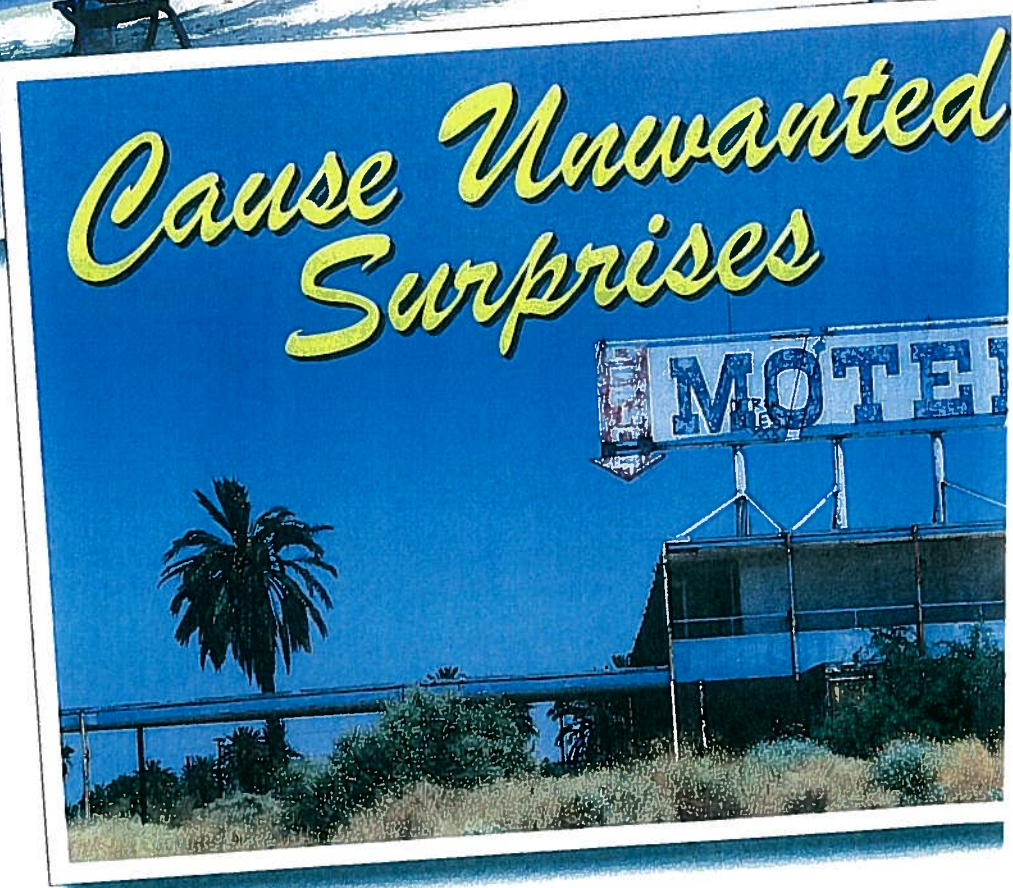


## When Prizes...



## Cause Unwanted Surprises

**A LOUISIANA RADIO STATION** conducts a contest that promises to make the first contestant to call with correct answers to required questions a "millionaire." The eventual winner receives one million Turkish lira, worth less than \$2, and not the \$1 million he had expected.

**A NEW JERSEY RADIO STATION** holds a contest requiring the eighth caller to guess a four-digit code to win a cash prize. A listener, using multiple telephone lines that the contest rules did not prohibit, becomes the contest's seventh and eighth caller. The listener is denied the opportunity to win the prize because the station considers him to be the seventh caller only.

**A MASSACHUSETTS RADIO STATION** runs a contest that awards the winner a prize including memorabilia from a well-known rock band. The winner eventually receives the memorabilia more than six months after the contest ended, but only after he makes numerous inquiries to the station about the delay in prize delivery.

What do these real-world examples of radio station contests gone awry have in common – besides a disgruntled contestant? Each resulted in a \$4,000 fine assessed by the Federal Communications Commission against the station conducting the contest for its failure to comply with the FCC's contest rules.

In the first case, the station never disclosed a key contest term – namely, that the millionaire prize was in the form of Turkish lira. In the second instance, the station improperly changed a contest term by restricting the method by which a potential contestant could be chosen. In the third example, the station's failure to provide a prize in a reasonably prompt manner violat-

ed its implied obligation to ensure timely prize fulfillment.

Contests have long been a popular and effective means of promoting radio stations. Contests build station loyalty, encourage listeners to stay tuned and help distinguish the station from its competitors in the crowded media marketplace. But as the examples above make clear, contests can also have a decided downside if not conducted carefully.

How can your station keep contests engaging while avoiding unwanted consequences? The simple answer is proper contest planning and implementation. All station contests should be developed in a manner that accounts for applicable legal requirements, and they should be conducted in a way that both ensures compliance with those requirements and guards against potential problems.

While it's important to consult legal counsel about specific contest situations, there are some broad brushstroke considerations to bear in mind when planning your next contest.

### Lotteries & the FCC

The first order of business is to steer clear of any contest that is in reality a lottery, the conduct and promotion of which federal and state law generally restrict.

Lottery laws vary by jurisdiction and the nuances specific to each set of laws are beyond the scope of this article, but the following three elements must be in place for a lottery to exist: 1) a prize (*i.e.*, anything of value offered to a contestant); 2) a chance (*i.e.*, a prize awarded in whole or in part on random chance); and 3) consideration (*i.e.*, any item of value, such as money or substantial investment of time, that a contestant must expend to participate in the contest). If any of these three elements is missing, you can be confident that you are not dealing with a lottery.

A station contest must also comply with the FCC rule governing "licensee-conducted contests," which are intended to prevent deceptive or misleading contests. (Some states have their own laws regulating contests, which may also affect your station.)

The FCC has the authority to impose fines, as demonstrated above, or even delay or deny license renewals where it finds that sta-

tions failed to comply with its rules. Station personnel responsible for contests should know the FCC's contest rule inside and out.

The FCC's regulation of contests includes three key obligations:

- A station must fully and accurately disclose on air the material terms of the contest that it conducts;
- A station should conduct the contest substantially as announced or advertised;
- No contest description may be false, misleading or deceptive with respect to any material term. (See sidebar, page 14.)

Although the FCC primarily focuses on preventing misleading contests, troublesome contests not specifically addressed by its rules must also be avoided. Federal law expressly prohibits rigged contests that intentionally deceive the public by prearranging or covertly assisting winners. And it also proscribes the use of persuasion (such as bribery) or intimidation to affect a contest's outcome.

Contests also become problematic when they threaten the privacy or property rights of others. Scavenger hunts or stunts intended to disrupt the public order fall within that category. These types of contests invite negative publicity and could expose the station to civil suits or criminal prosecution. Moreover, the FCC may also determine that a disruptive contest is contrary to the station's general obligation to operate in the public interest.

### Extra Steps

So you have developed a creative idea for a contest that is legally sound and whose material terms have been fully and accurately disclosed. What's next?

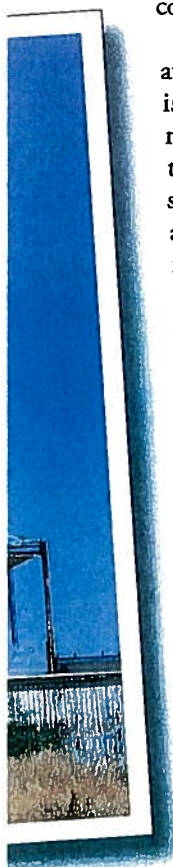
Careful contest implementation also requires the preparation of detailed contest rules, prize provider agreements and participant releases to protect the interests of the station. Taking these steps may seem obvious, but even contest veterans can sometimes forget the basics – and then rue the day they did when trouble arises. Your legal counsel can assist in the preparation of the materials detailed below.

**Contest Rules** – For each contest it conducts, a station should prepare written rules that are detailed, accurate and complete – and then conduct the contest in strict compliance with those rules. Rules should be tailored to the contest and specifically cover each of the FCC's material terms.

Do not rely on a generic set of rules with vague references to contest prizes or contestant eligibility, as doing so may be inconsistent with the full and accurately disclosed material terms. Also, do not

*Dreaming up contests*  
for a trip to the tropics can land  
stations in some pretty  
hot water—unless they engage  
in some careful planning.

By PHILIP BONOMO



allow station employees conducting a contest to make exceptions to the rules on an ad hoc basis, as this risks violating the obligation to conduct a contest substantially as announced.

Contestant eligibility and prize descriptions require particular attention as these terms often determine whether a person will participate in a contest. Contest rules should include a clear description of who is eligible to participate in the contest based on factors such as minimum age or residency. (For example, is the contest limited to certain geographic or listening areas?)

Any disqualifying conditions should also be included in the rules, such as participation by employees or family members of a contest sponsor or by a person who previously won a station contest prize within a disclosed period of time.

Contest prize descriptions should fully list what the prize includes (and, if appropriate, excludes), as well as any restrictions on how or

by when the prizes may be used. A contest with a prize trip for two to the Caribbean, for example, should detail not only the mode of transportation and hotel accommodations, it should also indicate whether other “extras,” such as food and beverages or ground transportation, are included or excluded.

If there is a deadline by which the Caribbean trip must be taken, or any travel blackout dates, these too should be added to the rules. The goal is to avoid springing unwelcome surprises on the winner. Remember to also provide all contest prizes on a timely basis.

**Provider Agreements** – Station sponsors or advertisers often provide a contest prize in exchange for the promotional benefits derived from association with the contest. In such cases, it is always a good practice to enter into a written prize provider agreement that sets out the obligations of both the station and the sponsor, and which details the nature and value of the prize to be provided.

Getting written assurance that a prize will actually be delivered is especially important where high-value prizes, such as vehicles, are to be given away. If an original prize becomes unavailable, the station should strive to acquire an equivalent prize or, failing that, a substitute prize of comparable value. Contest rules should include a provision that permits the station to offer substitute prizes of equivalent value in lieu of the original prize.

**Participant Releases** – Many high-profile contests involve stunts or behaviors that subject contestants to the risk of bodily harm. Any contest with significant risks – for example, a contest determining which thinly clad contestant can sit on a block of ice the longest without standing up – should be avoided. Contests with lower levels of risk may be feasible with proper safeguards in place. Consult with your legal counsel before undertaking any such contest for an assessment of an acceptable level of risk.

For contests involving the performance of stunts or other activities, a station should require each contestant to sign a release through which the contestant assumes the risk of participating in the contest and holds the station harmless in the event of personal injury.

A separate winner’s release should also be obtained from the contest winner, acknowledging receipt of the contest prize. It may be appropriate for the participant release and winner’s release to also include a publicity provision whereby the contestant or winner agrees to the station’s use of his or her name, likeness or voice in connection with the promotion of the contest, station or contest sponsor.

Contests by design often involve an element of chance. There is no reason, however, that a radio station needs to take any chances when conducting a contest. Careful contest planning and implementation will help minimize your risk of problems.

**Any contest with significant risks – for example, a contest determining which thinly clad contestant can sit on a block of ice the longest without standing up – should be avoided.**

## Heart of the MATERIAL MATTER

A central aspect of the FCC contest rule is the concept of a “material term.” Essentially, they are factors that define the operation of a contest and that affect a person’s decision to participate. Such terms will vary from contest to contest, but 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
- The basis for valuation of prizes
- Time and means of selecting winners
- Tie-breaking procedures



A station must disclose on air the material terms for each contest it conducts, an obligation that arises at the time the audience is first told how to participate and continues thereafter. Although stations are not required to disclose all material terms every time a promotional announcement for a contest is aired, each material term should be disclosed periodically.

While posting contest rules on a station’s Web site is encouraged, the FCC does not consider that act to be sufficient notice under its rules. A station must still disclose all material terms on air. Remember to make material terms announcements comprehensible to the average listener. The announcements also should run during the day part or parts that the contest is conducted. Do not simply bury material terms announcements in the overnight hours.

Changes in material terms while a contest is in progress can also cause hassles. When such adjustments are unavoidable, stations are required to make the public aware of them, because an undisclosed change may constitute a failure to conduct the contest substantially as announced. Changes should be disclosed on air as soon as possible after they are made.

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