.⁴²

The FCC published a 1974 *Public Notice* concerning the integrity of broadcasters' contests which underscored a licensee's responsibilities in conducting a contest.⁴³ The 1974 *Public Notice* indicated that certain practices would automatically raise serious questions as to whether a licensee had fulfilled its responsibility

understand that the phrase meant that there would be a maximum of only one bike winner each day).

40. Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly, 39 Fed. Reg. 10,652, 45 F.C.C.2d 1056 (1974) [hereinafter cited as 1974 Public Notice]; Public Notice re Contests and Promotions Which Adversely Affect the Public Interest, 31 Fed. Reg. 2568, 2 F.C.C.2d 464 (1966) [hereinafter cited as 1966 Public Notice]. FCC policy statements have the force of law when published in the Federal Register and the FCC Reports. 47 C.F.R. § 0.445(d) (1982).

Previous to these two notices the Commission had published a broad policy statement regarding the general programming obligations of licensees. See Public Notice, Report and Statement of Policy Res: Commission *en banc* Programming Inquiry, 25 Fed. Reg. 7291, 44 F.C.C. 2303 (1960) [hereinafter cited as 1960 Public Notice]. In the 1960 Public Notice, the Commission stated that a licensee has the nondelegable responsibility for all broadcast material and must take all reasonable measures to eliminate deceptive advertising. *Id.* at 7295, 44 F.C.C. at 2313. One year later, the Commission issued Public Notice In re License Responsibility, With Respect to The Broadcast of False, Misleading or Deceptive Advertising, 40 F.C.C. 125 (1961), which elaborated on licensees' responsibilities regarding advertising.

41. 1966 Public Notice, *supra* note 40, at 2568, 2 F.C.C.2d at 464. See, e.g., WMJX, Inc., 85 F.C.C.2d 251 (1981); Walton Broadcasting, Inc., 78 F.C.C.2d 857 (1980), *aff'd*, 679 F.2d 263 (D.C. Cir. 1982).

42. 1966 Public Notice, *supra* note 40, at 2568, 2 F.C.C.2d at 464. At times, eager contestants searching for treasure hunt prizes had damaged parks, lawns, libraries and even museums as they dug up the ground or ransacked places. Of further concern to the FCC were the reports that several contests had attracted large crowds that blocked traffic and necessitated the diversion of police from other duties. See, e.g., Radio Station WHNE, 68 F.C.C.2d 542 (1978) (licensee staged "Mr. Treasure Contest" in which listeners searched city for hidden medicine bottle); Honeyradio, Inc., 69 F.C.C.2d 833 (1978) (contest prize was partially hidden on private property); Action Radio, Inc., 51 F.C.C.2d 803 (1975) (public "miniskirt" contest caused traffic congestion requiring diversion of police from other duties).

43. 1974 Public Notice, *supra* note 40.

to broadcast programs in the public interest. The following conduct was listed:⁴⁴ urging persons to stay tuned to a broadcast in order to win contests during time periods when it is not actually possible to win;⁴⁵ failing to ensure that contestants have a fair chance of winning announced prizes;⁴⁶ failing to award prizes or failing to award them within a reasonable time;⁴⁷ failing to accurately announce contest rules and conditions or changing the rules or conditions without announcing the changes promptly;⁴⁸ using arbitrary or inconsistent standards in judging entries;⁴⁹ and disseminating⁵⁰ misleading information as to the amount or nature of the prizes.⁵¹

The FCC's 1974 *Public Notice* also stated that even if licensees carefully plan contests to avoid such improprieties, they may still breach their responsibility if they fail to adequately instruct or supervise their employees as to the legal aspects of contests and the proper procedures to follow.⁵² The FCC has held that a licensee can fulfill this responsibility only with continuous and *active* vigilance of its employees.⁵³ In addition to placing a non-

44. *Id.* at 10,652, 45 F.C.C.2d at 1056-57.

45. *See, e.g.*, Radio Chesapeake, Inc., 29 Rad. Reg. 2d (P & F) 1371 (1974) (for weeks station urged listeners to stay tuned because winning number would be announced at any moment, however, station did not intend to reveal number until last day of contest).

46. *See, e.g.*, Eastern Broadcasting Corp., 14 F.C.C.2d 228 (1968) (contestants had almost a nonexistent chance of actually winning the announced prize money); WCHS-AM-TV Corp., 4 F.C.C.2d 376 (1966) (virtually impossible to win more than a small predetermined fraction of the prize total offered each week). In deciding whether announcements regarding prizes are misleading, the Commission has stated that a significant variance between prize money offered and that which is eventually awarded indicates that the broadcast was misleading. *Id.* at 376.

47. *See, e.g.*, Baron Radio, Inc., 25 Rad. Reg. 2d (P & F) 1125 (1972) (a one-year delay in awarding prizes was unreasonable).

48. *See, e.g.*, Fox River Communications, Inc., 45 F.C.C.2d 1081 (1974) (disc jockeys told callers that they could only play contest once a day, but this rule was not announced publicly).

49. *See, e.g.*, LaFiesta Broadcasting, Inc., 59 F.C.C.2d 1175, 1178 (1976) (breach of licensee responsibility by discriminating against Anglo-American contestants by removing their names from entry lists).

50. The term "disseminating" has been interpreted by the Commission to include more than merely "broadcasting." For example, the FCC has considered car bumper stickers to be within the definition of "disseminating." *See* *Communico Oceanic Corp.*, 44 F.C.C.2d 733 (1975).

51. *See infra* note 79.

52. *See, e.g.*, Action Radio, Inc., 51 F.C.C.2d 811, 820 (1973) (licensee liable for failing to explain to employees that a "Miss Miniskirt Contest" would violate FCC regulations because it would cause a public disorder and traffic congestion), *aff'd*, 51 F.C.C.2d 803 (1975).

53. *See, e.g.*, Centrum Corp., 36 Rad. Reg. 2d (P & F) 201 (1976) (although manage-

delegable and affirmative duty on licensees to instruct their employees as to the manner in which contests must be conducted, a licensee's duty to supervise its employees' conduct negates the possibility of a licensee, faced with FCC action regarding contest misconduct, from raising any defenses based on lack of intent.⁵⁴ The burden of absolute liability for the acts of their employees is imposed on licensees because they are considered "trustees" of the "public interest," and thus are charged with nondelegable duties to uphold that trust.⁵⁵

Consistent with the basic tenet that improprieties in the broadcasting of contests cannot be tolerated, is the Commission's position that proof of actual harm to the public as a result of contest improprieties is not required to establish the wrongdoing of the licensee.⁵⁶ Rather, based on the "philosophy of holding licensees to an exemplary standard of conduct in contest-type programs,"⁵⁷ the FCC, depending on the surrounding circum-

ment had given no indication that prizes would be available for a song writing contest, disc jockeys assumed so and licensee was held liable when disc jockeys made incorrect announcements); Independence Broadcasting Co., 53 F.C.C.2d 1161 (1975) (licensee liable for failing to insure that a winner was actually selected, even though the station did not sponsor or produce the contest but merely broadcast it); SJR Communications, Inc., 45 F.C.C.2d 928 (1974) (licensee liable for failing to maintain adequate records of contest, including contest rules, transcripts of all promotional announcements, lists of all winners, and the prizes awarded); Pacific and S. Co., 44 F.C.C.2d 629 (1973) (licensee failed to employ internal security measures and was therefore liable when unknown station employee tampered with list of contestants); KOLOB Broadcasting Co., 36 F.C.C.2d 586 (1972) (licensee breached duty to supervise contest operation by failing to inventory contents of "treasure chest" after unknown intruder had broken into station offices); National Broadcasting Co., 25 F.C.C.2d 106 (1970) (licensee who merely broadcast, but did not produce program, was held responsible for failing to discover and prevent public deception caused by the program).

54. Walton Broadcasting, Inc., 78 F.C.C.2d 857 (1980) (although licensee was not personally involved in station's alarming hoax and had promulgated a station policy forbidding contest improprieties and deceptions, FCC found licensee liable for acts of its employees and stated that licensee's contest policies were simply form over substance), *aff'd*, 679 F.2d 263 (D.C. Cir. 1982); Greater Indianapolis Broadcasting Co., 44 F.C.C.2d 599, 600 (1973) (FCC ruled that it was no defense that licensee did not intend to mislead the public as to the difficulty of actually winning advertised prize money).

See also, Honeyradio, Inc., 69 F.C.C.2d 833 (1978). In *Honeyradio*, the Commission noted that violations under 47 C.F.R. § 73.1216 (1982) were akin to absolute liability: "Such a finding [of intent] is not necessary to impose a forfeiture for violation of Section 73.1216. All that is necessary . . . is a finding that Honeyradio repeatedly broadcast misleading information regarding material contest terms." *Id.* at 836-37.

55. 1960 Public Notice, *supra* note 40, at 7295, 44 F.C.C. 2311-12. *See also* WMJX, Inc., 85 F.C.C.2d 251, 269 (1981).

56. WMJX, Inc., 85 F.C.C.2d 251, 270 (1981). Actual harm may, however, have a bearing on the severity of the sanction imposed. *Id.*

57. KWK Radio, Inc., 35 F.C.C. 561, 564 (1963), *aff'd*, 337 F.2d 540 (D.C. Cir. 1964),

stances, has often imposed severe sanctions on licensees for any wrongdoing committed in conducting contests.

Sanctions Imposed for Misconduct in Broadcasting Contests

If licensees breach their duties to the public and violate the provisions of the Communications Act or the FCC's rules and regulations concerning contest conduct they could be subject to any of the following sanctions: criminal fine or imprisonment,⁵⁸ license revocation, short-term license renewal, forfeiture, and censure or admonition. Another FCC response to a licensee's misconduct, which is not technically a sanction, is the renewal of a broadcast station's license by the FCC for the purpose of allowing the licensee to sell its interest in the station. The sanctions of a criminal fine or imprisonment have never been utilized. A brief description of the civil sanctions follows.

License Revocation or Denial of License Renewal

The Communications Act specifically empowers the FCC to revoke or refuse to renew the license of any licensee that violates the contest integrity obligations imposed on broadcasters.⁵⁹ The FCC has not hesitated to impose this devastating sanction in situations involving egregious contest conduct by broadcasters.⁶⁰

cert. denied, 380 U.S. 910 (1965).

58. 47 U.S.C. § 509(c) (1976).

59. *Id.* §§ 307(d), 312(a). See *supra* notes 19-21 & 23-25 and accompanying text.

60. See, e.g., *WMJX, Inc.*, 85 F.C.C.2d 251 (1981) (FCC denied renewal application by broadcaster because of two contest improprieties. In the first contest, the station encouraged listeners to find its supposedly "lost" disc jockey, although the disc jockey was actually at the station. In a second contest, the station stated that \$1,000 was hidden in an Easter egg which could be found by listeners. However, no such egg existed.); *Walton Broadcasting, Inc.*, 78 F.C.C.2d 857 (1980) (FCC denied the renewal of a broadcaster's license for running a contest in which the object was to find the victim of an alleged kidnapping. Station personnel had refused to cancel the hoax even after so requested by police because the hoax had created public alarm.), *aff'd*, 679 F.2d 263 (D.C. Cir. 1982); *Star Stations, Inc.*, 51 F.C.C.2d 95 (FCC denied renewal of five stations' licenses for several contest improprieties, improper campaign contributions and news slanting.), *aff'd*, 527 F.2d 853 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 982 (1976); *Santa Rosa Broadcasting Co.*, 9 F.C.C.2d 644 (1967) (FCC revoked license of station because it rigged the outcome of two different contests.); *KWK Radio, Inc.*, 34 F.C.C. 1039 (FCC revoked license of station for misconduct in the broadcast of two treasure hunt contests and a bonus club program. In the bonus club program, the station misled the public by awarding "millionaires' vacations" which actually caused the prizewinners hardship and inconvenience. In the treasure hunt contests, contestants searched for prizes which were not actually hidden until the last day of the contests.), *reconsideration denied*, 35 F.C.C. 561 (1963),

The licensing of broadcast stations is at the core of the FCC's mandate from Congress.⁶¹ Licenses confer a limited five-year (for television) and seven-year (for radio) broadcasting privilege to the licensee. A license may be renewed for subsequent terms if the FCC determines that the licensee's service has been in the public interest. The sanction of license revocation is often referred to as the "death penalty" for a broadcast station because no radio or television station can broadcast without a license from the FCC.

Short-Term Renewal of License

Section 307(d) of the Communications Act authorizes the FCC to impose on a licensee the sanction of a short-term renewal of its license.⁶² Over the years, the FCC has liberally employed the short-term renewal as a means of redressing violations of the provisions of the Communications Act or the FCC's rules and regulations regarding contest conduct.⁶³ In utilizing this sanction, the Commission will typically renew a license for a one-year

aff'd, 337 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965); Eleven Ten Broadcasting Corp., 32 F.C.C. 706 (FCC denied renewal of station's license because listeners were directed to find the station's new disc jockey somewhere in the city in order to win a prize. The disc jockey was actually in another state completing his duties at his former job.), *reconsideration denied*, 33 F.C.C. 92 (1962), *aff'd sub nom.* Immaculate Conception Church v. FCC, 320 F.2d 795 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 904 (1964).

61. The Commission's licensing powers are enumerated in 47 U.S.C. §§ 301, 303, 307-312 (1976 & Supp. V 1981) and in 47 C.F.R. §§ 73.3511, .3533, .3538-.3541, .3591-.3593, .3597, .3601, .3605 (1982).

62. 47 U.S.C. § 307(d) (1976). *See supra* note 19.

63. *See, e.g.*, Janus Broadcasting Co., 78 F.C.C.2d (1980) (disc jockeys would predetermine outcome of contests by picking marked tapes); CBS, Inc., 69 F.C.C.2d 1082 (1978) (station deceived public by stating that it was holding a "winner-take-all" tennis contest when in fact each celebrity participant was guaranteed a prize); Colonial Broadcasting, Inc., 44 Rad. Reg. 2d (P & F) 1191 (1978) (disc jockeys would predetermine outcome of contests by selecting marked tapes, and also misled public as to value of prizes to be awarded); Oil Shale Broadcasting Co., 68 F.C.C.2d 517 (1978) (disc jockeys predetermined the outcome of contests by selecting marked tapes, and also chose participants in an unfair manner); Musical Heights, Inc., 40 Rad. Reg. 2d (P & F) 1016 (1977) (misled public as to amount of cash prizes awarded); La Fiesta Broadcasting, Inc., 59 F.C.C.2d 1175 (1976) (station rigged outcome of contest by removing entries of Anglo-American contestants); T/R, Inc., 38 Rad. Reg. 2d (P & F) 1310 (1976) (station deceived public as to the value of prizes awarded); Action Radio, Inc., 51 F.C.C.2d 803 (1975) (station conducted a "Miss Miniskirt" contest in full view of a street thereby causing a traffic jam requiring diversion of police from other duties); Communico Oceanic Corp., 55 F.C.C.2d 733 (1975) (station misled public into believing \$100,000 would be awarded when only \$36,000 was actually awarded); Lawrence County Broadcasting Corp., 45 Rad. Reg. 2d (P & F) 881

term only, rather than for the statutory license term of five or seven years. During the short-term renewal period, the licensee is placed on probation by the FCC. The Commission then closely monitors the broadcast station's activities, paying particular attention to the manner in which a broadcast station conducts those types of activities that produced the original violation. If, at the completion of the probationary period, the FCC determines that the broadcast station has fulfilled its obligation to broadcast in the public interest, then the FCC will renew the broadcaster's license for the statutory license term.

The time at which a violation occurs often determines whether the sanction of short-term renewal will be imposed on a licensee by the FCC, rather than some other sanction. If a violation occurs near the expiration of a broadcaster's statutory license period, the Commission will usually choose short-term renewal as the most appropriate sanction to impose on a licensee, short of conduct that the FCC views as so egregious that it warrants revocation of a broadcaster's license. If, on the other hand, a violation occurs well before the completion of a broadcaster's license term, the Commission will probably choose some other sanction as a penalty for a licensee's misconduct, such as a forfeiture or censure, rather than wait to impose the sanction of short-term renewal when the broadcaster's license expires. Of course, when a broadcaster's license does elapse, nothing prevents the FCC from imposing on the broadcaster a short-term renewal of its license as a sanction for its past violation, although the FCC earlier prescribed another penalty in response to the broadcaster's violation.⁶⁴

(1974) (disc jockeys predetermined outcome of contest by selecting marked tapes); Greater Indianapolis Broadcasting Co., 44 F.C.C.2d 599 (1973) (station misled public as to total amount of prizes which could be won); Baron Radio, Inc., 25 Rad. Reg. 2d (P & F) 1125 (1972) (station waited an unreasonable period of time (one-year) to award prize); KOLOB Broadcasting Co., 36 F.C.C.2d 586 (1972) (station failed to adequately supervise and control a contest when it did not inventory the contents of a contest prize chest after an intruder broke into the station office); Qualitron Aero, Inc., 25 Rad. Reg. 2d (P & F) 679 (1972) (station began contest announcing that clues could be found in a public area when clues were not actually placed in the public area until two to four weeks later); Henkin, Inc., 29 F.C.C.2d 40 (1971) (station misled public as to value of prize to be awarded); Eastern Broadcasting Corp., 14 F.C.C.2d 228 (1968) (station misled public by stating \$100,000 could be given away, but chances of winning were infinitesimal); WCHS-AM-TV Corp., 8 F.C.C. 608 (1967) (station misled public by stating that \$6,000 could be won per week when only \$30 per week was actually awarded).

64. See, e.g., WCHS-AM-TV Corp., 8 F.C.C.2d 608 (1967) (station was first censured for contest improprieties, WCHS-AM-TV Corp., 4 F.C.C.2d 376 (1966), and then issued a

The broadcasting industry regards short-term renewals as serious and costly penalties for several reasons. Particularly burdensome are the enormous legal fees and the time commitment involved in having to apply for a new license within a year of applying for the previous license. Furthermore, the cloud that hangs over a broadcast station during its probationary period is acutely embarrassing for a business operation which maintains high community visibility and is chartered to serve the public interest.

Forfeiture

The forfeiture provision of the Communications Act is a monetary penalty that may be imposed on a broadcaster for violating its obligation to conduct honest and fair contests.⁶⁵ The FCC views contest violations as very serious breaches of a licensee's obligation to broadcast in the public interest. In this regard, the Commission has stated that licensees can expect larger forfeitures for contest violations than for violations which pertain to the technical and engineering standards and obligations of a broadcaster.⁶⁶ The FCC's strong stance regarding contest improprieties committed by licensees stems from the Commission's belief that contest violations have a direct and adverse impact on the public because many listeners participate in broadcasters' contests.⁶⁷

The forfeitures that the Commission levies must not exceed two-thousand dollars per day, and although each day a fraudu-

short-term renewal one-year later).

65. 47 U.S.C. § 503(b)(1) (Supp. V 1981). *See, e.g.*, Honeyradio, Inc., 69 F.C.C.2d 833 (1978) (station repeatedly misled public as to location of hidden prize and prize was also partially hidden on private property); United Broadcasting Co., No. 78-838, memo decision 4530 (FCC Nov. 30, 1978) (station failed to announce prizes which could be won in a contest and also made false statements concerning the eligibility of winners to qualify as entrants in subsequent station contest); WGOE, Inc., 49 F.C.C.2d 329 (1974) (station rigged outcome of contest by falsely naming friend of station manager as winner of contest); Bremen Radio Co., 41 F.C.C.2d 595 (1973) (prearranged contest so only one person won contest per day); Kern County Broadcasting Co., 14 F.C.C.2d 292 (1968) (station preselected those who would be winners in a contest); Eastern Broadcasting Corp., 8 F.C.C.2d 611 (1967) (rigged outcome of contest by awarding prize to fictitious person).

66. United Broadcasting Co., No. 78-838, memo decision 4530 (FCC Nov. 30, 1978). The Commission stated: "[W]e believe forfeitures for violations of the contest rule should be for greater amounts than those imposed for violations for matters not so directly affecting the public." *Id.* at 3.

67. *Id.*

lent contest continues constitutes a separate offense, the total forfeiture may not exceed twenty-thousand dollars.⁶⁸ Other than the maximum monetary penalties which may be imposed, the Commission may determine in its discretion, the amount of the forfeiture it assesses. However, the forfeiture provision of the Communications Act does require the FCC to consider certain factors in determining the amount of the forfeiture it will levy against a broadcaster.⁶⁹ In addition to considering "such other matters as justice may require,"⁷⁰ the Communications Act specifies that the FCC must take into account the degree of culpability of the licensee, any history of past offenses, the ability to pay, and the nature, circumstances, extent, and gravity of the violation.⁷¹

Censure and Admonition

Both censure and admonition serve the same function: to condemn and bring to a halt the misconduct involved.⁷² The difference between a censure and an admonition is that the former is a greater degree of reproachment of a broadcaster's conduct by

68. 47 U.S.C. § 503(b)(2) (Supp. V 1981).

69. *Id.*

70. *Id.*

71. *Id.*

72. *See, e.g.*, Randy Jay Broadcasting Co., 64 F.C.C.2d 1121 (1977) (broadcaster misled public that airfare and food would be included in prize vacations); Bucks County Radio News, Inc., 61 F.C.C.2d 1091 (1976) (broadcaster misled public as to chances of winning, when the odds were very slim); Centrum Corp., 36 Rad. Reg. 2d (P & F) 201 (1976) (broadcaster mistakenly announced that prizes could be won which actually could not); Independence Broadcasting Co., 53 F.C.C.2d 1161 (1975) (broadcaster failed to insure that a third party advertiser who ran a contest on-the-air would award a prize); Bartell Broadcasting, Inc., 51 F.C.C.2d 2 (1974) (broadcaster promised contest winner ownership of corporation which held great wealth when corporation was worth only \$10,000); Fox River Communications, Inc., 45 F.C.C.2d 1081 (1974) (broadcaster changed the contest eligibility rules without broadcasting the change); Radio Chesapeake, Inc., 29 Rad. Reg. 2d (P & F) 1371 (1974) (station not only broadcast that \$2.3 million could be won when it was only possible to win \$5,000 but station also asked listeners to stay tuned for contest information when no such information was broadcast for weeks); SJR Communication, Inc., 45 F.C.C.2d 928 (1974) (broadcaster failed to adequately supervise contest to insure fairness because station manager selected winner when he was alone in his office); Weis Broadcasting Co., 45 F.C.C.2d 536 (1974) (broadcaster misled public that one million dollars could be won, when only three-thousand dollars was awarded); Channel 20, Inc., 43 F.C.C.2d 1075 (1973) (broadcaster's contest advertisements were misleading to children who comprised the show's audience); Pacific and S. Co., 44 F.C.C.2d 629 (1973) (broadcaster failed to adequately supervise because employee was able to place the names of his friends on the list of the next day's contestants); Deceptive Advertising, 14 F.C.C.2d 683 (1968) (broadcaster announced one million dollars could be won when chances of winning were nearly impossible).

the FCC. Implicit in each sanction is the possibility that one of the more severe sanctions will be imposed by the FCC if any misconduct by a broadcaster subsequently occurs. Even if a violation does not recur, a licensee may still be subject to the sanction of a short-term renewal of its license when its current license term expires.⁷³

When a licensee receives a censure or an admonition, the FCC often directs the licensee to take immediate corrective action, such as adopting a station policy to ensure that, in the future, the broadcaster's contests will be conducted fairly and honestly.⁷⁴ Although a censure or an admonition does not impose the often devastating economic consequences of other sanctions, they do embarrass a broadcaster and threaten its all-important public image of trustworthiness because these sanctions are public reprimands from the federal agency charged with protecting the listening and viewing public's interest. Moreover, an immediate consequence of the FCC's condemnation of a broadcaster's activities, which is not welcomed by a licensee, is the increased monitoring by the Commission of the offending broadcaster's day-to-day operations.

Renewal of License to Allow Broadcaster to Sell its Interest

A licensee charged with contest wrongdoing may win a Pyrrhic victory by obtaining a renewal of its license, but only on the condition that the licensee sell its interest in a broadcast station.⁷⁵ This result obviates the need for the Commission to determine the merits of pending allegations concerning a licensee's misconduct. For instance, a member of a broadcaster's audience or a local citizens group may allege that contest violations were

73. See, e.g., WCHS-AM-TV Corp., 8 F.C.C.2d 608 (1967) (station was first censured for contest improprieties, WCHS-AM-TV Corp., 4 F.C.C.2d 376 (1966), and then issued a short-term renewal one year later). When the FCC censures or admonishes a licensee, the threat of short-term renewal at the end of the then current license term is often explicit. See, e.g., Bartell Broadcasting, Inc., 51 F.C.C.2d 2, 5 (1974).

74. *Bartell Broadcasting*, 51 F.C.C.2d at 6 (station censured for contest conduct and directed to formulate station policy to prevent future misconduct).

75. See, e.g., WOIC, Inc., 44 F.C.C.2d 891 (1974) (station obtained renewal of its license on condition it sell interest after being accused of failing to award contest money and instead using it to redecorate offices); Melody Music, Inc., 2 F.C.C.2d 958 (1966) (station owners did not possess requisite good character to own and manage radio station because of prior participation in rigged T.V. quiz shows).

committed by a licensee that is seeking periodic renewal of its license term. If the FCC views these allegations as presenting "substantial and material" questions of fact⁷⁶ regarding the licensee's ability to broadcast in the public interest, the licensee may wish to sell its interest in the broadcast station to avoid subsequent FCC investigations and proceedings concerning the charges. The Communications Act requires FCC approval before a licensee may transfer its interest in a broadcast station or assign its public frequency channel.⁷⁷ The Commission must determine the appropriateness of such a transfer, based on whether the proposed transferee possesses all the necessary qualifications and would operate the broadcast station in the public interest.

ANALYSIS

It is relatively easy to predict the sanctions the FCC will impose on broadcasters for certain types of contest violations. For example, the Commission has consistently imposed the sanction of license revocation upon licensees whose indifference to the law has resulted in the broadcast of contests involving flagrant hoaxes causing public alarm.⁷⁸ As another example, in all the FCC decisions involving the broadcast of misleading prize descriptions, the Commission has imposed on a licensee either a short-term renewal of its license, or a censure or admonition.⁷⁹ Although the Commission has employed both the short-term renewal of license and the censure or admonition in situa-

76. 47 U.S.C. § 309(e) (1976). Sometimes if the record before the Commission is insufficient to allow it to conclude whether a license renewal would be in the public interest, then a public hearing will be scheduled and the issues raised by the allegations of improprieties will be decided. *Id.* At the conclusion of that hearing, the presiding administrative law judge will render a decision regarding renewal and the Commission will either concur with its decision or overrule it.

77. *Id.* § 310(d).

78. See, e.g., *WMJX, Inc.*, 85 F.C.C.2d 251 (1981); *Walton Broadcasting, Inc.*, 78 F.C.C.2d 857 (1980), *aff'd*, 679 F.2d 263 (D.C. Cir. 1982); *Eleven Ten Broadcasting Corp.*, 32 F.C.C. 706, *reconsideration denied*, 33 F.C.C. 92 (1962), *aff'd sub nom. Immaculate Conception Church v. FCC*, 32 F.2d 795 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 904 (1964).

79. *Musical Heights, Inc.*, 40 Rad. Reg. 2d (P & F) 1016 (1977) (station granted short-term renewal after advertising that there would be cash prizes but then actually awarding non-cash prizes); *Randy Jay Broadcasting Co.*, 63 F.C.C.2d 1121 (1977) (station admonished for advertising dream vacation as prize when in truth station intended to pay only hotel charges, not transportation or other necessary expenses); *Centrum Corp.*, 36 Rad. Reg. 2d (P & F) 201 (1976) (station admonished when it mistakenly advertised that prizes would be awarded but none were); *T/R, Inc.*, 38 Rad. Reg. 2d (P & F) 1310

tions involving the broadcast of misleading prize descriptions, this is not indicative of an inconsistent response by the FCC to this violation. Rather, the FCC's choice of sanction in this situation is related to the time period at which the violation occurs.⁸⁰

For some other types of violations, a wider range of sanctions have been imposed on broadcasters by the Commission. In analyzing the reason why varying sanctions may have been imposed for violations of a similar type, it must be borne in mind that the FCC attempts to balance the severity of the sanction it imposes against the degree of culpability exhibited by a particular licensee.⁸¹ In this regard, the Commission's primary inquiry is the extent to which a licensee has, or has not, displayed the character traits appropriate for a trustee of the public interest. Therefore, the FCC does not merely consider the type of violation which occurred in determining the sanction it will impose on a broadcaster, but it also considers all the surrounding circumstances, including a licensee's conduct and attitude before a violation occurs, and perhaps more importantly, a licensee's cooperation and candor after a violation occurs. Because licensees' conduct, attitudes, cooperation and candor vary from one situation to the next, it is not surprising that the sanctions imposed by the FCC for contest violations likewise vary.

(1976) (station granted short-term renewal after its advertisements implied that contestants whose names were drawn would share \$250,000, when the contestants merely won Ohio State Lottery tickets); *Communico Oceanic Corp.*, 55 F.C.C.2d 733 (1975) (station granted short-term renewal after advertising that \$100,000 in prizes would be won, when only \$34,000 was actually awarded); *Radio Chesapeake, Inc.*, 29 Rad. Reg. 2d (P & F) 1371 (1974) (station admonished when it advertised that \$2.3 million in prizes could be won when the maximum winnings were \$5,000); *Weis Broadcasting Co.*, 45 F.C.C.2d 536 (1974) (station admonished for advertising prize as a treasure taking millions of dollars to assemble, when it had actually only budgeted a maximum of \$3,000 for the contest); *Greater Indianapolis Broadcasting Co.*, 44 F.C.C.2d 599 (1973) (station granted short-term renewal after advertising that there would be \$25,000 in prizes but failing to explain the difficulty in winning and that \$10,000 of that sum was reserved for companion golf tournament award); *Baron Radio, Inc.*, 25 Rad. Reg. 2d (P & F) 1125 (1972) (station granted short-term renewal for failing to award prizes until one-year after contest ended); *KOLOB Broadcasting Co.*, 36 F.C.C.2d 586 (1972) (station granted a short-term renewal because it failed to adequately supervise and control a contest when it did not inventory the contents of a contest prize chest after an intruder broke into the station's office); *Henkin, Inc.*, 29 F.C.C.2d 40 (1971) (station granted short-term renewal after advertising that prize would be the "keys to a new Impala," then awarding a set of keys, but no car); *Eastern Broadcasting Corp.*, 14 F.C.C. 2d 228 (1968) (station granted short-term renewal because it advertised that \$100,000 was being "given away" but the chances of that occurring were so slight as to be virtually non-existent).

80. See *supra* text accompanying notes 63-64.

81. *Eastern Broadcasting Corp.*, 8 F.C.C. 611, 616 (1967).

The emphasis that the FCC places on the attitude and cooperation of a licensee that is charged with a contest violation has very practical consequences for attorneys representing licensees so charged. Instead of merely assuming a combative posture in arguing his client's case, an attorney and his client should display candor and cooperation during the FCC's investigations and proceedings. The primary issue in the FCC's proceedings concerning charges of a licensee's misconduct is the *character* of the licensee, and whether a licensee's character indicates that it will broadcast in the public interest. The Commission is concerned with a licensee's reasonable diligence in attempting to prevent violations, and if a violation does occur, the FCC is concerned with the licensee's willingness to admit that a violation has occurred and with the steps taken by a licensee to prevent the misconduct from recurring.⁸²

The following FCC decisions are a representative sampling, exemplifying the range of sanctions imposed by the FCC on licensees that violate their contest obligations. Evident in these decisions is the importance the FCC places on the character of a licensee in determining the sanction to be imposed for a contest violation.

FCC Decisions

In *KWK Radio, Inc.*,⁸³ the licensee had its license revoked because the broadcast station's manager rigged the outcomes of treasure hunt contests. The radio station conducted the contest on two separate occasions, purportedly hiding a treasure in a

82. In *CBS, Inc.*, 69 F.C.C.2d 1082 (1978), the station promoted a tennis tournament it was sponsoring as a "winner-take-all" contest. However, in actuality, every participant in the contest was guaranteed at least \$150,000. In a letter of admonishment, the FCC characterized the CBS promotional advertisements as false or misleading statements to the public. *CBS, Inc., Tennis Match*, 67 F.C.C.2d 969, 970 (1978).

During the pendency of this case, CBS adopted new "internal procedures designed to prevent recurrence of the deceptive practices." 69 F.C.C.2d at 1085. In addition, before the FCC rendered its decision, the president of CBS appeared on a special seven-minute network report and admitted that the network's references to "winner-take-all" had been "wrong and misleading" and had deceived the public. *Id.* The FCC applauded the corrective measures as effective in preventing future deception. The FCC opted for a short-term renewal rather than license revocation, partly as a result of the new procedures and the public admission of responsibility for the misleading statements. *See also National Broadcasting Co.*, 25 F.C.C.2d 106 (1970).

83. 34 F.C.C. 1039, *reconsideration denied*, 35 F.C.C. 561 (1963), *aff'd*, 377 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965).

public place. During each contest, KWK broadcast daily clues which progressively became more specific as to the treasure's location. However, in both instances the treasures were not hidden until the final day of the contests. On the last day of these contests, precise clues as to the treasures' locations were broadcast, and the treasures were subsequently discovered by contestants.⁸⁴

The FCC concluded that KWK's fraudulent contests were violations of its contest obligations which were committed willfully and repeatedly by the broadcaster.⁸⁵ The FCC revoked KWK's license pursuant to section 312(a)(2) and (3) of the Communications Act, which authorize revocation of a license when conditions exist which would warrant a refusal to grant an original license, or when a licensee willfully or repeatedly fails to operate in substantial compliance with the terms of its license.⁸⁶

KWK's defense to the charges leveled against it was that its officers and directors had been misled by a trusted employee and that the fraud occurred without their knowledge.⁸⁷ The Commission responded to KWK's defense with three counter-arguments: first, a licensee is held accountable for the acts of its employees;⁸⁸ second, regardless of the validity of the first argument, in this instance the station manager was a principal of the corporate licensee—not a mere employee—who had broad authority concerning the radio station's operations and who held the position of vice-president;⁸⁹ and third, the licensee had not exercised *minimal*, let alone a reasonable degree of care in establishing safeguards to prevent contest improprieties.⁹⁰

Moreover, there was evidence presented which indicated that the president and principal stockholder of the licensee had discussed the contests with the broadcast station's manager, but had not bothered to inquire as to the details of the contests' formats nor did he attempt to ascertain what, if any, precautions were to be taken to prevent deceptions from being perpetrated upon the public.⁹¹ Under these conditions, the FCC believed that

84. *Id.* at 1040.

85. *Id.* at 1041.

86. 47 U.S.C. § 312(a)(2)-(3) (1976).

87. *KWK Radio*, 34 F.C.C. at 1041.

88. *Id.*

89. *Id.*

90. *Id.* at 1042.

91. *Id.*

such violations were almost inevitable, and the fact that there were only two isolated incidences of contest violations was "purely fortuitous," and would not be considered in mitigation of the penalty.⁹²

Three other factors present in this case seem to have influenced the FCC's decision to prescribe such a severe sanction: first, one of the treasure hunts had caused public disorder (a fight between two contestants) and damage to a public park;⁹³ second, there was evidence that another contest conducted by KWK, although not fraudulent, had misled and deceived the public regarding contest prizes to be awarded;⁹⁴ and third, and probably most importantly, after the licensee learned of the violations, it failed to notify the FCC of the violations and after FCC discovery of the misconduct the licensee failed to cooperate with the Commission. Instead, during the FCC's investigation, the licensee feigned complete honesty and a willingness to cooperate with the Commission while actually holding back relevant information for a protracted period of time.⁹⁵ In fact, implicit in its final decision was the FCC's belief that the licensee was still not revealing the entire truth regarding what it knew about the violations.⁹⁶ On rehearing, the Commission expressly stated that the licensee's reticence in truthfully disclosing the facts surrounding the violation during both the FCC's investigation, and later during its proceedings, influenced the FCC in its determination that the imposition of the severe sanction of revocation of the broadcaster's license was appropriate.⁹⁷

*Belk Broadcasting Co.*⁹⁸ stands in sharp contrast to the FCC's decision in *KWK Radio*. *Belk Broadcasting* involved a licensee whose contest-rigging schemes were more egregious than those employed by the licensee in *KWK Radio*. However, unlike the licensee in *KWK Radio* whose license was revoked, the licensee in *Belk Broadcasting* received no sanctions for its contest violations.

92. *Id.* at 1042-43.

93. *Id.* at 1042.

94. *Id.* at 1043.

95. *Id.* at 1043-44. In this regard, the Commission stated: "[W]e are not convinced that KWK's cooperation extended beyond what [the licensee] believed to be desirable." *Id.*

96. *KWK Radio, Inc.*, 35 F.C.C. 561, 564 n.5 (1963), *aff'd*, 377 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965).

97. *Id.* at 564.

98. 42 F.C.C.2d 844 (1975).

In *Belk Broadcasting*, WDPQ conducted a contest where its disc jockeys were to randomly select the names of area residents from a telephone directory and subsequently announce these names on-the-air. If a person whose name was announced, then telephoned WDPQ within a designated time period, he or she would win a valuable prize. However, without the knowledge of the licensee, a disc jockey who was also WDPQ's program director, conspired on at least two occasions to rig the outcome of the contest.

On one of these occasions, the disc jockey had recruited an accomplice and had informed the accomplice that his name would be "randomly selected" and broadcast on a specified date when the day's prize was a new automobile. Not surprisingly, the accomplice won the car on the designated date. Subsequently, the two conspirators sold the car and divided the proceeds. These facts came to light when the "winner," unhappy with his cut of the proceeds from the sale of the car, revealed the scheme to the automobile dealership which had provided the car for the contest prize. Thereupon, the automobile dealership informed the licensee of its disc jockey's misconduct.⁹⁹

The licensee immediately responded to this information. The licensee retained an attorney to discover the facts and determine whether the allegations leveled against its disc jockey were true.¹⁰⁰ As a result of his investigation, the attorney concluded that not only had the disc jockey rigged this contest, but that he had also rigged another contest and had engaged in other forms of self-dealing. After obtaining this information, the licensee fired the culprit and brought the violations to the FCC's attention.¹⁰¹ In addition, WDPQ, which had only recently begun to feature contests, ceased all big-prize promotions and terminated its consultancy contract with a contest marketing expert.¹⁰²

The Commission found that WDPQ's experiment with big-prize contests had not been accompanied by adequate precautionary measures to prevent misconduct. However, the FCC chose not to impose any sanctions on the licensee. The reason why the licensee did not receive any sanction was because of its

99. *Id.* at 845.

100. *Id.*

101. *Id.*

102. *Id.* at 848.

conduct after learning of the violations. In this regard, the FCC stated that “[a]bsent the stringent measures taken by the licensee to investigate and terminate the [misconduct], the facts here adduced would have had serious implications as to the licensee’s qualifications to remain a licensee of the Commission.”¹⁰³

Thus, even though *KWK Radio* and *Belk Broadcasting* both involved contest-rigging, there were major differences between the two situations which justified revocation in one case and exoneration in the other. In *KWK Radio*, the licensee waited for the FCC to discover on its own initiative that KWK had rigged contests, apparently hoping that its chicanery would remain undetected. In contrast, the licensee in *Belk Broadcasting* upon learning of WDPQ’s contest violations immediately notified the FCC that these violations had occurred. Also, in *KWK Radio*, the licensee feigned full cooperation and candor with the FCC in its investigation and proceedings, while actually holding back material information. On the other hand, in *Belk Broadcasting* the licensee disclosed to the FCC all information it had regarding the contest improprieties which had occurred. In addition, in *KWK Radio*, KWK had experience in sponsoring radio contests, one of which had previously misled the public, yet the licensee had not instituted even minimal precautionary measures designed to prevent contest misconduct. In *Belk Broadcasting*, however, WDPQ had only recently begun sponsoring contests and took immediate corrective measures once the licensee discovered that violations had occurred.

There is another reason which may have contributed to the divergent decisions in *KWK Radio* and *Belk Broadcasting*. In *Belk Broadcasting*, the disc jockey had predetermined the outcome of contests secretly, and for his own personal aggrandizement. His misconduct was more difficult for the licensee to detect and prevent. In *KWK Radio*, however, KWK’s station manager’s misconduct was designed to advance the broadcast station’s interest, and therefore more than likely his misconduct could have been prevented if the licensee had established guidelines for its employees to follow to insure the integrity of KWK’s contests.

In sum, what appears as the inconsistent imposition of sanctions by the FCC for analogous types of contest violations are readily reconcilable because in determining whether to revoke or

103. *Id.* at 849.

renew a license, the Commission's ultimate inquiry is not the type of contest violation which occurred, but rather is whether the licensee had demonstrated the character and sense of responsibility necessary for it to broadcast in the public interest. In *KWK Radio*, the licensee's lack of safeguards designed to prevent fraudulent contests and its evasive responses to the Commission's requests for candor and cooperation convinced the FCC that the licensee was ill-suited to maintain the exemplary standards required of a broadcast licensee. In *Belk Broadcasting*, the licensee's quick and effective response upon discovering possible contest improprieties and its cooperation and candor, assured the Commission that this licensee would responsibly carry out its duties as a "public trustee."

A case in which a licensee's culpability fell somewhere in between the extremes of licensee conduct exhibited in *KWK Radio* and *Belk Broadcasting* is *Janus Broadcasting Co.*¹⁰⁴ Appropriately, the sanction imposed on the licensee, a short-term renewal of its license, is not as severe as the sanction imposed on the licensee in *KWK Radio*, and is certainly more severe than no sanction being imposed as was the case in *Belk Broadcasting*. In *Janus Broadcasting*, the licensee was reasonably diligent in safeguarding against the rigging of contests by making it a practice to regularly monitor broadcasts.¹⁰⁵ However, such a violation occurred in spite of the licensee's precautions when the station's program director rigged the outcome of an over-the-air contest entitled, "Play WGNE." The contest involved listeners calling the station and guessing whether the letter W, G, N or E would come up next, roulette-style, on a cassette tape held by a disc jockey. The program director, over a two-week period during the contest, instructed the station's disc jockeys to select different letters in response to letters selected by contestants so as to avoid awarding prizes.

At the time of the contest-rigging, the principals of WGNE were unaware of the contest-fixing.¹⁰⁶ However, subsequent to the airing of the contest, one of the co-owners of the corporate licensee discovered that the rigging had occurred. Nevertheless, during an FCC investigation, the co-owner stated he had no knowledge of any irregularities in any of the contests conducted

104. 78 F.C.C.2d 788 (1980).

105. *Id.* at 789-90.

106. *Id.* at 789.

by the station.¹⁰⁷ The co-owner, however, subsequently went before the FCC on his own initiative and recanted the falsehood.¹⁰⁸ The licensee's decision, albeit delayed, to cooperate and be candid in its dealings with the FCC, prompted the Commission to decide that there was a basis to trust that in the future the licensee would conduct itself according to the standards imposed on a broadcast licensee. Thus, a short-term renewal of the broadcaster's license was deemed appropriate "because of the isolated instance of misconduct, the lack of a pattern of misrepresentation and, most importantly, the later recantation."¹⁰⁹

The decision in *Janus Broadcasting* is consistent with the FCC decisions in *KWK Radio* and *Belk Broadcasting*. Unlike *KWK Radio*, the licensee in *Janus Broadcasting* made a good faith effort to prevent contest improprieties and eventually exhibited complete candor as to the events surrounding the violation. On the other hand, the licensee in *Janus Broadcasting*, unlike the licensee in *Belk Broadcasting*, did not on its own initiative notify the Commission of the contest violations which occurred, nor did the licensee exhibit total honesty and forthrightness from the outset.

In *Kern County Broadcasting Co.*,¹¹⁰ the licensee was the unwitting victim of a dishonest employee. The broadcast station's manager rigged the outcome of a contest so that four of his friends were able to "win" motorcycles as contest prizes. The licensee was unaware of the perfidy of its employee. However, unlike *Belk Broadcasting*, in *Kern County Broadcasting* there was an absence of any mitigating conduct on the part of the licensee after the violation occurred. On the other hand, there is no evidence of aggravating circumstances, such as there was in *Janus Broadcasting* where the corporate licensee made a misrepresentation to the Commission. Although there was no evidence in *Kern County Broadcasting* that the licensee failed to cooperate with the FCC's investigation, neither is there any evidence

107. *Id.* at 790-91.

108. *Id.* at 791-92. The Commission stated that the seriousness of the misrepresentation, however, was somewhat mitigated by the licensee's explanation that he "had no intention to lie to the Commission investigators when he went into the interview, but that when faced with the question of admitting what he regarded to be minor error, he took the easy way out." *Id.* at 792.

109. *Id.* at 792.

110. 14 F.C.C.2d 292 (1968).

that the licensee exhibited the kind of exemplary honesty displayed by the licensee in *Belk Broadcasting* which immediately notified the FCC upon learning of fraudulent contest conduct by its employee. Here, apparently, the licensee cooperated with the FCC investigation only after the Commission's own investigation uncovered the violation. The FCC responded to the contest violation by imposing on the licensee the sanction of a forfeiture of three-thousand dollars.¹¹¹

In *Breman Radio Co.*,¹¹² radio station WWCC advertised that the number of winners in its "turkey shoot" contest would be unlimited. However, without the licensee's knowledge, the broadcast station's program director rigged the contest so that there could be only one prize winner per day.¹¹³ Here, there was no evidence that the licensee made any misrepresentation to the FCC or was uncooperative with the FCC during its investigation. On the other hand, as was the case in *Kern County Broadcasting*, there was no evidence of any conduct on the part of the licensee which warranted the licensee's exoneration. Accordingly, a forfeiture of three-thousand dollars was levied against the licensee.¹¹⁴

In *Eastern Broadcasting Corp.*,¹¹⁵ the licensee's misconduct in broadcasting a fraudulent contest was only slightly less egregious than the conduct of the licensee in *KWK Radio* whose license was revoked. Appropriately, the FCC assessed a ten-thousand dollar forfeiture against the licensee. The severity of the sanction of a large forfeiture may not be greatly disparate from the sanction of license revocation because the FCC's determination that such a severe sanction was warranted weighs heavily against a licensee when applying for license renewal at the expiration of its license term.

In *Eastern Broadcasting*, the broadcast station's manager rigged a contest so that no bona fide entrants could win. Rather, a fictitious person was announced as the winner, and thus no

111. *Id.* at 294. The Commission stated that it did not seek revocation because of the licensee's apparent lack of knowledge of the fraud and various steps it took to ensure the honesty of the contest which mitigated its culpability. *Id.* In assessing the forfeiture, the Commission also considered the financial situation of the station as well as the licensee's cooperation with the investigation. *Id.*

112. 41 F.C.C.2d 595 (1973).

113. *Id.* at 596.

114. *Id.* at 597.

115. 8 F.C.C.2d 611 (1967).

prize was actually ever awarded.¹¹⁶ The licensee, in response to the FCC charges, claimed that although it knew the contest was being held, it had not learned of the fraudulent conduct of its manager until long after the contest was completed.¹¹⁷ However, as in *KWK Radio*, the Commission found that the licensee had acted irresponsibly by failing to supervise its contests and institute safeguards to prevent contest violations, especially in light of the fact that the licensee was charged with monitoring the conduct of the station manager because he had acted dishonestly on other occasions.¹¹⁸

In contrast to *KWK Radio*, however, there was no evidence that the licensee made any factual misrepresentations before the Commission. On the other hand, the licensee did not display praiseworthy candor. For instance, despite overwhelming evidence of the station manager's misconduct, the licensee continued to assert that another employee may have been responsible for the fraud. Furthermore, to mitigate the gravity of the charge, the licensee asserted that it had diligently attempted to prevent contest violations. In this regard, the licensee alleged that it had previously placed the station manager under "intensive surveillance and supervision," after learning of his past dishonest acts.¹¹⁹ The licensee's careful scrutiny of its station manager, it argued, consisted of taking away his title of vice-president and placing him on probation.¹²⁰ However, the FCC ascertained that these measures in no way diminished the station manager's actual authority and were unrelated to actual supervision of the station manager's conduct.¹²¹ Accordingly, the FCC imposed on the licensee a ten-thousand dollar forfeiture.

In some cases, the Commission has imposed greater or lesser sanctions than would seem appropriate in light of other decisions involving similar forms of conduct and displays of licensee character. For example, in *Oil Shale Broadcasting Co.*,¹²² the FCC imposed a less severe sanction than what consistency

116. *Id.* at 611-12.

117. *Id.* at 612.

118. *Id.* The station manager had falsified information on the station's logs as well as on the station's latest license renewal application. Furthermore, he had previously conducted a contest suspected to have been fraudulent. *Id.* at 612, 616.

119. *Id.* at 616.

120. *Id.*

121. *Id.* at 616-17.

122. 68 F.C.C.2d 517 (1978).

appears to have demanded. In *Oil Shale Broadcasting*, the Commission found that the licensee itself had negligently contributed to the rigging of a contest because the majority owner of the corporate licensee had actually made statements to radio station employees from which those employees could have inferred, albeit mistakenly, that the owner wanted them to rig a contest.¹²³ Also, as in *KWK Broadcasting*, there were allegations that the licensee made misrepresentations to the Commission.¹²⁴ However, the licensee in *Oil Shale Broadcasting* received only a short-term renewal of its license as a sanction because the FCC held that the evidence was too meager to support the serious charge that the licensee had made misrepresentations to the Commission.¹²⁵ Thus, even though the licensee's negligence contributed to contest fraud, and despite some evidence of prevarication, the FCC held that the necessary grounds to support the sanction of revocation of license were not present.¹²⁶

If the sanction imposed in *Oil Shale Broadcasting* appears to be inconsistent with the results of other FCC decisions, this could be attributable to factors not readily disclosed by the reported decision. For instance, a footnote in the opinion indicates that at the time the decision was rendered, the majority owner of the broadcast station had become incompetent to testify.¹²⁷ Presumably then, someone else had assumed the role of actively managing the broadcast station, and perhaps an assignment of the majority owner's interest was contemplated. Under such circumstances, the FCC may have decided that revocation should be eschewed in favor of a short-term renewal. In a more general vein, seemingly inconsistent decisions may also be attributable in part to such factors as the demeanor and credibility of witnesses and licensees who testify, variables which may not properly be appreciated upon a reading of a decision, but which an

123. *Id.* at 522-24. For example, the licensee had stated in front of his employees that he "hoped that there would be no more than one or two winners per day." *Id.* at 523.

124. *Id.* at 525.

125. *Id.* at 526. The Commission stated that before it will deny a renewal application because of misrepresentations, "it must be convinced that there is substantial evidence to support the allegations." *Id.* With respect to the misrepresentation charge in this case, the Commission seems to have given the licensee a much greater benefit of the doubt than the licensee in *KWK Radio*. The reason for this is not apparent from the decisions. Perhaps it may be attributable to such factors as the demeanor of the parties.

126. See 47 U.S.C. § 312(a)(4) (1976).

127. *Oil Shale Broadcasting*, 68 F.C.C.2d at 521 n.12.

administrative law judge or FCC commissioner may have readily perceived at a hearing.¹²⁸

CONCLUSION

Although it is not possible to predict with precision how the FCC will respond to any particular contest violation, it is submitted that the Commission expects its licensees to fulfill the following contest integrity obligations:

A. A LICENSEE MUST:

1. Adopt a detailed station contest integrity policy that forbids any false, misleading or deceptive contest activity.
2. Insist that all station employees read and understand the station's contest integrity policy.
3. Closely supervise all employees to insure their full compliance with the station's contest integrity policy, including monitoring the contest statements disc jockeys make on-the-air.
4. Fully disclose the material terms of the contest to the public and explain all contest rules.
5. Conduct the contest substantially as announced and advertised.
6. Eliminate any false, misleading or deceptive contest advertising.
7. Award all contest prizes within a reasonable time.
8. Maintain detailed records of each contest's advertisements, winners, prizes and rules.
9. Maintain strict in-house contest security measures.
10. Insure that contests produced by outside parties and broadcast by the station satisfy the station's contest integrity guidelines.

128. FCC decisions are also affected by changes in Commission composition. Each of the seven, soon to be five, commissioners is appointed by the President and confirmed by the Senate for staggered seven-year terms. Each assumes office with certain economic, political and regulatory philosophies. Some commissioners are more conservative, and are therefore hesitant to regulate or penalize the broadcast industry. Other more liberal commissioners are often energetic in their efforts to regulate radio and TV licensees.

B. A LICENSEE MUST NOT:

1. Prearrange or predetermine the outcome of a contest.
2. Provide special or secret assistance to any contestants.
3. Describe any material contest term falsely, misleadingly or deceptively.
4. Deny contestants a fair chance to win.
5. Change the rules of a contest without notifying the public.
6. Judge contest entries arbitrarily or capriciously.
7. Improperly disqualify contestants.

C. A LICENSEE SHOULD:

1. Comply with any requests of law enforcement officials regarding any contests.
2. Conduct treasure hunts carefully so as not to violate others' property rights, threaten public safety or divert police from other duties.
3. Ask all employees to attest that they have read and understand the station's contest integrity policy.
4. Quickly investigate any allegations of contest impropriety; insure the credibility and exhaustiveness of the investigation by selecting an attorney to conduct it; decisively punish any wrongdoing; act to eliminate its recurrence; and be the first to apprise the FCC of the problem.
5. Upon being reliably informed of any contest misconduct, admit the error to the public in a special broadcast announcement or report.
6. Be circumspect in advertising, promoting and conducting its contests for children because the FCC holds licensees to a higher standard of care in conducting these contests.

D. THE FOLLOWING DEFENSES OFFERED BY LICENSEES IN CONTEST VIOLATION CASES WERE REJECTED BY THE FCC AND THE COURTS:

1. Lack of intent on the part of the licensee to mislead the public.
2. Absence of owner or management knowledge of employees' contest misconduct.
3. Contest advertisements were not technically false, even though they were misleading.

4. **Improper contest was not produced or conducted by the licensee, but was purchased from a program syndicator or received from an independent source.**
5. **First Amendment protects advertising and promotions of contests from FCC scrutiny.**
6. **Absence of evidence of actual harm to the public.**