PUBLIC NOTICE

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COMMISSION WARNS LICENSEES ABOUT PAYOLA AND UNDISCLOSED PROMOTION

On February 25, 1988, four persons were indicted in United States District Court in Los Angeles, California, as a result of a two-year investigation of "payola" practices in the broadcast industry. One of those indicted is charged with having made "undisclosed payments from 1980 to 1985 in the form of cash and cocaine" to station personnel in order to secure airplay for certain records. These indictments make this a propitious time for us to remind broadcast licensees that payola is not only a violation of the United States Criminal Code, but may also subject broadcasters to sanctions under the Communications Act.

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

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

Failure to make the reports required by section 507 of the Act can subject the violator to criminal penalties of a fine of up to $10,000 or imprisonment of up to one year, or both. Thus, the Department of Justice has primary jurisdiction for the enforcement of the law. See, e.g., United States v. Vega, 447 F.2d 698 (2d Cir. 1971). The Commission is cooperating with the Department of Justice by referring pertinent evidence that comes to our attention.

The Commission notes that licensees play a critical role in preventing payola, and the Commission's enforcement staff will investigate substantive allegations of payola that come to its attention. In many situations a station may be a victim of payola practices. Therefore, the Commission is willing to assist concerned stations by informally advising them as to whether a particular situation constitutes a potential rule or statutory violation. The Commission emphasizes, however, that a broadcaster's failure to comply with section 317 of the Act and 47 C.F.R. section 73.1212(b) may result in the imposition of administrative sanctions, including monetary forfeiture or initiation of revocation proceedings.

Action by the Commission May 18, 1988. Commissioners Patrick (Chairman), Quello and Dennis.