

Censorship, see also Programming  
 Educational Noncommercial FM Station, Financial Assistance  
 Educational Noncommercial FM Station, Programming  
 Educational Noncommercial TV Station, Financial Assistance  
 Educational Noncommercial TV Station, Programming

1st Report and Notice of Proposed Rulemaking adopted re rules pertaining to commercial-type practices (auctions, fund raising, underwriting credits, promotional announcements, etc.) of noncommercial educational FM b/c stations. Commission may regulate commercial matter on such stations under Sec. 303(a) and (b), without violating free speech principles. (DO 21136)

F.C.C. 78-383

BEFORE THE

## FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

COMMISSION POLICY CONCERNING THE  
 NONCOMMERCIAL NATURE OF EDUCATIONAL  
 BROADCAST STATIONS

Docket No. 21136

## FIRST REPORT AND NOTICE OF PROPOSED RULEMAKING

(Adopted: June 7, 1978; Released: July 17, 1978)

BY THE COMMISSION:

1. The Commission has before it the *Notice of Inquiry* released in this proceeding, FCC 77-162, March 15, 1977, 42 Fed. Reg. 15927 (March 24, 1977), and the comments<sup>1</sup> filed in response to the *Notice*. The purpose of the *Notice* was to inquire about certain activities of noncommercial educational broadcast stations, such as announcements promoting the sale of products and services, underwriting credits and over-the-air auctions, with a view toward providing clarification and guidance as to Commission Rules and policies in these areas for the benefit of educational stations and others concerned about the service provided by those stations.<sup>2</sup> To this end, the *Notice* posed twenty-two specific questions concerning the above activities and other matters, and asked for the comments of all interested parties. The Commission is gratified by the large response to the *Notice* and will address the questions, *seriatim*, below.<sup>3</sup> However, before turning to a discussion of the specific questions raised, some general observations are appropriate.

<sup>1</sup>The parties filing comments are listed in Appendix A. The deadline for filing comments, originally May 16, 1977, was extended to July 15, 1977 by Order released June 28, 1977.

<sup>2</sup>The inquiry is not, as requested by some parties, a vehicle by which to adopt new methods for funding noncommercial educational broadcasting.

<sup>3</sup>Comments were submitted by, or on behalf of, 191 parties. The comments contained numerous suggestions and requests for specific rule changes and, although all such suggestions and requests were considered, we have addressed in the following paragraphs only those we believed to be the most significant and relevant to the matters under discussion.

2. This inquiry was designed, in effect, to define the limitations on the "noncommercial" status of radio and television stations that operate on reserved "noncommercial educational" television allocations and in the reserved "noncommercial educational" portion of the FM radio band.<sup>4</sup> Most comments filed in this proceeding were by current noncommercial educational licensees and other organizations concerned with the well being of this medium. While they do not comprise all licensees (or even a majority of the radio licensees) that are on reserved noncommercial educational frequencies, and which will therefore be subject to these proposed rules, "public broadcasters" funded in part by federal contributions under the Public Broadcasting Act of 1967 and in part from private sources are among those most actively concerned with this issue. These parties universally proclaimed the lack of adequate funds for public broadcasting and argued that the Commission should take no action which would adversely affect the public broadcaster's ability financially to support station operation. On the other hand, the Commission received a number of comments from commercial licensees and members of the public complaining that public broadcasters, in seeking funds for station operations, have turned more and more to commercialism. These parties point to practices such as public broadcasters' "solicitation" of corporate and business underwriters, "hard-sell" tactics employed during auctions, and numerous program interruptions to request contributions. Some call for an end to these practices; others request that the present level of this activity at least be curtailed and limits imposed. Of particular concern to many is the apparent acceptance by public broadcasters of financial support in return for over-the-air identification of contributors. The concerns about these practices of public broadcasters are at least potentially equally applicable to other noncommercial educational licensees and the terms "public" and "noncommercial educational" are used interchangeably for purposes of discussion in this document.

3. The Commission recognized in *Noncommercial Educational Stations*, 26 FCC 2d 339 (1970), that trends in some fund-raising practices would have to be examined to assess their public interest implications, and to some extent this has been done in the following paragraphs. However, in considering requests that over-the-air methods of obtaining funds, such as underwriting, auctions and appeals, be eliminated or curtailed, the Commission has been mindful of the Congressional policy that a large portion of public broadcasting's financial support is to come from the private sector. In enacting the Public Broadcasting Act of 1967, Congress clearly expected the newly formed Corporation for Public Broadcasting to approach businesses and individuals for financial support and to examine the possibility of annual campaigns for the benefit of educational broadcasting stations. H. R. Rep. No. 572, 90th Cong., 1st Sess. 21 (1967). And it was assumed that fund-raising would be "vigorous." *Id.* It was hoped that contributions would flow from a diversity of private sources, individual as well as institutional. S. Rep.

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<sup>4</sup>We are today also adopting a *Notice of Inquiry* (BC Docket No. 78-164) to determine how better to define the eligibility of this class of licensees as a whole, with a particular focus on the "educational" portion of the definition of this eligibility status. One alternative proposed in that *Notice*, however, would open eligibility for reserved frequencies purely on the basis of "noncommercial" status. Because of the interrelationship between that item and this one, we urge parties commenting in both proceedings to cross reference their comments.

No. 222, 90th Cong., 1st Sess. 8 (1967). This Congressional intent was carried over when the Public Broadcasting Financing Act of 1975 was enacted. See generally, S. Rep. No. 433, 94th Cong., 1st Sess. (1975). Particular emphasis was directed toward the concept of "localism" in public broadcasting, and the 1975 Act was designed to encourage "further financial . . . independence at the local level." *Id.* at 9. In fact, the principle of federal "matching" of funds raised locally by public broadcasters, at a specified statutory ratio, was created by the 1975 Act. This has given a Congressional stimulus to much of the increased over-the-air fund-raising activity by public broadcasters. This matching scheme is continued in the new long-range funding bills for public broadcasting currently before the Congress. If Congress wished to reduce the pressures for aggressive fund-raising techniques by public stations, it could adopt a different method of providing federal support for such stations. In view of the current and past Congressional intent, the Commission firmly believes that there is a place in the present system of noncommercial educational broadcasting for over-the-air practices which raise funds for station support. Moreover, it should be recognized, that announcements acknowledging entities contributing money for particular program purposes must be made to identify sponsored program matter pursuant to Section 317 of the Communications Act and Section 73.1212 of the Commission's Rules. However, in the following paragraphs we have proposed rules placing limits on some of these activities with an eye toward striking a reasonable balance between the financial needs of such stations and their obligation to provide an essentially noncommercial broadcast service.

4. We turn now to a discussion of the specific questions raised in the *Notice*.

#### QUESTION 1

5. In question 1, the Commission asked whether the prohibition against "announcements promoting the sale of a product or service" should be limited to those announcements that directly promote such sales. Although this prohibition applies to all announcements on non-commercial educational stations, in posing question 1 the Commission stated a desire to develop some criteria or guidelines to assist broadcasters in differentiating between announcements of transitory services which "informed" listeners of these services available in the community and those announcements which "promoted the sale" of such services. We also stated our belief that whether the licensee received payment for the announcement or whether the announcement was broadcast on behalf of a non-profit entity was not determinative of the question, since announcements broadcast under either of those circumstances may promote the sale of a product or service or constitute commercial clutter. In the *Notice*, we indicated that announcements which urged attendance at, or stated ticket prices of, events would be directly promotional, but that announcements limited to dates, location and time would be indirectly promotional and permissible. In addition to receiving numerous comments on what constitutes direct "vis a vis" indirect promotion, the Commission received several comments questioning its authority, on constitutional grounds, to proscribe broadcast of announcements which may promote the sale of products or services for which no consideration is received, particularly on the basis of our

"commercial clutter" policy. It was also argued that any guidelines proposed, particularly a direct/indirect one, would be constitutionally vague. We will first discuss these constitutional questions and then the other matters raised by question number 1.

6. Most parties questioning the Commission's constitutional authority to proscribe unpaid-for announcements concede that the Commission has authority to ban the "sale" of advertising in particular radio and television services and appropriately has done so in the educational broadcasting service. This power derives from Sections 303(a) and (b) of the Communications Act of 1934, as amended, which authorizes the FCC to "classify radio stations" and to "prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class." However, it is argued that announcements which are not paid for, or which merely are said to constitute commercial clutter, are not broadcast in return for consideration and therefore do not come within the Commission's definition of commercial matter applicable to commercial broadcast stations. The parties conclude that Commission regulation of such broadcast matter interferes with the noncommercial educational licensee's programming discretion, and is, thus, contrary to the statute and the constitution.

7. The parties argue that these restrictions may prohibit broadcast of information regarding local events and activities of either a cultural, educational or charitable nature, as well as programs presenting critical reviews of cultural events or consumer products. The parties assert that the decision to broadcast such matter is clearly one within the licensee's programming discretion, *Columbia Broadcasting System, Inc. v. National Democratic Committee*, 412 U.S. 94 (1973). They claim that licensees should be free to broadcast all relevant information regarding local events or activities, and, in programs reviewing cultural matter or consumer products, to recommend attendance or non-attendance or purchase or non-purchase of products or services. It is contended that any regulation of broadcasts of this nature, particularly one employing the loose standard of "direct/indirect," would be unconstitutionally vague, *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676 (1965), and fail to inform licensees of what is permitted, *Speiser v. Randall*, 357 U.S. 513 (1968). Consequently, the regulations would have a chilling effect on the broadcast of such information, *Hynes v. Mayor and Council of Borough of Oradell*, 425 U.S. 610 (1976), resulting in licensees foregoing the broadcast of this material for fear of violating the law. It is also argued that present rules and the "commercial clutter" policy are constitutionally suspect as prior restraints on licensee programming discretion, *Near v. Minnesota*, 283 U.S. 697 (1931), and that broadcasters cannot be required to seek waivers each time a close case arises because the First Amendment prevents Commission review of broadcast material to determine whether on the basis of its content it can or cannot be broadcast. See *Home Box Office, Inc. v. FCC*, 567 F.2d 9 (D.C. Cir.), *cert. denied*, 98 S. Ct. 111 (1977). Finally, the parties assert that recent Supreme Court decisions striking down state statutes aimed at regulating commercial advertising have clearly stated that commercial speech is constitutionally protected just as other forms of speech and deserving of full First Amendment protections, thus casting further doubt on the Commission's authority to regulate in this area. *Bigelow v. Virginia*, 421 U.S. 809 (1975); *Virginia State*

*Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); and *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (the advertising cases).

8. The Commission believes that the Communications Act clearly authorizes proscription of all commercial speech on non-commercial educational broadcast stations and that the First Amendment to the Constitution presents no bar to such regulation. As noted above, Sections 303(a) and (b) of the Act authorize the Commission to classify radio stations and to prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class. The Commission's authority, pursuant to this power, to establish categories of communications service, confine their use to particular frequencies and determine the kinds and types of communications which fall within the authorized categories, has long been recognized. See *National Broadcasting Company v. United States*, 319 U.S. 190 (1943); *Gross v. Federal Communications Commission*, 480 F.2d 1288 (2nd Cir. 1973); *Lafayette Radio Electronics Corp. v. United States*, 345 F.2d 278 (2nd Cir. 1965); *Subscription Television Service*, 15 FCC 2d 466, 565-566 (1968), *aff'd sub nom., National Association of Theatre Owners v. Federal Communications Commission*, 420 F.2d 194 (D.C. Cir. 1969). In recognizing this authority of the Commission, the courts have specifically declared that this regulatory function does not abridge First Amendment freedom of speech privileges or constitute censorship. *National Broadcasting Company, supra*, p. 227; *Lafayette Radio Electronics Corp., supra*, p. 281. The Commission routinely designates the types of communications content which are permissible or prohibited in the different communications services, and in certain services has specifically prohibited communications containing commercial content. See Rules and Regulations of the Federal Communications Commission, Section 95.501 (a)(9) (proscription of citizens band service for advertising or soliciting sale of goods or services).

9. The argument that the Commission is prohibited from regulating commercial speech which is not paid for asserts, in effect, that although the Commission may establish categories of service, it may not make a determination as to the kinds and types of communications which fall within the authorized categories. The establishment of a category without a determination of the composition of the traffic would, in the Commission's view, result in virtually no regulation at all and an abdication by the Commission of its congressionally imposed responsibilities. *National Broadcasting Company, supra*, p. 216. Thus, it is for the Commission to determine what constitutes commercial matter for the purposes of its rules, regulations and policies governing noncommercial educational broadcast stations.

10. The Commission's rules presently prohibit the broadcast on non-commercial educational stations of announcements that "promote the sale of a product or service." This phrase is broader than the definition of a commercial announcement used for commercial stations, and properly so. We do not think that it is appropriate to permit the broadcast on a noncommercial educational station of a commercial message just because the station was not paid to broadcast the announcement. Section 317 of the Act is not controlling, as that section is concerned with whether the speaker pays to have his message disseminated. A broader definition is clearly required to preserve the noncommercial

nature of educational broadcast stations. Free announcements regarding upcoming community events, cultural activities or entertainment programs may also promote the sale of products or services. The frequently heard argument that some of these announcements, typically termed public service announcements (PSAs), are not considered commercial time on commercial broadcast stations provides no justification for permitting them on noncommercial educational broadcast stations. Simply because the Commission does not require commercial broadcasters to log unpaid announcements which promote the sale of a product or service as commercial matter in computing hourly totals of commercial time does not negate the fact that these announcements promote sales. (See footnote four of the *Notice* for an example of such an announcement.) Accordingly, while there may be differences of opinion as to what language is commercial or promotes the sale of a product or service, a subject addressed below, it is clear that whether an announcement is paid for does not answer the question.<sup>5</sup>

11. With respect to the commercial clutter policy, some clarification is in order. The policy has been enunciated to make known the Commission's concern over the *frequency* with which announcements containing commercial or commercial-like matter are broadcast. Although it has been mentioned as a factor in finding some announcements objectionable, it has never been used to refer to the content of any particular announcement. The policy merely states the Commission's hope and expectation that licensees will avoid excessive presentation of announcements of this character. Therefore, arguments against the use of the commercial clutter policy to proscribe certain broadcast matter are misplaced.

12. The recent Supreme Court cases cited by the parties, i.e., *Bigelow*, *Virginia State Board of Pharmacy*, and *Bates*, *supra*, provide no support for the proposition that the Commission may not adopt regulations proscribing commercial communications in the noncommercial educational broadcast services. While in each of these decisions the Court stated that commercial advertising enjoyed First Amendment protection, it was careful to point out that that protection was not absolute. In *Bigelow*, the Court stated that, "Advertising, like all public expression, may be subject to reasonable regulation that serves a legitimate public interest." However, it found that the Virginia courts had sanctioned a state statute prohibiting essentially all advertising pertaining to abortions without first, as required, assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation. The Court undertook such an assessment and found little public interest justification for the statute. In *Virginia State Board of Pharmacy*, the Court made clear that its holding did not mean that commercial speech could never be regulated in any way. It pointed out the restrictions on the time, place, and manner of disseminating protected speech have often been approved where the restrictions: (1) are justified without reference to the content of the regulated speech, (2) serve a significant governmental interest, and (3) leave open ample alternative channels for communication of the information. The statute ruled unconstitutional in *Virginia*

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<sup>5</sup> We note that in defining "commercial" or "advertise," the dictionary meaning in no way requires that payment be made.

*State Board of Pharmacy* clearly failed this test since it singled out speech of a particular content and sought to prevent its dissemination completely. It should also be noted that the court considered the public interest arguments advanced by the state in favor of the restriction but found them unpersuasive. Finally, in the *Bates* case, where an Arizona statute totally banning attorney advertising was held unconstitutional, the court again noted that reasonable restrictions on advertising were permissible but found unpersuasive the State's public interest reason for imposing an absolute ban on the subject advertisements.

13. The Commission's proscription of all commercial speech on non-commercial educational broadcast stations conflicts with none of the principles discussed in the "advertising" cases. In authorizing spectrum space for educational broadcasting, the Commission made a public interest finding that in view of the proposed goals and purposes of the new service it should be free of commercial or commercial-like matter. This action amounts to the Commission's placement, consistent with its statutory authority and responsibility, of reasonable restrictions on the time, place, and manner of dissemination of commercial speech on the public airwaves. Obviously, commercial speech has not been totally banned from the airwaves, it has merely been confined to a particular service.

14. Finally, we are not persuaded that any rule or guideline set out by the Commission in this area would necessarily be so vague as to violate the First Amendment. The Supreme Court stated in *Bates*, *supra*, p. —, 97 S. Ct. 2691, 2707; 53 L. Ed. 810, 834 (1977), that "there are common sense differences' between commercial speech and other varieties" (citation omitted) and we have set out, in notes to proposed new rules, examples of language which we feel promote the sale of products or services. These examples should provide guidelines for most situations. We realize that some situations will fall into a gray area. However, we believe our rules and guidelines are drafted in a manner which avoids the pitfall that "men of common intelligence must necessarily guess at [their] meaning," *Hynes v. Mayor and Council of Borough of Oradell*, *supra* at 620 (1970), quoting from *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926), and are clear enough that "the ordinary person exercising ordinary common sense can sufficiently understand and comply . . . without sacrifice to the public interest," *CSC v. Letter Carriers*, 413 U.S. 548, 579 (1974). And, while no rules and guidelines can cover all situations, we note the language in *Lafayette Radio Electronics Corp.*, *supra*, stating, "The FCC is not to be faulted simply because ingenuity can imagine borderline cases where a conscientious licensee might have fair doubt whether his communications were banned or not." 345 F.2d at 281.<sup>6</sup> Our *Notice* indicates that such cases can be handled on an *ad hoc* basis. We do not believe that regulation is inappropriate because difficult

<sup>6</sup>See also language in *CSC* indicating that there are limitations in the English language with respect to being both specific and manageably brief and that guidelines need not satisfy those intent on finding fault at any cost. 413 U.S. at 577-79. Additionally, note the language in *National Association of Independent Television Producers and Distributors v. FCC*, 516 F.2d 526 (1975), stating that "in the field of broadcasting program categories must remain somewhat vague to avoid the implication that the guideline is rigid enough to be censorial. On the other hand, a category should not be so undefinable that it would not be understood by an average licensee." *Id.* at 539.

situations may present themselves. Finally, we do not believe that any imprecision in the rules or guidelines unconstitutionally chills the broadcast of commercial or commercial-like matter. As noted above, commercial matter has merely been confined to a particular service and "[s]ince advertising is the *sine qua non* of commercial profits, there is little likelihood of its being chilled by proper regulation and foregone entirely." *Virginia State Pharmacy Board*, 425 U.S. at 771 n. 24. For all of the above reasons, the Commission believes that its proscription of all commercial matter on noncommercial educational broadcast stations is consistent with the Communications Act and the First Amendment to the Constitution. We turn now to a discussion of specific broadcast matter which will be deemed to promote the sale of a product or service.

15. In seeking a guideline for appropriate announcements to inform members of the listening audience of community events, it is important to identify just what type of programming the guideline is addressed to. Many parties complained that guidelines in this area would affect programs, critically reviewing, and passing judgment on, entertainment, cultural, literary and consumer matters. This complaint is unwarranted. The *Notice* clearly indicated that the Commission's concern in raising this issue pertains to informational *announcements* briefly describing various cultural or entertainment activities taking place or upcoming in the community. These announcements generally refer to transitory events which may be of interest to station listeners. The distinction between an informational announcement of this nature and a critical review of a play, concert, book or consumer product, in which artistic or functional merits are discussed, is obvious and we do not believe confusion on this matter will prevail.<sup>7</sup> It is important to recognize that the broadcast of informational announcements regarding community events for which charges for goods or services may be made represents an exception to the essentially noncommercial nature of educational broadcasting and, although we believe the announcements to be in the public interest, it is our intention to limit the exception to its express purpose; i.e., to *inform* listeners of the occurrence of community events rather than to promote the sale of goods or services.

16. Although almost all parties agreed that some rule or guideline prohibiting "hard-sell" pitches and announcements directly promoting the sale of products or services should be formulated, many parties argued that an exception be made for unsponsored or gratuitous announcements broadcast on behalf of non-profit organizations, or for announcements which would qualify as PSAs on commercial broadcast stations. Some parties argued for an exception for licensee sponsored events conducted for fund-raising purposes. The Commission's reasons for proscribing announcements which are unsponsored or which would qualify as public service announcements on commercial broadcast stations were expressed in paragraph 10, above, and need not be restated here. Likewise, the Commission sees no reason to permit noncommercial educational broadcast stations to broadcast announcements pro-

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<sup>7</sup>We are also proposing a new note to the rules permitting the broadcast of commercial matter used for illustrative purposes such as a program illustrating advertising directed to children. See new note 2 to Sections 73.503 and 73.621 of the Rules.

moting the sale of products and services simply because they are made on behalf of non-profit organizations. Announcements promoting the services of Blue Cross/Blue Shield or urging the purchase of tickets to a local symphony orchestra performance would fall in this category. It is claimed that such announcements are in the public interest and that public radio's goals, responsibilities and dedication to public service make it an especially appropriate outlet for announcements of this kind. The Commission believes that commercial broadcast stations serve as an adequate outlet for such announcements and the parties have submitted no evidence to alter this belief. See also *Petition to Institute a Notice of Inquiry and Proposed Rulemaking on the Airing of Public Service Announcements by Broadcast Licensees*, 41 RR 2d 1101 (1977). Moreover, it has already been determined that public broadcasting's mission is to be accomplished in a noncommercial manner. Accordingly, no exemption from guidelines established in this area will be accorded to non-profit organizations. We also believe no exception for licensee sponsored events is warranted. Educational licensees are accorded considerable latitude in their on-air fund-raising activities and we do not believe further relaxation of our rules for such purposes is appropriate or necessary.

17. Most parties had no objection to a direct/indirect rule; however, there was no general agreement as to what information constituted direct "vis a vis" indirect promotion of transitory events, particularly with regard to the inclusion of price<sup>8</sup> in such announcements. Some parties, on the other hand, believed the matter should be left to each licensee's discretion and advocated that no rule or guideline be adopted. The Commission believes that regulation in this area is appropriate in view of its statutory responsibilities and that a reasonably clear rule is attainable. Although we initially leaned toward a direct/indirect standard regarding promotion of all products and services, we now believe that it would be clearer to keep the rule in its present form and to add language addressed to specific categories or announcements. Therefore, we propose to retain the general prohibition against announcements which "promote the sale of products and services." For announcements regarding transitory events, we propose to permit language which, consistent with the purpose of the announcements, informs the audience of facts concerning the events' occurrence. Clearly, language regarding time, date, place and nature of an event informs the audience of its occurrence, whereas language urging attendance or stating prices is unnecessary to this purpose. The Commission believes that price information is inherently commercial and its inclusion in purely informational announcements tends towards undue commercialism of the medium. A simple statement giving listeners the telephone number of the organization promoting the event is all that is necessary to aid those who want price and other information. Notes to the new proposed rules set out examples of announcements which the Commission believes provide information regarding the oc-

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<sup>8</sup>Although many parties stated price information was commercial and unnecessary, many other parties disagreed. Arguments favoring price information in announcements for transitory events were primarily that: (1) it is necessary to a complete description of the events, (2) listeners often call and request it, and (3) the problem will take care of itself, since too frequent broadcast of prices will result in listener complaints and cause licensees to reduce the number of such broadcasts.

currence of an event and examples that go beyond providing information and promote the sale of products and services.

### QUESTIONS 2 & 3

18. In question two, the Commission listed four areas where questions repeatedly arose regarding certain specific announcements which may promote the sale of a product or service, and asked for comment on whether these areas should be governed by a different standard. If a different standard should apply, question 3 asked what that standard should be. Each of these areas will be discussed below.

19. The first area concerned announcements by vocational schools, colleges and universities listing upcoming courses together with necessary books and supplies. These announcements may be for courses offered by licensee affiliated educational institutions or by non-licensee affiliated public and private educational institutions. The Commission indicated in the *Notice* that course announcements created no general problem but that announcements for course related material should be governed by the guidelines proscribing the promotion of goods or services. Comments varied widely on this question. Some felt that announcements should be made only for courses offered by the institution holding the license, while others felt announcements should be made only for courses relating to specific programming, or only for courses broadcast on the station. Many felt announcements for all courses should be permissible. As for accompanying announcements of course related material, the question of price again arose. Some felt mention of price appropriate only if the seller was a non-profit entity, although many parties felt that price information on course related material, as well as on tuition costs, was essential to persons interested in taking a course and that they should not have to search elsewhere for this information.

20. Initially, the Commission notes that any standard limiting course announcements to courses offered by the educational institution holding the broadcast license would be contrary to our policy against using a broadcast license to advance the private interest of the licensee rather than the public interest. The Commission believes that announcements providing information about upcoming courses scheduled at all educational institutions are in the public interest. However, for the same reasons noted in paragraphs 17 and 18, above, we see no compelling public interest reason for the broadcast of tuition costs or detailed information regarding related course material, such as the prices of books and equipment and where they may be purchased. We believe that a brief announcement stating how tuition and detailed course material information may be obtained is sufficient and more in keeping with the noncommercial nature of educational broadcasting. Moreover, we see no real distinction between promotional-announcements for educational courses and those for transitory events. Accordingly, information broadcast regarding upcoming educational courses shall be governed by the general proscription in the rules regarding announcements which promote the sale of a product or service.<sup>9</sup>

<sup>9</sup>We do not believe that licensee statements generally encouraging listeners to further their education through courses available in the community are proscribed by this rule.

21. Two other specific types of announcements mentioned by the Commission were those promoting the sale of government documents and those promoting the sale of material related to programming content such as transcripts. The latter category might also include books or other informational material. Most parties argued that promoting the sale of program related government documents<sup>10</sup> and other program related material, i.e., written material on a particular subject, was often necessary for the fullest appreciation of a program and should be permitted to the fullest extent possible. Some parties felt that a distinction in the extent of allowable promotion should be made if the material promoted is obtainable from a non-profit organization. The Commission believes that there are good reasons to carve out an exception to the rule and to permit announcements which promote the sale of some program related material. Program transcripts are often useful educational, instructional and informational aids of relatively little cost and we see no harm in announcing the details of their availability, including price. It is also true that the availability of books and other types of program related material may be useful information to listeners of programs and program series.

22. However, the Commission foresees certain problems with announcements promoting the sale of program related materials. For example, the Commission considers inappropriate announcements regarding the sale of books on home improvements following a program on how to make home repairs where the licensee, program producer, program supplier or on-air personality has a financial interest in the books. We view such announcements as overtly commercial. Also, we do not believe appropriate any exception to the rule which would encourage the use of noncommercial educational programming to expose related products or services for commercial gain.<sup>11</sup> We believe that a limit imposed on the value of program related goods or services mentioned in broadcast announcements would be a deterrent to such activity. It seems to us, therefore, that program related material available at nominal cost<sup>12</sup> in which the licensee, program producer, program supplier or on-air personality has no financial interest could be brought to the audience's attention through a brief descriptive announcement. We contemplate that the exception being created will be used to promote the sale of items such as program transcripts,<sup>13</sup> government documents, recipes, informational pamphlets and, to make listeners aware of other program related materials of a more costly nature, bibliographies. For example, an announcement stating "For a transcript of the preceding program, send 50 to . . ." or "For a list of reference material related to the foregoing program, send 75 to . . ." would be permissible; but an announcement stating "For a good book

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<sup>10</sup> Announcements promoting sale of government documents unrelated to programming would not appear to be appropriate. Additionally, we believe that federal funding of noncommercial educational broadcasting is sufficiently insulated from programming judgments to provide protection against possible pressure to promote, as a general matter, the sale of government documents, a fear expressed by some parties.

<sup>11</sup> We are concerned here with attempts by private enterprise to have licensees feature their goods or services as important programming related materials.

<sup>12</sup> Nominal cost would not appear to exceed \$2.00 to \$4.00. We seek comments on this aspect of the proposed rule as to whether and at what level precise dollar limits should be imposed.

<sup>13</sup> The Commission believes that program transcripts are especially important and does not intend to eliminate any announcements informing listeners of their availability. Accordingly, we seek comments on the procedures employed by licensees to obtain program transcripts and the costs involved.

on Archeology [the subject of the preceding program] get Smith's Illustrated Archeology, by sending \$3.95 to . . ." would not be permissible. Also impermissible would be an announcement stating, "for ideas similar to those just discussed on 'Jones' Flower Shop' get Mr. Jones' book at most fine garden stores." We wish to make clear that the above discussion is limited to announcements urging the direct sale of books or related material. Nothing herein prevents the recommendation of particular aids, such as books or equipment, which may further an appreciation or understanding of the program subject matter so long as no prices, publishers or places of purchase are mentioned. Likewise, we are not referring to a statement that "several books are available at the library for those interested in reading more about the subject of this program." Rule changes to permit the above described announcements are proposed.

23. The last specific announcement noted by the Commission was the mention of credit cards during fund-raising activities to inform listeners of an alternative way to pay a donation. The concern was that such announcements may promote the sale of the credit card service. The overwhelming majority of parties commenting on this question supported the use of credit cards for this purpose. Many parties cited statistics demonstrating that the use of credit cards increased both the number of persons contributing funds and the size of the contributions. It was argued that failure to broadcast the identity of cards which could be used resulted in calls to the station during fund-raising activities, tying up phone lines and creating confusion in explaining which cards were suitable and why. The most frequently advanced argument, though, was that listeners would not be induced to subscribe to the credit card service simply because it could be used to make donations to a noncommercial educational broadcast station. Additionally, a person wishing to use such a card to make a donation generally could not obtain one quickly enough to use it in connection with a contemporaneous fund-raising activity. In view of the limited purpose for which credit card announcements are made, the fact that their effect in promoting the cards would be at most remote, and the Commission's posture toward commercial-like matter during fund-raising activities, we can see no compelling reason to forbid their use so long as the announcements are confined to merely informing listeners during fund-raising activities that donations may be made by using a named card. However, we wish to point out that a visual display identifying a particular credit card logo or visual depiction of the credit card form is not required to inform the audience that the card may be used to pay a donation and is not permissible. One area of credit card use not generally discussed by the parties and which the Commission would like addressed in response to this *Notice* is the criteria which licensees use to determine which credit cards they will identify in their fund-raising efforts and the extent to which all credit card companies should have the opportunity to be identified.

#### QUESTIONS 4 & 5

24. Question four concerns noncommercial educational station practices when originating programming from a commercial place of business during fund-raising activities. Specifically, the Commission asked

for comments on whether stations should be able during such broadcasts to mention the name and location of the commercial enterprise and urge listeners to visit it. In question five, the Commission asked whether programming originating from commercial enterprises should be limited to fund-raising drives. Most parties commenting on these questions stated that program origination away from the station studio (commonly referred to as remote broadcasting) for fund-raising purposes is extremely beneficial to licensees in both raising funds and increasing their public visibility. Since most fund-raising remote broadcasts depend heavily on foot traffic, they originate in locations chosen for their proximity to potential crowds, and the parties argue that to prohibit announcements identifying the location and urging people to come would severely hamper the promotion's success. It was generally observed in the comments that, as a rule, remote fund-raising promotions originate in some open or common area associated with a commercial location, i.e., shopping mall concourse or parking lot, rather than from a specific business enterprise. Under these circumstances, most parties believed mention of the location and urging attendance was appropriate, but while some parties believed that mention of the name and location of a specific store and appeals to come were appropriate, most did not.

25. The Commission believes that mention of the name and/or location of a particular business from which a station temporarily originates its programming during fund-raising activities, especially when coupled with encouragement to visit the temporary program origination point, clearly promotes that business. The Commission concludes, therefore, that such broadcasts are inconsistent with its rules and policies. There appear to be readily available alternatives that can achieve both visibility and the potential for mass public participation. For example, an open house at the station's studio, or origination of programs in public areas, such as parks or buildings. Also, there could be origination in commercial locations not associated with a particular business, such as a vacant store, or as noted in the comments, a parking lot or shopping mall common area. Announcements giving location and encouraging attendance are appropriate in these cases. However, it may be that there are situations where these alternatives are not available or practicable. In those circumstances, the Commission will consider an appropriate waiver request. It should be noted that the burden of showing that a waiver of the rule would be in the public interest is on the licensee requesting the waiver. Factors to be considered in acting on waivers include the unsuitability of the station's studios for planned broadcasts, the unavailability of buildings or other areas not associated with a particular business, and the length and frequency of the broadcasts. Where waivers are granted, it is the Commission's view that the mention of the name or location of the business in question should be limited to the frequency permitted for underwriting announcements set out in Sections 73.503 and 73.621 of the Commission's Rules.

26. There is another aspect to programming temporarily originating in commercial enterprises or areas for fund-raising purposes which raises more difficult problems. Several licensees asked whether they could originate programming at a commercial business where goods or services are rendered and where the amount of funds coming to the

station is dependent on the number of persons visiting the business. For example, some licensees broadcast a day from a bar or local nightclub and the establishment owner agrees to donate a certain percentage of the day's receipts to the station. It seems clear in this situation that announcements regarding the business, its location, or the nature of its function, are made to induce persons to patronize the establishment and are, therefore, inappropriate. This type of broadcast concerning an ongoing activity is distinctly different from the broadcast of a transitory event such as a concert or lecture from an arena or hall (even though refreshments may be sold as an ancillary matter) or where the business pays for line charges and production costs. Similar problems can arise in promotions of this type even where programming from the site is absent. For example, a local ski resort held a benefit for a station and gave it the first \$300 in lift ticket sales and a 50 percent split on the other sales over \$1,500 during the course of a week. Here again, on-air announcements concerning this fund-raising event clearly promote business for the ski resort and are inappropriate.

27. Temporary origination of programming from a particular place of business or commercial enterprise for purposes unrelated to fund-raising presents an easier case. The parties stated that many stations present live broadcasts of events from theatres, auditoriums, arenas, or nightclubs such as symphonies, lectures and performances by popular entertainers, where tickets are required or food and drink sold. It was argued that informing the audience where the broadcast was originating was in no way promotional or contrary to the noncommercial character of educational broadcasting. The Commission believes that such remote broadcasts are consistent with the purpose of noncommercial educational broadcasting and agrees that announcements stating where the broadcast is coming from<sup>14</sup> are not contrary to the rules so long as they are made in accordance with Sections 73.503(e) and 73.621(f) of the proposed rules and attendance is not urged.<sup>15</sup>

#### QUESTION 6

28. In question six, the Commission asked for comment on the propriety of using prizes on noncommercial educational stations: (1) as an inducement during fund-raising in order to obtain larger donations and, (2) in promoting listenership through contests unrelated to fund-raising. In the *Notice*, we stated that announcements during fund-raising activities which identify prizes such as books, records, or appliances (often referred to as "premiums") given to persons who donate above a certain minimum are reasonably related to a description of the premium's value as a prize,<sup>16</sup> and that the practice did not appear to result in an abuse of our rules. Additionally, many stations pointed to actual statistics indicating that there are more and larger donations when premiums are used. Nothing in the comments or our own expe-

<sup>14</sup> We would consider broadcast of an establishment's street address to be promotional under most circumstances.

<sup>15</sup> It should be recognized that urging listeners to attend any program origination point requiring an entry fee is impermissible; e.g., a "hi-fi" show.

<sup>16</sup> Such descriptions do not identify the person who donated the item to the licensee nor do they promote any particular place of business.

rience indicates that this practice has resulted in abuses warranting Commission action and we see no reason to consider the matter further at this time. However, the Commission wishes to remind licensees that premium descriptions are clearly commercial or commercial-like announcements permitted only for fund-raising purposes and that their content should be strictly confined to merely *describing* the item. Although no action is being taken at this time regarding the use of premiums, concern has been expressed with: (1) the inherent commercialism accompanying the use and depiction of particular authors, artists, and product brand names in describing premiums, and (2) the extent to which products and services from other companies are excluded from use as premiums (or auction items) as a result of licensee procedures employed to determine what goods and services are featured during fund-raising activities. Accordingly, the Commission seeks comments on these areas of concern.

29. With respect to prizes used in contests promoting listenership, the *Notice* stated that the prizes appeared to be small, such as free meals or snacks at an identified restaurant. We also stated that many of these prizes required mention of the donor's identity in order to describe its value as a prize. We stated that use of such prizes seemed to involve an exchange of the prize for an over-the-air mention which is impermissible on noncommercial educational stations. For example, the object of our concern is a prize such as "two free dinners at Smith's Restaurant" or "ten gallons of Exxon gasoline." Although some parties condemned the use of prizes to promote listenership, most parties supported the practice. It was claimed that the practice increases general listenership and stimulates listener interest if used in connection with particular programs. It was also claimed that the donation of these prizes frees station funds for other uses. However, the parties expressed several points of view on how to credit the donor. Some parties felt that mentioning the donor when awarding the prize was appropriate since the prize was, in reality, a donation to make possible the particular programming promotion. Others believed that the donor should be mentioned at some other time of day as a general contributor. One repeated argument favoring complete donor identification is that if the prize was one purchased by the station there would be no "exchange" for a mention and a complete description of the prize could be given. Some parties favoring the use of prizes, however, believed that no prize should be used which required identification of the donor in describing it or which required the recipient to go to the donor's place of business.

30. We have considered the advantages urged in the comments as to using prizes from identified donors to promote listenership. The Commission is not persuaded that those advantages outweigh the obvious promotion of products or services that flow from such broadcasts. Accordingly, while we believe that licensees may, in their discretion, use prizes in contests to promote listenership, announcement of prizes requiring donor identification promote the donor's business interests and are, thus, proscribed by the rules. Announcements referring to the item being given away should not, therefore, mention the donor's

name.<sup>17</sup> For example, tickets to a local movie, record albums, meals at a local restaurant, or consumer goods from a local merchant can be given away without identifying the donor, i.e., a free ticket to [name of motion picture], a Johnny Mathis record album, a free meal at a local drive-in, or a leather purse from a "local" merchant adequately informs the listener of the nature of the prize. Credit may be given the donor of such donations pursuant to the proposed new rules governing in-kind contributions (in-kind contributions are contributions of goods and/or services, as opposed to cash or programs). We also believe that an over-the-air announcement instructing the listener to claim the prize at the donor's place of business promotes the donor and should, therefore, be avoided. We recognize that announcements made in connection with items purchased by the station to be given away do not suffer from the "exchange for mention" failing; however, such announcements can nevertheless be promotional. As noted above, the passage of consideration is not required to find impermissible promotional announcements on noncommercial educational broadcast stations. We also recognize that mention of a donor's name is permitted, if not required, when the donor produces or furnishes programs, or provides funds for their production. However, an in-kind donation to be used as a prize for a contest give-away does not fall into this category.

#### QUESTION 7

31. The present notes to Sections 73.503 and 73.621 provide, with respect to underwriting and credit announcements, that "The person or organization furnishing or producing the program, or providing funds for its production, shall be identified by name only, except that in the case of a commercial company having *bona fide* operating divisions or subsidiaries one of which has furnished the program or funds, the division or subsidiary may be mentioned in addition to or instead of the commercial company." The Commission stated in the *Notice* that it had received inquiries as to what constitutes a *bona fide* operating division or company within the meaning of these notes. Although the Commission stated its belief that a case-by-case approach to this question was required because of the various arrangements that can be found between parent and subsidiary business entities, it requested comments in question seven as to what guidelines should be used in making this determination.

32. Although the comments contained a number of suggestions for guidelines, i.e., does the entity do business under its own name?, does the company have a generic name?, how does the company hold itself out to the public?, does the business keep separate books and records or have separate officers and directors?, the great majority of parties commenting on this question felt, for the same reason stated by the Commission, that a case-by-case approach in this area was appropriate. The Commission continues to believe that any rules or guidelines

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<sup>17</sup>We recognize that the proviso clause of Section 317 of the Act would permit mention of a donor's name in identifying a prize without a sponsor identification announcement if the name is necessary to a description of the item's value as a prize. However, as noted above, the definition of commercial matter for the commercial and noncommercial educational broadcast services differs, and whether a sponsorship identification announcement is required does not determine whether an announcement promotes the sale of goods and services.

adopted in this area would fail adequately to address the various relationships between commonly owned or controlled business entities. The qualification in the rules that operating subsidiaries must be *bona fide* indicates that there must be some substance to the division, and that a corporate shell or an entity established as a sham does not qualify. In cases where a licensee has substantial doubt as to whether an entity is a *bona fide* operating division, staff or Commission rulings can be obtained.

33. In addition to comments submitted regarding the meaning of *bona fide* operating division or company, many parties used this occasion to press for a rule change permitting more descriptive underwriting announcements. The rules presently permit underwriters to be identified by name only, except that a brief description may be permitted to avoid confusion where a donor has a name virtually the same as that of another business. Such a brief description may be broadcast only after Commission approval of a waiver of the rule. Many parties argued that while a "name-only" announcement usually constitutes sufficient donor identification, the licensee should be able to include additional descriptive language where required without having to resort to the burdensome procedure of rule waiver. It was asserted that a name only identification is insufficient not only where there is a similarity in names, but also where: (1) a business's proper name is unfamiliar to the community but its product, trade, or generic name is not, (2) a business may not be known in some parts of a station's service area, particularly when the station covers a number of communities, and (3) the donor's name fails to disclose the relationship, if one exists, between the donor's business and the program it is underwriting—information the public should be aware of. In cases such as these, it is argued that a brief notation of either the donor's city or town location, logogram, product, or publicly recognizable name would achieve a clear identification, thus promoting the objective of Section 317 of the Act. Additionally, clearer identification may encourage businesses (frequently local and small) for whom a name-only identification is meaningless, to support public broadcasting.

34. The Commission has previously considered, and rejected, the contention that descriptive material in addition to an underwriter's name is required generally to achieve the purpose of Section 317 of the Act. See *Noncommercial Educational Stations, supra*, at 341. The provision in the rules allowing for identification of a *bona fide* operating division in place of, or in addition to, a parent company and the procedure authorized for rule waiver to avoid confusion over similar or same business names has, to our best information, been successful in achieving adequate underwriter identification. We note that since adoption of these rules, requests for waiver have been few; i.e., less than three a year. Waiver requests have been granted allowing mention of an underwriter's product to remove confusion. See letter to *WGBH Educational Foundation*, dated February 9, 1977\* and letter to *Community Television of Southern California*, FCC 71-1238, released December 8, 1971.\*\* We are also not persuaded that additional

\* Rule waived to permit use of trademark "STAN HOME" in addition to company name "Stanley Home Products, Inc.," to avoid confusion with different company named "The Stanley Works."

\*\* Rule waived to permit use of trademark "GW" in addition to company name "Great Western Savings and Loan Association" to avoid confusion with other local financial institutions having "Western" as part of their names.

descriptive information should be permitted in order to disclose the relationship between an underwriter and the program it supports. As we stated in *Noncommercial Educational Stations, supra*, "We are . . . concerned . . . [about] regular association of a particular commercial underwriter—and credits for it—with particular programs, especially where the program involved is one related particularly to the underwriter's products." *Id.* at 345. Many parties, including licensees, expressed concern over the increasing amount of money corporate underwriters are providing noncommercial educational broadcasting and urged the Commission not to formulate rules and guidelines which would increase dependence on this means of support. The concern centered upon the negative influence this support could have on the programming judgment and independence of noncommercial educational licensees. Judgment and independence could be subverted, even absent direct corporate interference, through the licensee's quest for corporate dollars. Our own concern with the possible effect of corporate underwriters upon noncommercial educational broadcasting continues today and we are not disposed to amend the rules to permit announcements which may encourage businesses to underwrite programs in which they may have a commercial interest.† The Commission recognizes that the name-only requirement may inhibit certain business entities from underwriting or funding public broadcasting. However, we believe strict adherence to the name-only identification requirement is necessary to preserve the essential nature of noncommercial educational broadcasting.

35. The Commission at this point would like to address two underwriting practices which have come under fire from various interested parties. One of these practices is the active solicitation of underwriters by noncommercial educational licensees by methods closely resembling time sales by commercial broadcast stations. The complaint appears to be that in soliciting underwriting support, noncommercial educational broadcasters point out to potential contributors, as part of their effort to encourage donations, the number of broadcast identifications a donation will generate. For example, a noncommercial educational broadcaster will inform a potential contributor that his donation to a program series of ten one-hour broadcasts will entitle him to twenty broadcast underwriting credits. It is claimed that this practice not only violates the spirit, if not the letter, of the Commission's rules, but is unfair and financially injurious to commercial broadcasters who must compete for business with these tax exempt facilities. The Commission initially notes that it is no violation of its rules for noncommercial educational broadcasters to solicit underwriting support from the business community. In fact, the Congressional funding scheme encourages them to do so. It is also a fact that Section 317 of the Act requires that persons or entities providing funds for specific programs be identified. Additionally, it should be recognized that the amount of money raised by underwriting for specific programming, unlike commercial time sales, is limited to "the costs incidental to [the program's] production and broadcast." See Sections 73.503(c) and 73.621(d) of the Rules. Accordingly, we can see no violation of our rules in contributors being

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†For example, a sewing machine company underwriting a program demonstrating money saving aspects of home sewing.

informed of the number of broadcast identifications they will receive for their contribution and the fact that this procedure may resemble commercial time selling does not change this conclusion. The other practice receiving substantial criticism from commercial broadcasters and others concerns newspaper advertising promoting corporate underwriting of noncommercial educational programs. It is argued that this practice is clear evidence of the commercialism which has overtaken noncommercial educational broadcasting. There is no Commission rule, regulation or policy which prohibits or restricts newspaper advertising of this kind. Furthermore, in noncommercial educational broadcasting's competition with commercial broadcasting for viewers and listeners,<sup>18</sup> newspaper advertising helps make the public aware of the alternatives to commercial programming.

36. We also find little merit to the complaint that these practices, and perhaps others, divert advertising dollars from commercial to noncommercial educational broadcasters. It is readily apparent that in seeking underwriting and broadcast support, noncommercial educational broadcasters do in a sense compete with commercial broadcasters for money from the business community. However, financial support for noncommercial educational broadcasters from the business community is an integral part of the Congressionally mandated scheme for financing public broadcasting and we do not believe it appropriate for this Commission to alter significantly this scheme.<sup>19</sup> Moreover, any competition for dollars that does exist is heavily weighted in favor of the commercial broadcaster by virtue of the restrictions placed upon the types of credit announcements noncommercial educational broadcasters may make.

#### QUESTION 8

37. In question 8, the Commission requested comments on the impact of changing the underwriting rules to permit only one underwriting announcement in programs of less than one-half hour duration. Note 1 to Sections 73.503 and 73.621 of the Rules presently permits underwriting announcements at the beginning and end of each program and the Commission has been questioned about the propriety of these announcements at the beginning and end of a five-minute program. The majority of comments on this question stated that a limit of

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<sup>18</sup>The intent of Congress in appropriating funds to noncommercial educational broadcasting was, in part, to foster such competition. Congress stated, "The programming of these stations should not only be supplementary to but competitive with commercial broadcasting services." S. Rep. No. 222, 90th Cong., 1st Sess. 6 (1967).

<sup>19</sup>Mention of commercial entities on public broadcast stations in connection with underwriting and donations has occurred for many years and we are unaware of any significant adverse Congressional reaction. This lack of reaction may, in part, be due to the comparatively small amount of money dedicated by business to noncommercial educational broadcasting. For example, public broadcasting income, i.e., income to CPB qualified stations and others such as Children's Television Workshop, from business (including auction income) totaled approximately 41 million dollars in 1976 (PBS Comments, Appendix B, Table 1), while advertising expenditures on commercial broadcast stations totaled 6.032 billion dollars (FCC TV Broadcast Financial Data and FCC AM/FM Broadcast Financial Data, released August 29, 1977 and December 12, 1977, respectively) in the same period. Moreover, there is no apparent correlation between the business community's support of noncommercial educational broadcasting and the statistic cited by the North Carolina Broadcasters Association (NCBA) that 39 percent of all commercial broadcast stations operated at a loss in 1975. Nor can any adverse conclusions regarding such support reasonably be drawn from the NCBA's statement that from 1974 to 1975 commercial radio broadcast revenue increased only 7.6 percent while noncommercial educational radio revenue increased 20.1 percent (respective figures for television are 8.3 percent and 25.5 percent).

one underwriting announcement in programs of less than one-half hour would have little impact on noncommercial educational programming. However, several parties stated that noncommercial educational radio stations broadcast many more programs of less than one-half hour than do television stations, that radio licensees would be adversely affected by any decline in financial support resulting from the contemplated change, and that, therefore, any rule change should take into consideration this difference between radio and television. It was also argued that programming cost is not necessarily determined by length and that to deny underwriters of programs lasting less than a half-hour of the same number of credits as underwriters of longer programs would be unfair. Additionally, some parties assert that appropriate sponsorship identification, pursuant to Section 317 of the Act, requires that underwriting announcements be made at the beginning and end of all programs. Finally, several parties noted that radio underwriting presently constitutes only a small portion of radio licensee income and any rule change adversely affecting the usefulness of such underwriting could only lessen the possibility of growth of this source of station support.

38. The Commission believes, based on the information presently before it, and in accord with its desire to maintain and further the noncommercial character of noncommercial educational broadcasting to the fullest extent possible consistent with the public interest, that a change in the Commission's rules to permit only one underwriting announcement in brief programs is appropriate; but will make the change applicable to programs of less than fifteen minutes duration rather than to those of less than one-half hour as tentatively envisioned. This change will eliminate what appears to be unnecessary and unproductive program interruptions of a commercial-like nature. The Commission's conclusion on the matter is based primarily on the general agreement in the comments that permitting only one underwriting announcement in programs of less than one-half hour would have little impact on noncommercial educational programming and the lack of evidence to the contrary submitted by those who disagree. A reduction in the number of permissible underwriting announcements will not necessarily reduce station support since such support is not wholly dependent on the broadcast exposure of the underwriter. We note that 1976 underwriting revenue for radio, where the impact, if any, is most likely to be felt, constituted only approximately 1.6% of total revenue sources and only \$770,000 in actual dollars.<sup>20</sup> If radio's present capability of offering two credit announcements in short programs has produced only this small response, the frequency of exposure does not appear significant to radio underwriters and the proposed rule change is not likely to affect substantially the decision whether to underwrite. Furthermore, we do not believe two underwriting announcements in programs of less than fifteen minutes duration are necessary to provide adequate disclosure to the audience as required by Section 317 of the Act. The Commission has no such general requirement for commercial broadcasting (except in the case of political educational broad-

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<sup>20</sup> Source: Public Broadcasting Income, Comments of the Public Broadcasting Service, Appendix B, Table 1, based upon annual financial reports of public television and radio licensees and other organizations (such as Children's Television Workshop).

cast matter and certain other matter described in Section 73.1212(d) of the Rules) and we see no reason to treat noncommercial broadcasting differently. Accordingly, the Commission proposes to amend the rules to effectuate this change. Some comments noted that most programs described as one-half hour in length were actually a few minutes less than that so as to permit station identification, public service announcements, underwriter credits and the like. We assume this could be true of programs lasting fifteen minutes and this is taken into consideration in the proposed rule.

39. The Commission would like to propose another rule change in Note 1 regarding underwriting announcements. The comments of Dow, Lohnes & Albertson state that Note 1 to Sections 73.503 and 73.621 of the Rules permits underwriting announcements in programs lasting longer than one hour to be made "at hourly intervals during the program if the last such announcement occurs at least fifteen minutes before the announcement at the end of the program," and requests that the rule be relaxed to permit these hourly announcements to be made "at a natural break in programming, as close to the hour as feasible." Dow, Lohnes & Albertson notes that the Commission already permits PBS to broadcast underwriting announcements in this manner in the television programs it distributes, and states that the convenience afforded by permitting all parties this method of identification would be widely felt. The Commission believes that the suggested rule change would be in the public interest. Many stations broadcast music and drama programs lasting longer than one hour and the injection of an underwriting announcement during the course of such programs may be unnecessarily disruptive. Such a rule change would also be consistent with Section 73.1201 of the Rules which permits station identification announcements to be made "as close to the hour as feasible, at a natural break in program offerings." Accordingly, a rule change to this effect is being proposed.

#### QUESTION 9

40. In question nine the Commission requested comments on establishing guidelines with respect to announcements identifying those who contribute goods or services to noncommercial educational broadcast licensees instead of programs or funds for program production. The present rules require announcements recognizing the producing or furnishing of programs or the provision of funds for their production, and permit announcements recognizing general contributions of a substantial nature which make possible the broadcast of programs for part, or all, of the day's schedule. However, these rules have never formally been interpreted to encompass contributions to licensees of other than programs or money. The Commission recognizes that many licensees receive gifts of goods or services such as studio equipment, carpeting, records (in-kind contributions) and it stated in the *Notice* a belief that the in-kind contributor should be treated similarly to contributors of programs or funds for their production, the rationale for this procedure being that donations of such goods or services free other station funds for program purposes. The great majority of comments received on this question supported treating in-kind contributors similar to cash contributors and stated that this could be accom-

plished by following the procedures for crediting cash contributors presently set out in Notes 1 and 2 to Sections 73.503 and 73.621 of the Rules. The problem the Commission sees, though, in crediting in-kind contributors pursuant to Notes 1 and 2 is that, in contrast to established methods, as discussed below, for determining the number of credit announcements a cash program underwriting donation may warrant, no limit on the number of announcements acknowledging a specific or general contribution of carpets, for example, is readily apparent. We believe, however, that with the rule changes specified below, acknowledgment of in-kind contributors along the same lines as cash contributors can be achieved.

41. In-kind contributions, like cash contributions, may be of two types, either designated for use in connection with specific programming or for use in general station operation. It appears from the comments that few problems exist with respect to crediting cash contributions designated for a specific program or a particular program series. Such contributions, after all, must be identified at the time the program is broadcast (pursuant to Section 317 of the Act) and the notes to the rules specify when these credits may be broadcast. In order to avoid the required numerous identification credits for cash contributors to specific programs, licensees frequently refuse cash donations for specific programs which fall below some minimum amount.<sup>21</sup> With respect to cash contributors for general station purposes, it seems from the comments that the number of credit announcements is often based upon a formula keyed to the relationship between the size of the contribution and the cost of one hour's or one day's station operation. To treat in-kind contributions on a par with cash contributors it appears that a monetary value would have to be placed on the gift and credit then given accordingly.

42. Some parties suggest other methods. Capitol Community Broadcasting, Inc., suggests that stations should be able to thank those who donate goods and services by announcing a list of donors not more than twice each day. WVUB Radio would like a rule permitting announcements at the beginning and end of a program, and at one-hour intervals, for substantial donations to particular programs and one announcement during the day for donors of less substantial goods or services. Florida Central East Coast Educational Television, Inc., claims that a credit announcement should not be given unless the value of an in-kind donation for a specific program equals at least 25% of the total cost of producing the program. The law firm Schwartz and Woods, on behalf of twenty-one licensees, states that licensees should be able to classify contributions on a reasonable basis and that permanent in-kind gifts of a substantial nature could be acknowledged over a period of time, just as are substantial general cash contributions. Station WMCU suggests that if the goods donated have a value of, for example, \$100 and if air time cost \$50 per hour, the donor should be entitled to announcements as though it sponsored two half-hour pro-

<sup>21</sup> We wish to point out that we do not believe Section 317 of the Act requires identification of a cash contributor to a particular program series each and every time a program in the series is broadcast if, in accepting the contribution, the contributor and the station, or program producer, expressly agree that the contribution is for a specific program in the series. For example, if, in accepting a cash contribution for a ten program series, it was agreed that the contribution was specifically for the third and fourth programs broadcast in the series, identification of the contributor need be made only at the time of the third and fourth broadcast.

grams. Public Radio in Mid America feels that stations should determine the value of the donation and assign a number of announcements over a period of time not to exceed, perhaps, five per day spread over the day's schedule, which would roughly correlate to the number of announcements an underwriter of programs would receive.

43. The Commission believes that in-kind contributions may be given a dollar value and credited pursuant to formulas generally used by licensees for cash contributions. Although many parties suggested that the Commission adopt some criteria as to what sort of in-kind contribution would warrant credit, we do not feel that setting an arbitrary dollar value or employing terms such as "reasonable" or "substantial" would be appropriate or create any degree of certainty in this area. Rather, we believe that whether a contribution warrants acknowledgment and the number of specific acknowledgments due are matters best left to each licensee's discretion. We propose only to place a limit on the number of times each day such acknowledgments may be made. However, we believe that in-kind contributions designated for use on particular programs or program series should not be treated like cash contributions of this nature because, unlike the Section 317 identification requirement for a cash contribution, an identification announcement in connection with an in-kind contribution for a particular program is not always necessary. Section 317 of the Act does not require identification of any service or property furnished without charge for use on, or in connection with a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast. We expect that in-kind contributions for use in connection with the broadcast of particular programs would be used in the programs for their normal purpose.<sup>22</sup> Thus, no identification of the in-kind contributor to a particular program is ordinarily required by Section 317 at the time of broadcast and, because of our desire for clarity in this area and our reluctance to establishing arbitrary limits on the number of announcements particular in-kind contributions warrant, we believe a different approach is appropriate. We are proposing rules that will permit the identification of in-kind contributors, of either a general or specific nature, at specific times of the day. The proposed rule will, we realize, eliminate contemporaneous identification of in-kind contributors to network distributed programs. The network is free to distribute the names of in-kind donors so that credit may be given on local stations if consistent with the local stations' criteria.<sup>23</sup> We note that elimination of credit announcements inconsistent with this proposed new rule in programs already produced or under contract for production may impose a burden on noncommercial educational licensees in editing or meeting contractual commitments. Accordingly, this new rule, if adopted, would apply only to programs the

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<sup>22</sup> We have in mind here such things as furniture used in sets, or clothing or costumes worn by performers.

<sup>23</sup> For example, if a host on a network program is provided with a wardrobe by XYZ Fashion Store, the station originating or taping the program can evaluate that contribution as to whether it deserves mention as a contributor. Regardless of that stations' criteria, since such contributions reduce the cost of production of the program and hence the cost of the program to the local stations, each station broadcasting the program may, if it desires, mention the contribution.

production of which was completed six months after the rule's adoption.

44. The Commission believes that in-kind contributors may be identified pursuant to the present Note 2 of the Rules with two modifications of the Note. To remove ambiguity, we are eliminating the requirement that contributions be substantial, thus permitting acknowledgment of any contribution, cash or in-kind, which the licensee deems appropriate. We will retain the provisions allowing acknowledgment at the start and close of the day and of one contributor once an hour. However, in view of the increased number of identifications which this rule change may generate, we are proposing to permit two programming breaks a day, at times of the licensee's choosing, for two minutes each, to acknowledge general cash and in-kind contributors. Since the proposed rules increase the daily number of acknowledgments and remove the "substantial" requirement, we further propose that no general cash or in-kind donor may be identified more than once a day in the permissible hourly acknowledgment.

45. One further point regarding credit announcements for in-kind contributions should be addressed. A number of parties requested that any rules permitting credit announcements for in-kind contributions should also permit mention of the nature of the contribution. The reasons generally put forth in support of this request were similar to those stated in support of relaxed underwriter identification requirements, namely, to present clearer donor identification and to enhance underwriter support. As an example, Schwartz & Woods suggests that a credit announcement such as "costumes contributed by Mr. X" or "by Y Corporation" should be acceptable. The Commission sees no reason to treat contributors of in-kind goods or services differently than contributors of cash or programs or funds for their production in terms of identification and has not included this request in the proposed rule.

#### QUESTIONS 10-13

46. Questions ten through thirteen concern the amount of broadcast time devoted to auctions and broadcast identification of persons or businesses underwriting and contributing to these events. Initially, it should be noted that, as stated in the *Notice*, the Commission has no intention of eliminating the auction as a station fund-raising activity at this time. The comments of PBS, at Table 4, show that in 1976 public television licensees received 11.6 million dollars in auction income representing 3.6 percent of total income. This is a substantial amount of money, particularly when it is recognized that over 90 percent of it goes to financing community licensees (see PBS Comments, Table 5). On the other hand, we stated in *Noncommercial Educational Stations, supra*, that we intended to study at some future time the matter of "extended" and "commercial" auction activities. It is for this reason that the Commission undertook this review of auction practices.

47. For the following reasons, the Commission believes that, despite the significant role auctions presently play in public station financing, some restrictions on their operation are now appropriate.<sup>24</sup> When the

<sup>24</sup> Although many parties stated that no restrictions should be placed on auction activity, some parties stated that restrictions would be acceptable. Station WSKG-TV stated that it could support a 14-day limit; Station KUNC-FM suggested an auction and fund-raising limit of 7 days once a year and Station KETC suggested limiting auctions and fund raising to four times a year.

Commission liberalized the rules to accommodate necessary commercial activity during auction periods, the usual station auction was an annual event lasting three to seven days. The comments demonstrate that while most stations conducting auctions still conduct only one per year, the normal auction period is now approximately seven to nine days, with several as long as 10 days and at least one station's auction lasting fourteen days. The comments also indicate that the normal auction consumes between one-third and one-half of the station's programming each day it runs and that several stations devote entire days to auction activities. Additionally, although we have no independent information on the total number of hours devoted to auction activity in past years, we note that the average annual number of hours devoted to public television station promotion/auction/fund-raising activities increased from 60.65 hours in 1974 to 69.0 hours in 1976.<sup>25</sup> Some of these hours can safely be assumed to contain auction activity. These figures indicate that auction activity is increasing and that it consumes substantial amounts of program time. The financial health of noncommercial educational television has not been shown to be dependent upon a continued increase in auction revenue<sup>26</sup> and the Commission does not believe that an unlimited increase in broadcast time devoted to auctions is in the best interest either of serving the public or of preserving the noncommercial character of noncommercial educational broadcasting. Accordingly, the Commission proposes to limit auction activity to a maximum of ten days during any one calendar year with an additional restriction that no one day's auction activity consume more than 50% of the day's broadcast time.<sup>27</sup> These restrictions permit a slightly higher amount of time for auction activity than on the average appears to take place at the present time.<sup>28</sup> Since auctions substantially consist of promoting the sale of products and services, obvious commercial activity, the Commission's authority to propose limits is clear. See paragraphs 8-14, *supra*.

48. The response to question 12 (what percentage of the money raised during auctions comes from auction underwriters?) demonstrates that auction underwriters provide substantial support to public broadcasters. While the parties did not separate major underwriters from those who provide ancillary support, it appears that underwriters generally accounted for approximately 10-20% of auction revenue, with some accounting for as much as 25% or more. In view of this fact, we are not inclined to discontinue broadcast acknowledgment of underwriter contributions at this time. However, as stated in the *Notice*, it has come to our attention that the rules permitting acknowledgment of

<sup>25</sup> Source: *Public Television Program Content: 1974*, Corporation for Public Broadcasting, figure V.2 and *Public Television Programming By Category: 1976*, Corporation for Public Broadcasting, figure V.2.

<sup>26</sup> Table 4 of the PBS Comments indicates that, in actual dollars, public television has received continuously increasing support from non-federal sources of income such as State governments, universities, businesses and members of the public for at least fiscal years 1974, 1975 and 1976.

<sup>27</sup> Stations may elect to stay on the air in excess of their normal operating hours during such periods.

<sup>28</sup> In view of the Commission's decision that limits on the amount of time devoted to auction activities are necessary, we do not believe it appropriate, as suggested by one party, to expand the exception for the promotion of goods and services during auction periods to include pre-auction announcements.

auction underwriter support,<sup>29</sup> designed to afford recognition to those persons or entities underwriting portions of auction expense, i.e., one day's cost, is being used to some extent to acknowledge in-kind contributions of nominal value. Since this rule permits identification of an underwriter's products and services, we believe that some guidelines are appropriate to define what constitutes an underwriter for the purpose of the rule.

49. Comments were solicited in question 13 as to what standard should be used in determining what constituted an auction underwriter. The most common response to this question was that any person or entity contributing money or goods which freed station funds to cover some other necessary auction expense should be considered an underwriter. Others stated that: (1) this decision should be left to the licensee's discretion, (2) to qualify for credit the contribution should be "substantial" or "more than minimal" (ranges from 10-75% of a day's cost were mentioned), and (3) only cash contributions defraying out-of-pocket expenses should be considered. In view of the large amount of exposure the present rule accords auction underwriters, see footnote 26, *supra*, the Commission believes that the underwriter's contribution should be quite substantial. The Commission proposes that contributors of more than thirty percent, in money or goods and services, of one day's necessary auction expense be considered auction underwriters. The Commission further proposes that contributors of less than this amount to auction activities may be recognized in the same manner as general cash and in-kind contributors.<sup>30</sup> It should be noted that recognition of these contributions may be prefaced by a statement indicating that they were made in support of the station auction. Licensees are free to determine in their discretion what value a donation must have to warrant recognition if the contributor does not qualify as an underwriter.

#### QUESTIONS 14-16

50. Questions 14, 15 and 16 pertain to the practice of noncommercial educational stations conducting auctions for entities other than themselves. In *The Ohio State University*, FCC 76-701, 38 RR 2d 22 (1976), the Commission denied a waiver of its rules for this purpose, stating, in part, that educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fund-raising operation for other entities by broadcasting material that is "akin to regular advertising." (38 RR 2d at 24). We asked in the *Notice* whether such auctions should be permitted (Question 14), and if so, under what guidelines (Question 15), and whether different guidelines should be applied and what they should be if the station retains part of the proceeds (Question 16).

<sup>29</sup> See present Section 73.503, Note 4 and Section 73.621, Note 4, which state, in part, that: "The provisions of Notes 1 and 2 of this section shall not apply during the broadcast times in which 'auctions' are held to finance station operation. Credit announcements during 'auction' broadcasts may identify particular products and services. . . ." These Notes, in effect, remove any quantitative limit on aural credits given an underwriter. Present Section 73.621, Note 4 also permits visual exposure of a display in the auction area of the underwriter's name and trademark, and products or service or a representation thereof.

<sup>30</sup> The name of the contributor should be broadcast in the form specified in Sections 73.503 and 73.621 of the Rules.

51. Most parties commenting on this matter supported the Commission's *Ohio State* ruling, although several believed joint auctions appropriate if the station retained a portion of the proceeds. The figure 50 percent was frequently mentioned as the portion of proceeds retained in a joint auction. Support for joint auctions is based upon the assertion that the activity is clearly one that substantially helps finance station operation. Many parties, however, argued in favor of auctions for the benefit of other entities, whether joint or not, claiming that the decision was properly a matter for licensee discretion and, in any event, the auctions are of great benefit to worthy nonprofit organizations. Those parties in favor of such auctions also generally believed that no rules should be adopted setting limits on the activity. However, some felt that limits were desirable. Limits mentioned included one such auction a year with a 7-day limit, or a 25-day limit for all auction activity. Advocates of no guidelines also argued that viewer resistance will keep licensees from devoting an undue amount of time to auction programming.

52. The Commission is not persuaded that further liberalization of its rules to permit auctions for the benefit of non-licensee entities is necessary to the well being, or in the best interest, of noncommercial educational broadcasting and we adhere to our view that broadcast of such matter is inconsistent with the noncommercial nature of educational broadcasting. Furthermore, we believe that the devotion of programming time to raising money by on-the-air auctions for charitable or other organizations does not serve the purposes for which noncommercial educational broadcasting was established. The only plausible justification for permitting auctions for the benefit of others is that the station would retain a substantial portion of the revenue. However, even this justification is unpersuasive in view of the large amount of broadcast time licensees already devote to fund-raising. Simply put, noncommercial educational broadcasting is the wrong vehicle for general fund-raising by auctions and the only reason an exception is made on behalf of licensees is to aid in their efforts to provide the programming which they were licensed to broadcast. Accordingly, no rules or guidelines will be adopted to permit auctions for the benefit of non-licensee entities.<sup>31</sup>

#### QUESTIONS 17-22

53. Questions 17 through 22 concern noncommercial educational licensee fund-raising activities other than auctions, such as membership drives and marathons. In the *Notice*, we stated that unlike auction broadcasts, in our experience these activities did not contain matter that can be categorized as "akin" to regular advertising.<sup>32</sup> In making this statement, the Commission had in mind the various licensee methods, undertaken during periods of suspended programming, of exhorting listeners and viewers to contribute money on either a one-time or

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<sup>31</sup> Auctions conducted by "friends" groups or other groups which devote themselves to station support will be permitted so long as all proceeds, less administrative costs, go to the licensee. Additionally, auctions by one licensee which help support a commonly owned station will not be considered as benefitting a non-licensee entity.

<sup>32</sup> The use of premiums to encourage contributions during these efforts is not "matter akin to regular advertising" since the references to the premiums, to the best of our knowledge, are reasonably related to a description of their value as a prize. See para. 28, *supra*.

regular basis. (The Commission does not consider brief announcements or, generally, in the case of radio, chatter between records to fall in this category). These fund-raising activities do not contain announcements promoting the sale of products or services.

54. The responses to questions 17 and 18, in which we asked for the yearly number of each station's fund-raising promotions and the duration of each, indicated that fund-raising practices varied considerably from licensee to licensee.<sup>33</sup> The number of major fund-raising efforts per year ranged from one to five. The main drives lasted anywhere from one to thirty days, and many licensees conducted additional "mini" fund-raisers of up to several days' duration at various times throughout the year. The methods used and amount of time devoted to fund-raising each day varied widely. The wide variation in non-auction fund-raising approaches could be explained by the parties' repeated assertions that each community responds differently to appeals for money and licensees must continuously try to find the right mix of fund-raising activities to achieve the greatest result. As a consequence, the overwhelming majority of parties stated in response to question 19, i.e., what guidelines, if any, should be imposed on non-auction fund-raising, that no guidelines should be imposed which would restrict the ability of licensees to vary their fund-raising methods. The parties also contend that audience reaction to appeals for money, easily measured by the amount of donations, automatically places limits on the amount of time devoted to this type of fund-raising and serves as an adequate check against abuse. The parties strongly urge that, in view of these factors and the statutory impediments against censorship, the decision when and how to conduct fund-raising activities of this type be left to each licensee's discretion.

55. The PBS Comments are instructive as to the amount of money raised through direct on-air appeals. Contributions are primarily in the form of station memberships or subscriptions. In 1976, public broadcasting membership contributions totaled \$37.7 million. For one hundred eleven television licensees in 1976, these contributions represented approximately 12% of their total income and about 15% of their non-federal income. PBS and other parties point out that an important aspect of this money is that it comes with no strings attached, as opposed to underwriting income for specific programs, and may be used for any purpose the licensee deems appropriate.

56. The Commission is persuaded that since fund-raising through membership drives, marathons, and the like provides considerable financial assistance to public broadcasting licensees, licensees should have a wide latitude within which to conduct such activities. We also take note of the fact that contributions from individuals to support public broadcasting operations are an important ingredient of the Congressional scheme for financing public broadcasting and that on-air appeals appear to be an effective method for obtaining public assistance. Accordingly, the Commission does not propose to prohibit or severely restrict this kind of fund-raising activity. The Commission believes, though, that some restriction on the amount of time devoted to non-auction fund-raising is required in order to insure that broad-

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<sup>33</sup> While the questions did not specify, we assume that the data collected in response to these questions mainly pertain to fund-raising solely for the licensee's benefit.

cast time on noncommercial educational stations is devoted primarily to the type of programming for which the service was established. Clearly, noncommercial educational stations would be prohibited from devoting one hundred percent of their programming to fund-raising to the exclusion of the types of programs which they are licensed to broadcast, hence, the imposition of a limit on fund-raising is analogous to the Commission's requirement that commercial stations not devote one hundred percent of their programming to entertainment to the exclusion of public interest programming. The Commission believes that a limit to the amount of broadcast time which noncommercial educational licensees may devote to non-auction fund-raising should be expressed in terms of hours so as to provide each licensee with the greatest flexibility in conducting its non-auction fund-raising efforts.

57. The Commission believes that any rule limiting the number of hours devoted to non-auction fund-raising activities should be based primarily upon the operations of community licensees<sup>34</sup> since it is those licensees who derive the most support from such efforts. Table 5 of the PBS Comments states that in 1976 community licensees received twenty percent of their revenue from members and subscribers, the main source of donations from marathons and the like, whereas all other licensees together received only 8.8 percent of their revenue from these sources. In seeking an appropriate number of hours, the Commission notes that community television licensees were on the air an average of 92.6 hours per week in 1976 (*Public Television Programming By Category: 1976*, Corporation for Public Broadcasting, Table II, 3). The Commission believes that no more than the equivalent of one week of noncommercial educational broadcast time ought or need be devoted to on-air non-auction fund-raising and proposes to limit such activity to ninety hours a calendar year. We also note that, although methods of fund-raising varied, the comments indicated that ninety hours a year would accommodate all but the most extreme case of present fund-raising activity. Accordingly, a rule setting this limit is proposed. Although we propose as one alternative an across the board 90-hour a year limit, we recognize there may be other approaches. We believe another viable alternative is to set the hourly limit each station may engage in non-auction fund-raising at the number of hours actually contained in a particular station's typical broadcast week. Additionally, it has been suggested that there may be some correlation between market size and the number of hours devoted to fund-raising. Accordingly, we seek comments on these subjects.

58. The Commission asked in question 20 whether its *Ohio State* ruling proscribing auctions for the benefit of non-licensees should be applied to fund-raising drives for entities other than the licensee and if so, what guidelines should be applied. As noted above, the Commission seriously questions whether the diversion of substantial amounts of program time to raise funds for purposes unrelated to the mission of public broadcasting, however worthy, is consistent with the responsibilities of the public broadcaster. Many parties commenting on this

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<sup>34</sup>There are four types of noncommercial educational broadcast licensees: (1) community, (2) university, (3) local school and (4) state. The community licensee is generally composed of various elements in a local jurisdiction which have come together and formed an organization to construct and operate a noncommercial educational broadcast facility.

question also believed that this practice is contrary to the goals and purposes of public broadcasting. However, a majority of the commenting parties found the practice to be in the public interest. Those parties supporting the practice generally stated that there exist a number of worthwhile community organizations which could greatly benefit from broadcast exposure and that so long as no commercial aspects are present, it should be within the licensee's discretion to determine whether programming devoted to these organizations is in the public interest. The Commission has steadfastly maintained that it is the broadcast licensee's obligation to determine what programming is in the public interest for its particular community and we believe that Commission preclusion of fund-raising for non-licensee entities, in the absence of commercial or commercial-like matter, conflicts with this principle. Accordingly, programming of this type will not be prohibited. However, time devoted to fund-raising for non-licensee entities will be counted against the ninety-hour yearly maximum amount of time proposed for non-auction fund-raising activities. As noted above, the fund-raising activity of concern here is that which occurs during periods of suspended programming and not thirty-second or sixty-second announcements urging support of fund-raising efforts conducted by non-licensee organizations which do not involve the purchase of goods and/or services, i.e., UGF, March of Dimes. An exception to the proposed rule will be included to make this clear.

59. The final two questions posed by the Commission in the *Notice* were what guidelines should be adopted as to acknowledging entities underwriting fund-raising activities other than auctions (Question 21) and what, in these circumstances, constitutes an underwriter (Question 22)? These questions were asked because the Commission's present rules permit identification of auction supporters but make no provision for identifying supporters of membership drives or marathons. The comments almost universally stated that while fund-raising drives of this sort receive little underwriting support, to the extent that they do, their underwriters should be treated as those for auctions are. The Commission observes, however, that there is a distinct difference between fund-raising by auctions and fund-raising by other methods, namely that substantial commercial acknowledgment to auction underwriters is carried out under exceptions to the Commission's Rules permitting commercial-like activity during auction periods. In contrast, no such exceptions are applicable to other fund-raising activities. Furthermore, we note that no rules are being adopted which substantially restrict non-auction fund-raising activities, at least in part because of their noncommercial nature. In view of these facts, the Commission is not disposed to treat underwriters and supporters of non-auction fund-raising activities similar to auction underwriters and supporters. We believe that identification of underwriters or supporters of non-auction fund-raising activities may be adequately acknowledged during the programming breaks proposed in the new rule for acknowledging general cash and in-kind contributors. Licensees are free to determine the value a contribution must have to warrant identification except in so far as identification is required pursuant to Section 317 of the Act. Identification shall be limited to name-only, subject to qualifications stated in Sections 73.503 and 73.621 of the Rules.

60. We wish to mention two additional points. Some parties suggested that the Commission combine Notes 1 and 2 to Sections 73.503 and 73.621, which respectively deal with contributions of a specific nature and those of a general nature, into one Note in order to eliminate confusion. In view of the changes proposed herein which place additional emphasis on differentiating between contributions of a specific nature and those of a general nature, we believe that a clear separation between the requirements for acknowledging each category is appropriate. However, the Commission believes that some change in the rule's structure is called for, namely, that all five notes to Sections 73.503 and 73.621 contain substantive matter and should be incorporated into the body of the rules. "Notes" to the rules should generally contain "explanatory" material and we will endeavor to confine our use of notes for that purpose. Accordingly, we propose to redesignate Notes 1, 2, 3, 4, and 5 to Section 73.503 as subsections (e), (f), (g), (h) and (i) to Section 73.503, respectively. Likewise, we propose to designate Notes, 1, 2, 3, 4, and 5 to Section 73.621 as subsections (f), (g), (h), (i) and (j) to Section 73.621, respectively. We will add notes to both Sections of the Rules containing, for the most part, examples of permissible announcements.

61. We are also occasionally asked whether licensees of noncommercial educational facilities operating on the AM band or on the nonreserved channels of the FM and TV bands must follow Sections 73.503 and 73.621 of the Rules. The answer to this question is yes. The Commission's Rules and Policies applicable to commercial and noncommercial educational stations differ in various respects, i.e., community ascertainment, hours of operation, and licensees operating under authorizations issued pursuant to the licensing procedures adopted for the noncommercial educational broadcast service must conform to the requirements of that service.

62. Finally, the Commission again notes that, in addition to this *First Report and Notice of Proposed Rulemaking*, it has today adopted a *Notice of Proposed Rulemaking*, BC Docket No. 78-164, looking toward amendment of the Commission's Rules governing the eligibility for noncommercial educational FM and TV broadcast station licenses. Parties participating in this proceeding should consider the effect the matters raised in that document may have on their comments and on overall Commission policies regarding regulation of noncommercial educational broadcasting.

63. Accordingly, IT IS PROPOSED, That Sections 73.503 and 73.621 of the Commission's Rules and Regulations, BE AMENDED as indicated in APPENDIX B attached hereto.

64. Pursuant to the applicable procedures set out in Section 1.415 of the Commission's Rules and Regulations, interested parties may file comments on or before October 2, 1978, and reply comments on or before November 1, 1978. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

65. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments and reply comments or other documents shall be furnished the Commission. Members of the general public who wish to express their interest by participating informally in this proceeding may do so by

submitting one copy of their comments, without regard to form, provided the Docket Number is specified in the heading.

66. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

67. Authority for the actions taken herein is contained in Sections 2, 4(i), 301, and 303 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION,  
WILLIAM J. TRICARICO, *Secretary*.

#### APPENDIX A

##### Parties Filing Comments

Akron Symphony Orchestra  
Alaska Public Broadcasting Commission  
Alaska Public Television, Inc.  
American Symphony Orchestra League  
Anderson, Donald L.  
Arizona State University  
Arizona Western College  
Ball, Lemuel B., Jr.  
Ball State University  
Barron, Harold  
Blue Ridge ETV Association  
Board of Education of Jefferson County, Kentucky  
Board of Regents of the University of Wisconsin System  
Board of Trustees, Coast Community College District  
Board of Trustees of Southern Illinois University  
Board of Trustees of the University of Illinois  
Boston University  
Bowling Green State University  
Brandmarker, Boaz  
Broadcasting and International Communications Center  
Broward County Division of Consumer Affairs  
California Friends of Public Broadcasting  
Calvary Bible College  
Capital Community Broadcasting, Inc.  
Central California Educational Television  
Central Texas College  
Chicago Educational Television Association  
Childrens Television Workshop  
Cincinnati Symphony Orchestra  
Colby-Bates-Bowdoin Educational Telecasting Corp.  
Columbus Symphony Orchestra  
Committee to Save KQED  
Community Radio in Telluride  
Community Television Foundation of South Florida, Inc.  
Community Television of Southern California  
Cornell Radio Guild, Inc.  
Council for AFL-CIO Unions for Professional Employees  
Dallas Symphony Orchestra  
Detroit Educational Television Foundation  
Eastern New Mexico University  
East Texas State University  
Educational Television Association of Metropolitan Cleveland  
Ewing, Elizabeth  
Fairleigh Dickinson University  
Farrell, James D.  
Florida Central East Coast Educational Television, Inc.  
Florida West Coast Public Broadcasting, Inc.  
Florida State University

Ford Foundation  
 Frank, Alan  
 Friends of Channel 21, Inc.  
 Grand Valley State Colleges  
 Greater New Orleans Educational Television Foundation  
 Greater Toledo Educational Television Foundation  
 Greater Washington Educational Telecommunications Association, Inc.  
 Hampton Roads Educational Telecommunications Association  
 Harmon, Susan  
 Hartford Symphony Orchestra  
 Hill, Geraldine and George  
 Howard University  
 Intercollegiate Broadcasting System, Inc.  
 International Brotherhood of Electrical Workers  
 Jacobson, Robert E.  
 Kansas City Philharmonic  
 KCTS/9  
 Kentucky Broadcasters Association  
 KIXE-TV  
 KMCR-FM  
 KNME Television  
 KOAK Radio  
 KQED, Inc.  
 KTRU Rice Radio  
 Lane Community College  
 Lehigh Valley Educational Television Corp.  
 Loyola Marymount University  
 L. Scott Hochberg & Associates  
 Magic City Communications Corporation  
 Maryland Public Broadcasting Commission  
 Media Central  
 Memphis Community Television Foundation  
 Metropolitan Board of Education (Nashville, Tennessee)  
 Metropolitan Indianapolis Television Association, Inc.  
 Metropolitan Pittsburgh Public Broadcasting, Inc.  
 Miami Christian College  
 Michigan Technological University  
 Milwaukee District Area Board of Vocational, Technical and Adult Education  
 Mississippi Authority for Educational Television  
 Mohawk-Hudson Council on Educational Television, Inc.  
 Morality in Media, Inc.  
 Mottler, Mike  
 Mullally, Dr. Donald P.  
 Murray State University  
 Nashville Symphony Association  
 National Association of Broadcast Employees and Technicians  
 National Association of Broadcasters  
 National Association of Educational Broadcasters  
 National Federation of Community Broadcasters  
 National Latino Media Coalition  
 National Public Radio  
 Nebraska Broadcasters Association  
 Nebraska Educational Television Commission  
 New Hampshire Public Television  
 New Jersey Public Broadcasting Authority  
 North Carolina Association of Broadcasters  
 Northeastern Educational Television of Ohio, Inc.  
 Northeastern Pennsylvania Educational Television Association  
 Northern Community Radio  
 Northern Michigan University  
 Office of Communication of the United Church of Christ  
 Ohio University  
 Oregon Educational and Public Broadcasting Service  
 Phoenix Symphony Orchestra  
 Pittsburgh Symphony Orchestra  
 Portland Public Schools

Public Broadcasting of Northwest Pennsylvania, Inc.  
Public Radio in Mid-America  
Public Television 19, Inc.  
Radio Santa Cruz  
Reily, Lawrence A.  
Rochester Area Educational Television Association, Inc.  
Rochester Philharmonic Orchestra  
St. Lawrence Valley Educational Television Council  
St. Louis Educational Television Commission  
St. Louis Symphony Orchestra  
San Diego Symphony Orchestra  
Sangamon State University  
Savannah Symphony Society  
Shenandoah Valley Educational Television Corporation  
Soper, Michael B.  
South Bend Symphony  
South Central Educational Broadcasting Council  
Southern Tier Educational Television Association, Inc.  
Spivey, R.P.  
Spokane School District No. 81  
Springfield Symphony Orchestra  
State Educational Radio and Television Facility Board (Iowa)  
State of Georgia Office of Planning and Budget  
State of Wisconsin Educational Communications Board  
Students (19) of the University of South Florida  
Stuhlmuller, Barbara  
Temple University of the Commonwealth System of Higher Education  
Tennessee State Department of Education  
The Brevard Symphony Orchestra, Inc.  
The Cleveland Orchestra  
The Connecticut Educational Telecommunications Corp.  
The Corporation for Public Broadcasting  
The Houston Symphony  
The Ohio Educational Television Network Commission  
The Ohio State University  
The Public Broadcasting Service  
The San Miguel Educational Fund  
The Southern Educational Communications Association  
The Southwest Texas Public Broadcasting Council  
The University of the State of New York  
The Virginia Public Telecommunications Council  
University of Alabama at Birmingham  
University of Arizona  
University of California, Berkeley  
University of Denver  
University of Houston  
University of Maine  
University of Nebraska  
University of North Carolina at Chapel Hill  
University of Northern Colorado  
University of Southern Colorado in Pueblo  
University of South Florida  
University of Texas at Austin  
University of Washington  
University of Wisconsin  
University Regional Broadcasting, Inc.  
Vermont Public Radio  
Wabash Valley College  
Wallace, Wesley  
Washburn University of Topeka  
Wayne State University  
WCDR-FM  
WCET  
West Central Illinois Educational Telecommunications Corporation  
Western New York Educational Television Association, Inc.  
WFSU-TV

WGBH Educational Foundation  
 WGBY-TV  
 WHYY, Inc.  
 WILK  
 Williams, Myron F.  
 WOXO/WXIV  
 WSWP-TV/WVPB  
 WVUB Radio  
 WYSO  
 WYWY  
 Youth Symphony Association

- (d) It is proposed to redesignate Note 3 to Section 73.621 of the Rules as subsection (h) to Section 73.621.
- (e) It is proposed to redesignate Note 4 to Section 73.621 of the Rules as subsection (i) to Section 73.621 and to amend that Note by the deletion of the following language within the < > symbol and addition of the following bracketed language:

The provisions of <Notes 1 and 2> [subsections (f) and (g)] of this section shall not apply during the broadcast times in which "auctions" are held to finance station operation. <Credit> Announcements during "auction" broadcasts [describing products or services at the time they are being auctioned] may identify particular products or services [and the name of the donor], but shall not include promotion of products or services beyond that necessary for the specific auction purpose. Visual exposure may be given to a display in the auction area including the underwriter's name and trademark, and product or service or a representation thereof. [An auction underwriter is any contributor of 30 percent or more, in money or goods and services, to one day's necessary auction expense. Contributors of money or goods and services equalling less than 30 percent of one day's necessary auction expense may be identified during auction periods pursuant to Section 73.621(g) of this Part. Auction activity may be broadcast on no more than ten days each calendar year and no more than one-half of any broadcast day may contain auction activity. Proceeds from all auction activity must be retained by the licensee for use in connection with its licensed facilities, except that proceeds derived from auction activity by one licensee may be used to support the broadcast activities of a commonly owned station or licensee. Over-the-air auction activity conducted by parties other than licensee are permitted so long as all proceeds, less reasonable administrative expenses related to the conduct of the auction, go to the licensee for use in connection with the licensee's licensed facilities.]

- (f) It is proposed to redesignate Note 5 to Section 73.621 of the Rules as subsection (j) to Section 73.621.
- (g) It is proposed to add a subsection (k) to Section 73.621 of the Rules to read as follows:

On-air fund-raising activities, excluding auctions, conducted for the benefit of non-commercial educational broadcast licensees or others may not consume more than ninety (90) broadcast hours in any one calendar year. Broadcast announcements of sixty (60) seconds or less urging support of fund-raising efforts conducted by non-licensee organizations not involving the purchase of goods and/or services shall not be counted in computing hours devoted to fund-raising activity sanctioned by this subsection.

III. It is proposed to add the following Notes to Section 73.503 of the Commission's Rules:

NOTE 1. The following example announcements regarding the availability of products and services contain language which will not be considered to promote the sale of products and services inconsistent with Section 73.503(b) of the Rules:

- (a) "The First Unity Church at 111 Smith Street is having its annual bake sale June 10 through 12 between the hours of 10:00 a.m. and 5:00 p.m."
- (b) "The Robert Jones Band will be appearing in concert at the University of California on Saturday night, April 15 at 8:00 p.m. Admission charge required. For ticket information call 111-2222."
- (c) "The Oakton Community Theatre Players are putting on a series of ten two-act plays featuring the works of John Smith. For time and ticket information call 111-2222."

- (d) "Mason University has announced a ten-week special course in modern computer technology. The course will meet for one hour on Tuesday and Friday night at 8:00 p.m. beginning May 1, 1978. The course textbook will be 'Today's Computers' by James Jones. For further information call 111-2222."

The following example announcements regarding the availability of products and service contain language which will be considered to promote the sale of products and services in a manner inconsistent with Section 73.503(d) of the Rules:

- (a) "The First Unity Church, at 111 Smith Street, is having its annual bake sale June 10 through 12 between the hours of 10:00 a.m. and 5:00 p.m. This annual event is known for an unusually wide variation in baked goods ranging in price from one dollar to ten dollars."
- (b) "The Robert Jones Band will be appearing in concert at the University of California on Saturday night, April 5th at 8:00 p.m. Tickets at \$4, \$6 and \$8. For additional information call 111-2222."
- (c) "The Oakton Community Theatre Players are putting on a series of ten two-act plays featuring the works of John Smith. You will want to get your tickets soon in order not to miss these new plays by this always excellent amateur group. For time and ticket information call 111-2222."
- (d) "Mason University has announced a ten-week special course in modern computer technology. The course will meet for one hour on Tuesday and Fridays evenings at 8:00 p.m. beginning May 1, 1978. The course textbook will be 'Today's Computers' by James Jones and may be purchased for \$11.95. For further information call 111-2222."

NOTE 2: Advertisements and/or commercial matter broadcast within educational, instructional or informational programs for illustrative purposes in demonstrating or describing particular problems or subjects being discussed or considered are not prohibited by the requirements of Section 73.503(d) of this Part.

NOTE 3: Broadcast announcements identifying the name and/or location of a particular business establishment from which programming for fund-raising purposes is originating, and broadcast announcements urging viewers or listeners to visit a particular business establishment from which programming for fund-raising purposes is originating, are prohibited.

NOTE 4: The following are examples of announcements regarding the sale of program related materials which will be deemed consistent with Section 73.503(d) of the Commission's Rules:

- (a) "For a transcript of the preceding program send 50 cents to ABC Press, 804 Elm Street."
- (b) "For a booklet on additional ways to improve your home insulation send 90 cents to Box 100, Government Printing Office, Washington, D.C."
- (c) "A complete bibliography on the writings of Patrick Henry and Benjamin Franklin may be obtained by sending 99 cents to the Revolutionary War Foundation, Box 100, Philadelphia, Pennsylvania."
- (d) "For ideas on flower arrangements similar to those discussed in the preceding broadcast of 'Jones' Flower Shop' send 50 cents and a self-addressed stamped envelope to Botanical Gardens, Box 100, Washington, D.C."

The following are examples of announcements regarding the sale of program related materials which will be deemed inconsistent with Section 73.503(d) of the Commission's Rules:

- (a) "For a booklet on additional ways to improve your home insulation, send \$2.00 to Box 100, Government Printing Office, Washington, D.C."
- (b) "For ideas on flower arrangements similar to those discussed in the preceding broadcast of 'Jones' Flower Shop', get Mr. Jones' new book at most fine garden stores."

NOTE 5: The limitations on credit announcements for in-kind contribution imposed by Section 73.503(f) shall not apply to program material for which production was completed prior to \_\_\_\_\_.

IV. It is proposed to add the following Notes to Section 73.621 of the Commission's Rules:

NOTE 1. The following are examples of announcements regarding the availability of products and services which contain language which will not be considered to promote the sale of products and services inconsistent with Section 73.621(e) of the Rules:

- (a) "The First Unity Church at 111 Smith Street is having its annual bake sale June 10 through 12 between the hours of 10:00 a.m. and 5:00 p.m."
- (b) "The Robert Jones Band will be appearing in concert at the University of California on Saturday night, April 15 at 8:00 p.m. Admission charge required. For ticket information call 111-2222."
- (c) "The Oakton Community Theatre Players are putting on a series of ten two-act plays featuring the works of John Smith. For time and ticket information call 111-2222."
- (d) "Mason University has announced a ten-week special course in modern computer technology. The course will meet for one hour on Tuesday and Friday night at 8:00 p.m. beginning May 1, 1978. The course textbook will be 'Today's Computers' by James Jones. For further information call 111-2222."

The following are examples of announcements regarding the availability of products and service which contain language which will be considered to promote the sale of products and services in a manner inconsistent with Section 73.621(e) of the Rules:

- (a) "The First Unity Church, at 111 Smith Street, is having its annual bake sale June 10 through 12 between the hours of 10:00 a.m. and 5:00 p.m. This annual event is known for an unusually wide variation in baked goods ranging in price from one dollar to ten dollars."
- (b) "The Robert Jones Band will be appearing in concert at the University of California on Saturday night, April 5th at 8:00 p.m. Tickets at \$4, \$6 and \$8. For additional information call 111-2222."
- (c) "The Oakton Community Theatre Players are putting on a series of ten two-act plays featuring the works of John Smith. You will want to get your tickets soon in order not to miss these new plays by this always excellent amateur group. For time and ticket information call 111-2222."
- (d) "Mason University has announced a ten-week special course in modern computer technology. The course will meet for one hour on Tuesday and Fridays evenings at 8:00 p.m. beginning May 1, 1978. The course textbook will be 'Today's Computers' by James Jones and may be purchased for \$11.95. For further information call 111-2222."

NOTE 2: Advertisements and/or commercial matter broadcast within educational, instructional or informational programs for illustrative purposes in demonstrating or describing particular problems or subjects being discussed or considered are not prohibited by the requirements of Section 73.621(e) of this Part.

NOTE 3: Broadcast announcements identifying the name and/or location of a particular business establishment from which programming for fund-raising purposes is originating, and broadcast announcements urging viewers or listeners to visit a particular business establishment from which programming for fund-raising purposes is originating, are prohibited.

NOTE 4: The following are examples of announcements regarding the sale of program related materials which will be deemed consistent with Section 73.621(e) of the Commission's Rules:

- (a) "For a transcript of the preceding program send 50 cents to ABC Press, 804 Elm Street."
- (b) "For a booklet on additional ways to improve your home insulation send 90 cents to Box 100, Government Printing Office, Washington, D.C."
- (c) "A complete bibliography on the writings of Patrick Henry and Benjamin Franklin may be obtained by sending 99 cents to the Revolutionary War Foundation, Box 100, Philadelphia, Pennsylvania."
- (d) "For ideas on flower arrangements similar to those discussed in the preceding broadcast of 'Jones' Flower Shop' send 50 cents and a self-addressed stamped envelope to Botanical Gardens, Box 100, Washington, D.C."

The following are examples of announcements regarding the sale of program related materials which will be deemed inconsistent with Section 73.621(e) of the Commission's Rules:

- (a) "For a booklet on additional ways to improve your home insulation, send \$2.00 to Box 100, Government Printing Office, Washington, D.C."
- (b) "For ideas on flower arrangements similar to those discussed in the preceding broadcast of 'Jones' Flower Shop', get Mr. Jones' new book at most fine garden stores."

NOTE 5: The limitations on credit announcements for in-kind contribution imposed by Section 73.621(g) shall not apply to program material for which production was completed prior to \_\_\_\_\_.

## APPENDIX B

I. It is proposed to amend Section 73.503 of the Commission's Rules as follows:

(a) It is proposed to amend Section 73.503(d) of the Rules by the addition of the following bracketed language:

(d) Each station shall furnish a nonprofit and noncommercial broadcast service. Noncommercial educational FM broadcast stations are subject to the provisions of § 73.289 to the extent they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others: however, no announcements promoting the sale of a product or service shall be broadcast in connection with any program [except that: (1) announcements regarding transitory events may inform the audience of facts concerning the event's occurrence, i.e., time, date, place and nature of event, and (2) announcements promoting the sale of products and services which may further an understanding and/or appreciation of a particular program may be made so long as the cost of the goods and/or services promoted is nominal and neither the licensee, program producer, program supplier or on-air personality has a financial interest in the subject goods and/or services.]

(b) It is proposed to redesignate Note 1 to Section 73.503 of the Rules as subsection (e) to Section 73.503, and to amend that Note by the addition of the following bracketed language:

Announcements of the producing or furnishing of programs, or the provision of funds for their production, may be made no more than twice, at the opening and at the close of any program, except that: (1) [where a program lasts twelve minutes or less only one such announcement, at either the opening or close of the program, shall be made and,] (2) where a program lasts longer than one hour an announcement may be made at hourly intervals during the program, [or at a natural break in programming as close to the hour as feasible,] if the last such announcement occurs at least 15 minutes before the announcement at the close of the program. (Remainder of subsection unchanged.)

(c) It is proposed to redesignate Note 2 to Section 73.503 of the Rules as subsection (f) to Section 73.503 and to amend that Note by deletion of the following language within the < > symbol and the addition of the following bracketed language:

Announcements may be made of [any] general [cash] contributions <of a substantial nature> [and of any in-kind contributions] which make possible the broadcast of programs for part, or all, of the day's schedule. Such announcements may be made at the opening and closing of the day or segment. <including all of those persons or organizations whose contributions are making possible the broadcast day or segment.> In addition, one such <general> contributor may be identified once <during> each hour of the day or segment, [however, no contributor may be identified in an hourly announcement more than once each day. Further, licensees may set aside two periods each day, of up to two minutes each, during which such contributors may be identified.] The provisions of <Note 1> [subsection (e)] of this section as to permissible contents apply to announcements under this <note> subsection.

(d) It is proposed to redesignate Note 3 to Section 73.503 of the Rules as subsection (g) to Section 73.503.

(e) It is proposed to redesignate Note 4 to Section 73.503 of the Rules as subsection (h) to Section 73.503 and to amend that Note by the deletion of the following language within the < > symbol and the addition of the following bracketed language:

The provisions of <Notes 1 and 2> [subsections (e) and (f)] of this section shall not apply during the broadcast times in which "auctions" are held to finance station operation. <Credit> Announcements during "auction" broadcasts [describing products or services at the time they are being auctioned] may identify particular products or services, [and the donor,] but shall not include promotion of products or services beyond that necessary for the specific auction purpose. [Auction underwriters may be acknowledged through aural credits giving the name of the underwriter (and a bona fide operating division if appropriate) at such times

as the licensee may choose during the auction period. An auction underwriter is any contributor of 30 percent or more, in money or goods and services, to one day's necessary auction expenses. Contributors of money or goods and services equalling less than 30 percent of one day's necessary auction expense may be identified during auction periods pursuant to subsection 73.503(f) of this Part. Auction activity may be broadcast on no more than ten days each calendar year and no more than one-half of any broadcast day may contain auction activity. Proceeds from all auction activity must be retained by the licensee for use in connection with its licensed facilities, except that proceeds derived from auction activity by one licensee may be used to support the broadcast activities of a commonly owned station or licensee. Over-the-air auction activity conducted by parties other than licensee are permitted so long as all proceeds, less reasonable administrative expenses related to the conduct of the auction, go to the licensee for use in connection with the licensee's licensed facilities.]

- (f) It is proposed to redesignate Note 5 to Section 73.503 of the Rules as subsection (i) to Section 73.503.
- (g) It is proposed to add a subsection (j) to Section 73.503 of the Rules to read as follows:

On-air fund-raising activities, excluding auctions, conducted for the benefit of noncommercial educational broadcast licensees or others may not consume more than ninety (90) broadcast hours in any one calendar year. Broadcast announcements of sixty (60) seconds or less urging support of fund-raising efforts conducted by non-licensee organizations not involving the purchase of goods and/or services shall not be counted in computing hours devoted to fund-raising activity sanctioned by this subsection.

II. It is proposed to amend Section 73.621 of the Commission's Rules as follows:

- (a) It is proposed to amend Section 73.621(e) of the Rules by the deletion of the following language within the < > symbol and the addition of the following bracketed language:
  - (e) Each station shall furnish a nonprofit and noncommercial broadcast service. <However> Noncommercial educational television stations shall be subject to the provisions of § 73.654 to the extent that they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others. <except that> However no announcements (visual or aural) promoting the sale of a product or service shall be broadcast in connection with any program [except that: (1) announcements regarding transitory events may inform the audience of facts concerning the events' occurrence, i.e., time, date, place and nature of event, and (2) announcements promoting the sale of products and services which may further an understanding and/or appreciation of a particular program may be made so long as the cost of the goods and/or services promoted is nominal and neither the licensee, program producer, program supplier or on-air personality has a financial interest in the subject goods and/or services.] <Provided, however,> [It is further provided] that where a sponsor's name or product appears on the visual image during the course of a simultaneous or rebroadcast program either on the backdrop or in similar form, the portions of the program showing such information need not be deleted.
- (b) It is proposed to redesignate Note 1 to Section 73.621 of the Rules as subsection (f) to Section 73.621, and to amend that Note by the addition of the following bracketed language:
 

Announcements of the producing or furnishing of programs, or the provision of funds for their production, may be made no more than twice, at the opening and at the close of any program, except that: (1) [where a program lasts twelve minutes or less only one such announcement, at either the opening or close of the program, shall be made and,] (2) where a program lasts longer than one hour an announcement may be made at hourly intervals during the program, [or at a natural break in programming as close to the hour as feasible,] if the last such announcement occurs at least 15 minutes before the announcement at the close of the program (Remainder of subsection unchanged.)
- (c) It is proposed to redesignate Note 2 to Section 73.621 of the Rules as subsection (g) to Section 73.621 and to amend that Note by deletion of the following language within the < > symbol and addition of the following bracketed language:

Announcements may be made of [any] general [cash] contributions <of a substantial nature> [and of any in-kind contributions] which make possible the broadcast of programs for part, or all, of the day's schedule. Such announcements may be made at the opening and closing of the day or segment. <including all of these persons or organizations whose contributions are making possible the broadcast day or segment.> In addition, one such <general> contributor may be identified once during each hour of the day or segment, [however, no contributor may be identified in an hourly announcement more than once each day. Further, licensees may set aside two periods, of up to two minutes each, during which such contributions may be identified.] The provisions of <Note 1> [subsection (f)] of this section as to permissible contents apply to announcements under this <note> subsection.