



PUBLIC NOTICE

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April 11, 1986

IN THE MATTER OF COMMISSION POLICY CONCERNING THE NONCOMMERCIAL NATURE OF EDUCATIONAL BROADCASTING STATIONS

The Commission has become aware of significant uncertainty and controversy concerning various aspects of Commission and statutory policy relating to commercial underwriting on noncommercial stations. As a consequence, we have reviewed the existing policies, focusing on five specific areas: (1) the broadcast of announcements relating to goods and services for which consideration is received by the station; (2) enhanced underwriting and donor announcements; (3) the offering of program-related materials; (4) the practice of hosts of children's programs urging the purchase of program related materials; and (5) the airing of foreign language programs by public broadcasters and the degree of control necessary to ensure compliance with Commission requirements.

ANNOUNCEMENTS PROMOTING THE SALE OF GOODS AND SERVICES

Section 399B of the Communications Act of 1934, as amended, and Sections 73.503(d) and 73.621(e) of our rules specifically proscribe the broadcast of announcements by public broadcast stations which promote the sale of goods and services of for-profit entities in return for consideration paid to the station. These rules, however, permit contributors of funds to the station to receive on-air acknowledgments. The Commission has articulated specific guidelines which emphasize the difference between permissible donor and underwriter announcements and commercial advertising. See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 97 FCC 2d 255 (1984) (hereinafter referred to as "1984 Order"); Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 90 FCC 2d 895 (1982) (hereinafter referred to as "1982 Order"); Second Report and Order, 86 FCC 2d 141 (1981); First Report and Order and Notice of Proposed Rulemaking, 69 FCC 2d 200 (1978).

Recent cases before the Commission indicate that some noncommercial broadcasters have aired outright commercial messages on behalf of profit

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making entities in violation of our rules and the statute. 1/ As our action in those cases attest, we will enforce our prohibition on the broadcast of commercial messages on behalf of profit making entities for which consideration is paid to the station. Information brought to the attention of the Commission regarding such practices will be scrutinized and licensees found to have engaged in them will be sanctioned.

ENHANCED UNDERWRITING AND DONOR ACKNOWLEDGMENTS

Beyond the airing of paid promotional announcements, our recent review of underwriting activities indicates that some public broadcasters may be airing donor and underwriter acknowledgments which exceed the Commission's guidelines. In light of these instances and an ongoing debate in the public broadcasting community on these issues, we believe that a brief statement concerning the obligations of public broadcasters with respect to donor and underwriting acknowledgments is appropriate. In March 1984, we relaxed our noncommercial policy to allow public broadcasters to expand or "enhance" the scope of their donor and underwriter acknowledgments to include (1) logograms or slogans which identify and do not promote, (2) location information, (3) value neutral descriptions of a product line or service, and (4) brand and trade names and product or service listings. 1984 Order at 263. That action was taken as another step in our ongoing effort to strike a reasonable balance between the financial needs of public broadcast stations and their obligation to provide an essentially noncommercial service. It was our view that "enhanced underwriting" would offer significant potential benefits to public broadcasting in terms of attracting additional business support and would thereby improve the financial self-sufficiency of the service without threatening its underlying noncommercial nature. In this regard, we

1/ For example, on October 25, 1985, the Commission issued Notices of Apparent Liability to the licensees of two noncommercial stations for repeatedly airing commercial messages in violation of the Communications Act and the Commission's rules. In addition, a letter of warning was issued that same day to the licensee of a third station for airing underwriting acknowledgments which contained comparative and qualitative descriptions of the donors' products and services and, therefore, exceeded Commission guidelines.

emphasized that such announcements could not include qualitative or comparative language and that the Order should not be construed as allowing advertisements as defined in Section 399B of the Communications Act. Id. 2/

We recognized in our 1982 Order that it may be difficult at times to distinguish between announcements that promote and those that identify. For that reason, we expressly stated that we expect public broadcast licensees to review their donor or underwriter acknowledgments and make reasonable good faith judgments as to whether they identify, rather than promote. 1982 Order at 911. We saw no purpose at that time, or at the time we adopted our 1984 Order, in fashioning rigid regulations or guidelines to ensure the noncommercial nature of public broadcasting, and we were concerned that such guidelines would inhibit public broadcasters' ability to seek and obtain the funds needed to present quality programming and to remain financially viable. It continues to be our view that the public broadcaster's good faith judgment must be the key element in meeting Congress' determination that the service should remain free of commercial and commercial-like matter. In response to requests for guidance, however, we will attempt to further clarify the guidelines applicable to public broadcasters' exercise of their discretion.

We reiterate that acknowledgments should be made for identification purposes only and should not promote the contributor's products, services or company. For example, logos or logograms used by corporations and businesses are permitted so long as they do not contain comparative or qualitative descriptions of the donor's products or services. Similarly, company slogans which contain general product-line descriptions are acceptable if not designed to be promotional in nature. Visual depictions of specific products are permissible. We also believe that the inclusion of a telephone number in an acknowledgment announcement is within these general guidelines and, therefore, permissible.

2/ Section 399B provides, in pertinent part:

- (a) For purpose of this section, the term 'advertisement' means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended--
 - (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
 - (2) to express the views of any person with respect to any matter of public importance or interest; or
 - (3) to support or oppose any candidate for public office.

Several examples of announcements that would clearly violate the rule may be helpful:

A. Announcements containing price information are not permissible. This would include any announcement of interest rate information or other indication of savings or value associated with the product. An example of such an announcement is:

- "7.7% interest rate available now."

B. Announcements containing a call to action are not permissible. Examples of such announcements are:

- "Stop by our showroom to see a model";

- "Try product X next time you buy oil."

C. Announcements containing an inducement to buy, sell, rent or lease are not permissible. Examples of such announcements are:

- "Six months' free service";

- "A bonus available this week";

- "Special gift for the first 50 visitors."

Additionally, examples of proscribed product messages can be seen in the instances where the Commission has assessed forfeitures or issued letters of warning for rule violations. 3/

We repeat that the Commission will continue to rely on the good faith determinations of public broadcasters in interpreting our noncommercialization guidelines. We emphasize, however, that we will review complaints and, in the event of clear abuses of discretion, will implement appropriate sanctions, including monetary forfeitures.

PROGRAM RELATED MATERIALS

We have reviewed the Commission's policies regarding the offering of program-related materials. We have looked carefully at this area because it has come to our attention that such offerings have been used by noncommercial licensees to raise funds for program acquisition purposes, a novel fund raising device.

3/ See supra, footnote 1. The following are representative and illustrative of the types of announcements found objectionable by the Commission:

[Music] . . . Genesee Beer . . . the great outdoors in a glass, talks with wildlife cameraman Scott Ransom: Working outdoors all the time sounds like a perfect life but it does have its disadvantages, like sitting with your camera and the mosquitoes for six hours to get one good shot at a beaver swimming. That's when I start dreaming about a nice campfire, dry clothes and a Genesee beer. Our one brewery makes it best . . . Genesee, the great outdoors in a glass. Genesee Brewing, Rochester.

What's the difference between a fine fur and an exquisite fur? You can always find the difference at KNOWLE'S FUR SHOP at 595 Highway 18 in Brunswick. For if you don't know furs you should always know your furrier. At Knowle's Fur Shop they manufacture furs, specializing in custom made furs with one of the largest selection of exquisite furs in stock. They also handle expert remodeling and repair work on their own premises as well as cleaning and glazing. So for that fur that stands above the rest it's Knowle's Fur Shop at 595 Highway 18 in Brunswick.

Production [of the program] has been made possible by grants from: A&J Luxury Limo Service. For a fabulous night on the town, spoil yourself or a client with a relaxing and comfortable evening in one of A&J's luxurious limosines featuring a retractable moon roof, color television, stereo, cellular telephone, intercom and wet bar. For the perfect way to enjoy a perfect and safe evening, call us at 360-8444.

Our 1982 Order dealt with the sale of program-related materials. It concluded that because Congress had approved direct promotional fundraising announcements sponsored by nonprofit organizations, public broadcasters could air announcements promoting program-related materials sold by nonprofit organizations, including the station itself. 1982 Order at 907. It is our belief that in order for the audience to be informed about the sponsor of these offerings, the nonprofit organization sponsoring the offering should be clearly identified in the announcement, a requirement in keeping with the mandate of Section 317 of the Communications Act and Section 73.1212 of our rules.

Guidelines covering announcements for the sale of program related materials by for-profit entities were not changed by our 1982 Order. Thus, such announcements are permitted so long as the licensee (1) receives no consideration for the announcement; and (2) the materials are offered on the basis of public interest considerations and not the private economic interests of the offeror; or (3) the price of the materials offered is only nominal. Second Report and Order, 86 FCC 2d at 152. As noted above, the nominal price requirement does not apply to offerings sponsored by nonprofit entities.

HOST SELLING

In a related matter, our attention has been drawn to what appears to be instances of "host selling" of program-related materials by some public broadcasters during children's programming. Host selling, a phenomenon previously limited to commercial television, involves the program host of a children's program actually delivering a promotional message in his character role on the program set or commenting on an advertisement in such a manner as to appear to endorse the product. On public broadcast stations the practice has occurred in the context of an offer of program-related materials by the program host and could occur in the context of fund-raising activities. In adopting our Children's Programming and Policy Statement, 4/ we found that the practice of host-selling tends to take unfair advantage of children and, therefore, is inappropriate and contrary to the licensee's obligation to operate in the public interest. 50 FCC 2d at 16. We cautioned commercial broadcast licensees against engaging in practices in the body of the program itself which promote products in a way that take unfair advantage of children. Information now available to the Commission indicates that some public broadcasters may be engaging in such practices. We see no rational basis for not applying this policy to public broadcasters. Noncommercial licensees are hereby cautioned to exercise care to ensure that the promotion of program-related goods or services during children's programs is in compliance with the Commission's policy against host-selling.

4/ 50 FCC 2d 1 (1974), recon. denied, 55 FCC 2d 691 (1975), affirmed sub. nom 564 F.d 458 (D.C. Cir. 1977). See also Children's Television Programming and Advertising Practices, 96 FCC 2d 634 (1984).

FOREIGN LANGUAGE PROGRAMMING

Finally, the Commission is aware that some public broadcast licensees regularly air foreign language programming. Often this programming includes underwriting announcements or credits that feature products and services which appear to be inconsistent with Commission rules and policy proscribing paid promotional announcements. Based on the number of complaints and staff review of specific foreign language programs, it appears that some noncommercial licensees may be falling short of their responsibility to establish and maintain internal procedures to ensure sufficient familiarity with or monitoring of foreign language programs to know what is being broadcast and whether it conforms with the station's policies and Commission requirements. See Licensee Responsibility to Exercise Adequate Controls Over Foreign Language Programs, 39 FCC 2d 1037 (1973). Licensees are again reminded of their responsibility in this regard and are cautioned that failure to maintain adequate controls over foreign language programming may raise serious questions as to the station's operation in the public interest. While the Commission does not require total pre-screening of foreign language broadcasts by licensees, we do expect that a sufficient monitoring program will be undertaken. As a minimum, periodic monitoring by foreign language speaking persons should be performed on a regular but random basis in order to assure licensee control of programming the licensee may not otherwise understand. Additionally, licensees are expected to take appropriate action when complaints are filed by the public.

Action by the Commission April 10, 1986. Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

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For further information contact Thomas Wyatt at (202) 632-3860.