

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

In the Matter of)	
)	
DAYSTAR PUBLIC RADIO, INC.)	EB-01-IH-0484
)	Facility #9714
Licensee of Noncommercial Educational Station)	
WKSG(FM), Cedar Creek, Florida)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 2002

Released: July 8, 2002

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. Introduction

1. In this Order, we admonish Daystar Public Radio, Inc. ("Daystar"), licensee of noncommercial educational station WKSG(FM), Cedar Creek, Florida, for broadcasting advertisements and conducting impermissible fundraising in violation of Section 399B of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 399b, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503. Daystar responded to our April 30, 2002, inquiry by its submission filed May 17, 2002. We have carefully reviewed the record, including Daystar's response, and conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions. While we believe that no monetary sanction is warranted at this time, we find that an admonishment is necessary to redress the statutory and rule violations.

II. Background

2. 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(a). As noted above, noncommercial educational stations may not broadcast advertisements. Although contributors of funds to noncommercial stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.

3. 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) ("Public Notice"). At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area. *See Xavier University*, 5 FCC Rcd 4920 (1990).

4. In addition, the Commission has narrowly construed what constitutes permissible fundraising on noncommercial stations. Specifically, the Commission has held that, in the

absence of a waiver, noncommercial stations are prohibited from conducting any fundraising activity which substantially alters or suspends regular programming and is designed to raise support for any entity other than the station itself, and for purposes other than station operations. *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations ("Policy Statement")*, 90 FCC 2d 895, 907 (1982), *recon. granted*, 97 FCC 2d 255, 264-65 (1984); *Ohio State University*, 38 RR 2d 22 (1976).

III. Discussion

5. The key facts in this case are not in dispute. Daystar admits that the station broadcast the five sponsored announcements described in our letter of inquiry and set forth in the attached transcript; that the sponsors are for-profit entities; and that it received consideration for airing the messages. The station also acknowledges that it broadcast a seventeen-minute interview with the proprietor of for-profit EZ Access Transporters, Inc., during which the station announcer solicited investment funds to assist the newly founded company in producing its product, the EZ Tilter Platform. Moreover, Daystar acknowledges that the announcements, "as a whole," do not comply with Section 399B of the Act, and the pertinent Commission policies and rules. It also states that the interview "violate[s] FCC policies." Daystar contends that it assumed its management "better understood" the appropriate "parameters of 'on-air acknowledgments'" and was disappointed to discover management's grasp of this issue was faulty. The licensee asserts that it has since taken steps to ensure underwriting rule compliance by revising the station's donor acknowledgment policy and practice. It also states that the fundraising interview "would never get by the present criteria of WKSG policies."

6. We find that the subject underwriting announcements exceed the bounds of what is permissible under Section 399B of the Act, and the Commission's pertinent rules and policies, in light of the "good-faith" discretion afforded licensees under *Xavier, supra*. In addition, we find that Daystar engaged in impermissible fundraising through the seventeen-minute interview with the proprietor of for-profit EZ Access Transporters, Inc., during which the station announcer solicited investment funds to assist the newly founded company in producing its product, the EZ Tilter Platform. In this regard, we note that the fact that the licensee did not receive consideration from broadcasting these fundraising pleas is not relevant to the question of whether the fundraising appeal itself was appropriate. Solicitations of the type conducted here are prohibited.

IV. Ordering Clauses

7. In view of the foregoing, we conclude that a sanction is appropriate. Accordingly, IT IS ORDERED that Daystar Public Radio, Inc., licensee of noncommercial educational station WKSG(FM), Cedar Creek, Florida, IS ADMONISHED for broadcasting advertisements and for conducting impermissible fundraising in violation of Section 399B of the Act, 47 U.S.C. § 399B, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503.

8. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order shall be sent, by Certified Mail -- Return Receipt Requested, to Daystar Public Radio, Inc., 1403 Indian River Avenue, Titusville, Florida, 32780.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau

Attachment

ATTACHMENT

The following text was transcribed from audio-taped recordings of underwriting announcements broadcast on WKSG(FM), Cedar Creek, Florida, on July 30, 2001:

1. Precision Air Heating and Air Conditioning (60 seconds.)

For every system purchased, Precision Air Heating and Air Conditioning will donate \$100.00 to the Bullet-Proof Vest Fund, Inc., a not-for-profit corporation. Donations may be made at any one of the eleven locations of Sun Trust Bank. . . . Again, thank you to Dave Leonard at Precision Air, home of the “Trane Home Heating and Cooling Systems.” Precision Air focuses on service, and when you call, you will speak to a live service representative, 24 hours a day, seven days a week. That’s Precision Air Heating and Air Conditioning, 3330 S.E. 58th Avenue. . . . The phone number is 352-624-4000. That’s 624-4000. And when you call, they haul. AC decision? Call Precision.

2. Lord’s Gym (90 seconds.)

Why settle for being merely physically fit when you can be spiritually fit as well? At Lord’s Gym, we believe in giving you the tools you need to be the person you always knew you could be. It’s more than the recumbent bikes, the elliptical trainers, and stair-steppers. We’re revolutionizing the fitness industry with our Christian fitness center, right here in north central Florida.

Lord’s Gym is more than you expect. We adhere to a different and, we feel, more complete vision of what it means to be “in shape.” The staff at Lord’s Gym is here to help you. Our personal trainers offer comprehensive one-on-one training sessions, and they look forward to helping you maximize your potential—inside and out.

And don’t forget Kid’s Power. The exercise program just for kids, aged 6-12. It’s a circuit training workout. Kid’s Power is a comprehensive fitness program for children aged 6-12 years old. Non-competitive games, activities, are implemented in a fast-paced 45-minute class. As many as 20 children can participate in Kid’s Power. It’s Kid’s Power, growing strong together, at Lord’s Gym. Located at 2467 S.W. 27th Avenue, in the Shady Oaks Plaza. The phone number at Lord’s Gym is 352-629-7757.

3. All-County Plumbing (45 seconds.)

I want to say thank you to my friends at All-County Plumbing. . . . The entire crew out there is just something special. All-County Plumbing specializes in repairs, remodels, new construction, 24-hour service, sewer and drain cleaning. They are Marion County’s premier drain surgeons. That’s right—you call them at 687-0806. 687-0806. You call—they come. They’ll be wearing the white heats because they’re good guys. And you know, good guys always wear the white hats.

4. Sears Hearing-Aid Center (90 seconds.)

[We] would like to say thank you to the Sears Hearing-Aid Center for their continued support of Daystar Radio. Sears Hearing-Aid Center is located in the sears Store in Paddock Mall in Ocala,

Florida. Sears Hearing-Aid Center offers the Miracle Ear Hearing-Aid System. Miracle Ear has been in business since 1947 offering unparalleled service to the hearing impaired for over half a century. Sears Hearing-Aid Center is a family-owned and operated business priding itself on its professional and personal one-on-one service. And let me say that excellence is not expensive, it's priceless. Ricky and Deidre Richardson along with Ricky's twin brother Dicky promise that they will make your visit and testing an absolutely pleasant experience. Guaranteed. It's the Sears Hearing-Aid Center in the Sears Store in the Paddock Mall in Ocala, Florida. The phone number in Ocala is 352-237-1665.

5. Hiers-Baxley Funeral Services (90 seconds.)

Honor to those you love is the highest priority of Hiers-Baxley Funeral Services. Understanding and guidance are essential tools of the Hiers-Baxley Funeral Services professional staff. Hiers-Baxley Funeral Services is a place of family. We are proud to be Marion County's oldest business still in operation. The Hiers and Baxley families have given our company the strength to remain the only independent funeral service provider in north central Florida, who offers your family complete funeral, crematory, and advance-planning services. Hiers-Baxley Funeral Services has been serving families since 1885 and will continue to do so for generations to come. Hiers-Baxley Funeral Services – when trust matters most.