



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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*In this issue, link to information about*

*Developments:* [Noncompliance with the Sponsorship ID Rule Can Be Costly  
FCC Imposes “Freeze” on Certain LPTV Applications](#)

*Deadlines:* [February 20, 2018: ATSC 3.0 Comments Due](#)

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### FCC Imposes \$13.4 Million Fine for Sponsorship Identification Violations

Several days ago, Reuters reported that a television station ownership group was going to be fined a significant amount of money for violations of the sponsorship identification laws. On December 21, 2017, the full Commission released a [Notice of Apparent Liability](#) (the “NAL”) in which it proposes to fine the broadcaster more than \$13 million in connection with the broadcast of more than 1,700 paid segments at more than 70 stations during the six-month period between January 2016 and July 2016. While all five FCC Commissioners agreed that the law had been violated, they differed significantly in how harshly the broadcaster should be penalized financially. The \$13.4 million fine that was ultimately approved by a 3-2 partisan split represents more than \$7,700 per violation, which is an upward departure from the FCC’s “base” fine of \$4,000 per incident for sponsorship identification violations.

As broadcasters should be well-aware, the Commission’s sponsorship identification rules generally require stations to broadcast an announcement disclosing the sponsored nature of any matter that is broadcast in exchange for valuable consideration directly or indirectly paid or promised to or charged or accepted by the station. The sponsorship identification announcement must be made each time the matter is broadcast and must identify the sponsor of the material.

There aren't really any "exceptions" to the sponsorship identification requirement. Paid program material must be identified as such, and the language "paid for by" or "sponsored by" are the exact phrases set forth in the rule as being sufficient for this purpose.

According to the NAL, the broadcaster had contracted with a medical establishment to produce both short-form and long-form promotional content, most of which was formatted to feel like traditional news segments to be aired within local newscasts. According to the FCC, the contract between the broadcaster and advertising client specifically required the material produced by the broadcaster to contain a sponsorship identification tag. Apparently, however, most of the program material ultimately did not contain a sponsorship identification when it aired on stations, except that some of the long-form (30-minute) program material contained a disclosure that *identified the paid nature* of the programming but *failed to identify the sponsor*. The NAL recites that the matter came to the attention of the FCC's Enforcement Bureau as a result of "an anonymous complaint," and it also observes that after the FCC began investigating the matter, the broadcaster aired a "five-week series of announcements . . . publicly acknowledging that its stories should have been accompanied by sponsorship identification disclosures and apologizing for the fact that such disclosures were not included."

The case presents a "teachable moment" for broadcast sales, programming, and operations staff. As the FCC observed in the NAL:

"When a broadcast licensee fails to disclose the sponsor of paid programming, it may mislead the public into believing the paid broadcast material is a station's independently generated news or editorial content. In addition, enforcement of the sponsorship identification requirements protects competition by preventing sponsors from gaining an unfair advantage by paying stations to present commercial material as news or editorial content, while their competitors' paid programming is properly disclosed as sponsored material."

Thus, stations must ensure that their internal systems are designed—and that their personnel are aware of the need—to critically review and identify all sponsored content (no matter how long or how short) scheduled to air. And, then, once such material is identified, stations must make sure that a complete, appropriate, legal sponsorship identification message is included. Of course, consultation with legal counsel may be warranted as well, particularly with paid promotional material that "feels" like news or is different in format than traditional spot advertisements.

This case serves as an important reminder that the FCC may enforce sponsorship identification rules with hefty penalties—which accumulate for each violation. In light of the FCC's continuing interest in enforcement of these rules and the substantial penalties for violations, stations may wish to review their policies and practices carefully.

## To Prepare for the Special Displacement Window, LPTV and TV Translator Minor Modification Applications Are Now Frozen

Earlier this week, the FCC [imposed a “freeze”](#) on the filing of minor change applications for all low power television and TV translator stations (collectively, “LPTV Stations”) in order to stabilize the Commission’s database as it prepares to open the so-called Special Displacement Window.

As we have previously reported, the FCC will open—likely in late first quarter 2018—a Special Displacement Window for certain displaced LPTV stations to file displacement applications for a new channel in the repacked TV spectrum. The exact dates for the Special Displacement Window are still unknown and will be announced by public notice (“Displacement Public Notice”). The Special Displacement Window will open no sooner than 60 days after the Displacement Public Notice is issued, and it will remain open for 30 days.

Following completion of the Special Displacement Window, the FCC will announce when it will again begin accepting LPTV Station minor change applications. During the freeze, the FCC will consider, on a case-by-case basis, requests for waiver of the freeze in compelling circumstances when a minor change application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public.

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## Comments on Several ATSC 3.0 Issues Are Due February 20, 2018

On November 20, 2017, the FCC released the text of its [Order](#) adopting certain rules relating to the permissive use by television stations of the ATSC 3.0 transmission standard. Part of that Order includes a series of further inquiries by the Commission relating to several open issues that may affect the speed and breadth of the rollout and use of the so-called Next Gen TV standard.

Thus, with an eye to the future and to the evolution of the industry, the FCC is seeking comment on a number of issues, including the following:

- Issues related to exceptions and waivers of the requirement that Next Gen TV broadcasters partner with a local station to simulcast DTV signals.
- Whether to allow broadcasters to use vacant channels in the television broadcast band for ATSC 3.0 deployment, and, if so, how the application process would work, what effect it might have on other operations that occur on such channels (e.g., wireless microphones and white spaces devices), and whether it might affect MVPD carriage.
- Whether local simulcasting should change the “significantly viewed” status of a Next Gen TV station for purposes of cable and satellite carriage (the FCC has tentatively concluded that local simulcasting should not change a station’s significantly viewed status).

Stations that are interested in filing comments on these issues must do so by February 20. Reply comments will be due March 20, 2018.

The rest of the FCC's recent ATSC 3.0 Order, which authorizes television broadcasters to use the Next Gen TV transmission standard on a voluntary, market-driven basis, has not yet been published in the Federal Register. The Media Bureau will issue one or more future public notices to announce the effective dates of the new ATSC 3.0 rules. We will keep you informed of ATSC 3.0 developments.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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