

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
<b>SOUTHERN RHODE ISLAND</b>	)	File No. 99070036
<b>PUBLIC RADIO BROADCASTING, INC.</b>	)	
	)	NAL/Acct. No. x32080016
Licensee, Noncommercial Educational Station WBLQ(FM)	)	
Westerly, Rhode Island	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 5, 2000**

**Released: May 9, 2000**

By the Chief, Enforcement Bureau:

**I. Introduction**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Southern Rhode Island Public Radio Broadcasting, Inc. (“Southern Rhode Island”), licensee of noncommercial educational station WBLQ(FM), has apparently violated Section 399B of the Communications Act of 1934, as amended (“the Act”), and Section 73.503 of the Commission's rules,<sup>1</sup> by broadcasting impermissible donor and underwriting announcements. We conclude that Southern Rhode Island is apparently liable for a forfeiture in the amount of one thousand dollars (\$1,000).

**II. Background**

2. In this case, we received information suggesting that various announcements broadcast by Station WBLQ(FM) appear to promote the products, services or businesses of for-profit enterprises. In response to this information, we issued a letter of inquiry to Southern Rhode Island dated September 21, 1999.

3. In its October 21, 1999, reply, Southern Rhode Island concedes that the sponsored underwriting acknowledgements described in our letter of inquiry were broadcast. Southern Rhode Island argues, however, that because the cited announcements contained factually accurate information, they are not promotional in nature, and were broadcast in accordance with the applicable Commission guidelines and the “good faith” discretion afforded noncommercial broadcasters. The licensee also believes that the announcement made for King’s Cyclery is permissible because its text

<sup>1</sup> 47 U.S.C. Sec. 399b and 47 C.F.R. Sec. 73.503.

does not compare, call to action, or mention price.<sup>2</sup> Finally, Southern Rhode Island contends that since the content of its underwriting announcements is similar to that of other local noncommercial broadcasters, it should not be punished even if its broadcasts are found to be in violation of the pertinent Commission rules.

### III. Discussion

4. Section 399B of the Act, as implemented by Section 73.503 of the Commission's rules, prohibits public broadcast stations from broadcasting advertisements. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities. 47 U.S.C. § 399B. Although contributors of funds to a noncommercial station may receive on-air acknowledgements, the Commission has unequivocally stated that such acknowledgements may be made for identification purposes only and should not promote the contributor's products, services, or business. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. See Public Notice, "In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations" (1986), republished, 7 FCC Rcd 827 (1992). The Commission has "recognize[d] that it may be difficult to distinguish at times between announcements that promote and those that identify. We only expect our public broadcast licensees to exercise their reasonable, good faith judgments in this regard." Xavier University, 5 FCC Rcd 4920 (1990) (quoting Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, 90 FCC 2d 895 (1982)). As the Commission made clear in Xavier, announcements will not be deemed to be impermissible where the "language at issue . . . is not clearly promotional as opposed to identifying and . . . the licensee exercised reasonable, good faith judgment regarding the language. . . ."

5. We have reviewed the record in light of the "clearly promotional/good faith" standard set forth by the Commission in Xavier. We find that the station's broadcast of the announcements identified in the Attachment to this Notice of Apparent Liability exceeded what is permissible under Xavier, and that Southern Rhode Island broadcast impermissible advertisements for the benefit of for-profit entities, in apparent violation of Section 399B of the Act, and Section 73.503 of the Commission's rules. In this regard, the identified announcements contain clearly promotional references that provide prohibited price information, product or service comparisons, and qualitative descriptions, and exceed the "good faith" discretion afforded under Xavier.

6. Southern Rhode Island argues that it employed "good faith" in formulating the subject announcements based on its understanding that announcements that convey factually accurate information are permissible, and that references to discounts are acceptable, so long as they do not specifically mention the price. Contrary to the licensee's assertion, the use of comparative, qualitative descriptive language is not rendered non-promotional and permissible merely because the message

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<sup>2</sup> The licensee further argues that because broadcast references to "discounts" offered by underwriters do not contain specific price information, they should be deemed permissible.

conveyed is factually accurate. Moreover, prohibited price information includes not only specific price information, but also sponsor discounts, and products or services offered by the sponsor at no cost or “free.” See Xavier; Public Notice.<sup>3</sup> Viewed in their full context, the attached segments clearly go well beyond “identification” as permitted in Xavier. They contain specific product descriptions, suggestions of price discounts, calls to action and clear inducements encouraging listeners to buy or try particular products. Thus, for example, in the station’s live remote broadcast from Urso’s Auto Village, the underwriter’s inducements, such as “enormous discounts” on merchandise, are recited in connection with the event. Such inducements appear to promote impermissibly the for-profit entity’s sales event. That other local noncommercial stations have broadcast announcements similar to those in question in no way excuses or mitigates the apparent instant violations.

7. We are also concerned that the licensee has not taken corrective measures regarding its defective underwriting announcements. Although Southern Rhode Island asserts that it is not fully versed regarding the Commission’s noncommercial rules, it is nevertheless responsible for complying with them. The Commission has consistently held that ignorance of the pertinent statute and rules will not excuse a licensee from its obligation to operate a station in compliance with the terms of its authorization and the Commission’s rules. Empire Broadcasting Corp., 25 FCC 2d 68 (1970). Additionally, licensees cannot be excused from responsibility for the acts of their managers or employees. Id. Consequently, we find that Southern Rhode Island has apparently violated Section 399B of the Communications Act and Section 73.503 of the Commission’s rules regarding permissible donor and underwriting announcements on noncommercial educational stations, for the reasons set forth above.<sup>4</sup> From the information supplied, it appears that the announcements were made on behalf of five underwriters identified in the Attachment, broadcast repeatedly since January, 1999, and were aired in exchange for monetary or trade remuneration.

8. In assessing this monetary forfeiture, we have taken into account the nature, circumstances, extent and gravity of the violations, the degree of culpability, as well as the station’s prior enforcement history. Section 503(b)(2)(D) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b)(2)(D). We note that the Forfeiture Policy Statement<sup>5</sup> provides for a forfeiture of \$2,000 as the base amount for violation of the enhanced underwriting requirements. In this case, we believe that a forfeiture of \$1,000 is appropriate due to the prior unblemished enforcement record of the licensee.

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<sup>3</sup> On page 4 of the Public Notice, the Commission also stated that announcements containing an inducement to buy, sell, rent or lease are not permissible.

<sup>4</sup> Compare Xavier, supra, where the Commission did not impose a sanction for a single prohibited announcement of limited duration because, among other things, the licensee took prompt corrective action in response to the Commission’s initial inquiry.

<sup>5</sup> In the Matter of the Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

#### IV. Ordering Clauses

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,<sup>6</sup> Southern Rhode Island Public Radio Broadcasting, Inc., licensee, noncommercial educational Station WBLQ(FM), Westerly, Rhode Island, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of One Thousand Dollars (\$1,000.00) for willfully and repeatedly violating 47 U.S.C. Section 399b and Section 73.503 of the Commission's rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Southern Rhode Island SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number of this proceeding.

12. The response, if any, must be mailed to the Commission's Investigations and Hearings Division, Enforcement Bureau, 445 Twelfth Street, S.W., Room 3 B443, Washington, D.C. 20554, and MUST INCLUDE the file number referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 Twelfth Street, S.W., Washington, D.C.<sup>7</sup>

15. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to Southern Rhode Island Public Radio Broadcasting, Inc., 4 Canal Street, Westerly, Rhode Island 02891.

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<sup>6</sup> See 47 C.F.R. Secs. 0.111, 0.311 and 1.80.

<sup>7</sup> See 47 C.F.R. Sec. 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

**ATTACHMENT**

The following text was taken from audiotapes of the announcements broadcast May 28, 1999 and June 25, 1999.

1. King's Cyclery (75 seconds)

[Announcement spoken over musical background.]

Steven: Hi, I am Steven King from "King's Cyclery" in Spindrift Village, Dunn's Corner. The warm weather is here, and we are ready with the latest in bicycles, gear and accessories. One of our newest recumbent bicycles is "Bikee." In my opinion, it's a very relaxing and comfortable bike, in which one sits on a soft-padded chair with handlebars and peddles in front. The other new recumbent which WBLQ's own Chris DiPaulo experienced is "Vision."

Steven: Chris, how did you like it?

Chris: Oh, Steve, I loved it. Like "Bikee," it's relaxing and comfortable. But, as you know, Steve, I could stand to lose a few pounds. "Vision" is perfect for me because it's also good exercise. You can adjust tension and the handlebars are uniquely placed right next to where I sit, and the peddles are out in front.

Steven: Well, there you have it. You can find these recumbent bikes and all other kinds of bicycles, gear and accessories as well as a model-train department at "King's Cyclery" in the Spindrift Village in Dunn's Corner. And I am proud to be supporting local community radio on 88.1 WBLQ.

Chris: Steve, what is your phone number.

Steven: It's funny you should ask, Chris. It's 322-6005.

2. Nigrelli's Jewelry (55 seconds)

For over 50 years, locals have depended on "Nigrelli's Jewelry" in downtown Westerly for service, repairs, and sales of jewelry. "Nigrelli's Jewelry" provides all kinds of repairs, including repairing those wrist-bands on watches, and other watch repairs. They have watch batteries, they also do all kinds of jewelry repairs including ring repairs, sizing and more. The phone number at "Nigrelli's Jewelry" is 596-4421. That's 596-4421. "Nigrelli's Jewelry" reminds you that the birthstone for June is "pearl," and all pearl items are available at a different price at "Nigrelli's Jewelry." That's "Nigrelli's Jewelry," 27 High Street, in downtown Westerly. Serving the local area for over 50 years. "Nigrelli's Jewelry," another proud contributor to local programming on 88.1 WBLQ.

3. Urso's Auto Village (65 seconds)

[The following are prefatory lyrics set to music]:

It's the excitement, it's the freedom, it's the feeling of pride, when you're ready for adventure, come ride. The open road is calling, no one knows it like we do. And we've got all the gear to make it happen for you. 'Cause once you've found freedom, it's a feeling for life . . . it's the excitement, it's the freedom, it's the feeling of pride, when you're ready for adventure, come ride.

[The following is the text of the announcement itself]:

Rich Urso and David page are ready for summer. "Urso's Auto Village," located on Granite Street on Route 1, Westerly, has sports cars, family vehicles, sport utilities and foreign and domestic vehicles. There are enormous discounts available. For more information, you can call 348-0200. Join Chris DiPaulo and Ken Collins for a live broadcast on Saturday June 26, 1999. There'll be give-aways and lots of fun. That's "Urso's Auto village," located on Granite Street on Route 1, Westerly, 348-0200.

[Closing repeats lyrics and music.]

4. MP's Automotive Electronics (55 seconds)

[Announcement spoken over musical background.]

The summer months are unofficially here. Just picture yourself driving along Atlantic Avenue on a beautiful summer's night, sunroof down, talking on your car phone, and cranking out the tunes in your superb sound system without a care in the world. Sounds nice, but a common concern for this scenario is – "can I afford all of this?"

"MP's of Westerly," the car phone store next to "Auto Zone" on Granite Street, makes it easy. Craig can help you find a sound system and fix you up with a sunroof that will fit your budget. The cell-phones have a fixed monthly rate, in both Connecticut and Rhode Island, with digital choice and choice single-rate plans. MP's of Westerly, the car phone store next to "Auto Zone" on Granite Street, 348-3071. Another proud contributor to programming on WBLQ.

5. Villa Trombino Restaurant & Lounge (75 seconds)

[Announcement spoken over musical background.]

What's the matter? Are you afraid you going to lose her? Well, don't worry anymore. "The Villa Trombino" can help. They've got dinners for two at "The Villa Trombino." That's right,

dinner for two. Sure to save a long-lasting relationship. "The Villa Trombino" has all kinds of dinners for two, like prime-rib of beef, shrimp frantiabile, fresh veal parmesan, chicken marcella, stuffed lobsters, surf and turf. And everything comes with potato, vegetable and pasta. They also have premium bottles of wine, like Cinella's Chardonnay, Ernest and Julio Gallo's White Zinfandel.

"The Villa Trombino Restaurant." Dinners for two. Take your honey out, you can do it at "The Villa Trombino." "The Villa Trombino" has been serving the local area for over 25 years. Bennie and Anna Trombino have been cooking up home-style meals, just like the old country, since the beginning. And the tradition continues. They have "early bird" specials at 4 until 6 p.m., and their bar's open most nights 'til 1:00 a.m. "The Villa Trombino," in business for over 25 years, Route 3, just 2 ½ miles from downtown Westerly. "The Villa Trombino," another proud contributor to local programming on WBLQ.