F.C.C. 70–593

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

IN RE APPLICATION OF SECTIONS 317 AND 508 OF THE COMMUNICATIONS ACT TO "KICKBACKS" OF FEES PAID TO PERFORMERS

JUNE 4, 1970.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), BARTLEY, ROBERT E. LEE, COX, H. REX LEE AND WELLS, WITH COMMISSIONER JOHNSON CONCURRING IN THE RESULT, ISSUED THE FOLLOWING PUBLIC NOTICE:

APPLICATION OF SECTIONS 317 AND 508 OF THE COMMUNICATIONS ACT TO "KICKBACKS" OF FEES PAID TO PERFORMERS

Information has been brought to the attention of the Commission that programs have been broadcast without regard to the provisions of sections 317 and 508 of the Communications Act of 1934, as amended, and the Commission's rules thereunder. The violations in question have been engaged in by broadcast licensees, networks, and independent program producers. Three types of such violations have been described in complaints to the Commission.

In the first type, the program producer has arranged for a performer to appear on a program for the fee specified by the performer's union, on condition that part or all of the fee will be reimbursed to the producer. The so-called reimbursement has usually been made by a recording company or other business concern with which the performer was connected. The amount of the reimbursement has in some cases been deducted by the recording company from the royalties or other fees normally paid the performers. The amount of reimbursement was usually the amount paid to the performer by the producer in accordance with the producer's contract with the American Federation of Radio and Television Artists (AFTRA) or other union to which the performer belonged, less usual salary deductions. The programs in connection with which such reimbursements have been made have not contained the sponsorship identification announcement required by section 317 of the Communications Act. In some of these cases, the producer has not disclosed to the licensee broadcasting the program that financial consideration was received for the performer's appearance. It has been customary, however, to add a statement at the end of the program that "promotional assistance" or "promotional consideration" has been received from the record company or other business concern furnishing the reimbursement.

In the second type of case, performing groups constituting a single act have been required to reimburse the program producer in an

amount equal to the difference between the union scale for a single performer and the union scale for a performing group. The reimbursement was handled in the same manner as noted above for single performers and the "promotional assistance" or "promotional consideration" credits were similarly added to the program.

In the third type of case, individual artists have been required, as a condition of their employment, to reimburse the producer, either a part or all of their fees paid by the producer pursuant to the union contract, or to pay for costumes, additional musicians, etc., used in their performance. For example, a performer who received the union scale from the producer would have to reimburse the producer for the fees paid by the latter to musicians, not normally provided in the program, who accompanied the performer.

Under section 508 of the Communications Act, producers of programs who receive money or other valuable consideration for the inclusion of matter in a program are required to report its receipt to the licensee or licensees over whose facilities the program is broadcast. The licensee is, in turn, required by section 317 of the Communications Act 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. For example, where a performing artist, either personally or through his agent, makes a payment to a producer to reimburse the producer for the fee paid to him, the fact that such payment was made must be disclosed by the producer to each licensee broadcasting the program and must be disclosed to the public in accordance with the requirements of our rules. Sections 73.119, 73.289, and 73.654 of the rules require that the announcement "fully and fairly disclose the true identity of the person or persons" making such payments. The announcements, therefore, must be such as to inform the viewing public of the true nature of the arrangement between the producer and the performer or other person furnishing "reimbursement," and must be given the same prominence as would identification of other sponsors of the program. The use of an audio or video announcement at the conclusion of a broadcast, which merely mentions the receipt of "promotional assistance" or "promotional consideration," does not meet the requirements of the rules.[1] At the very least, an audio announcement must be made which states, in essence, that the performer or an identified person acting on his behalf has paid the program producer in order to appear on the program.

Aside from the statutory considerations set forth above, the practices in question appear to constitute attempts by licensees or producers to violate or evade the provisions of contracts into which they have entered with labor unions. Such practices, whether engaged in by a licensee or condoned by the broadcast of programs in connection with which such practices have been employed, raise serious public interest questions, and if continued in the future will be considered in evaluating its qualifications to be a licensee.

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[1] Other types of announcements which do not disclose to the audience that a performer's appearance was paid for, and by whom, include "Miss *X* appeared through the courtesy of *Y* Recording Co.," "Miss *X*'s appearance was by arrangement with ————," and "Miss *X* was brought to you through the cooperation of *Y*."