

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

In the Matter of
CALVARY BIBLE COLLEGE
Licensee of Noncommercial Educational Station
KLJC(FM), Kansas City, Missouri
EB-02-IH-0345
Facility #8401

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 2002

Released: October 2, 2002

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Order, we admonish Calvary Bible College ("Calvary"), licensee of noncommercial educational station KLJC(FM), Kansas City, Missouri, 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. Based on our review of the facts and circumstances of this case, we 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). 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 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. Notwithstanding the above, the Commission has permitted announcements made to promote "transitory events" occurring in licensee service areas such as local plays, movies or

concerts, without regard to whether the events are sponsored by for-profit or not-for-profit entities, as long as the announcements are not made in return for consideration. *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations ("Policy Statement")*, 90 FCC 2d 895, 911 (1982), *recon. granted*, 97 FCC 2d 255, 264-65 (1984); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations ("Second Report and Order")*, 86 FCC 2d 141, 151 (1981).

III. Discussion

5. *The Underwriting Announcements.* We received recorded evidence of numerous announcements, allegedly broadcast by KLJC(FM) on March 27, 2002, that appeared to promote the products or services of presumably for-profit entities. By inquiry letter dated May 31, 2002, we asked Calvary to comment on announcements made on behalf of underwriters that included The Veggie Tales' Show, Fernando Ortega's "The Storm Tour" Concert, Wilson & Associates, and Burrow Photography. These announcements are alleged to contravene the statute, as implemented and interpreted by applicable Commission rules, precedent and policy.

6. The key facts in this case are not in dispute. In its June 20, 2002, response, Calvary admitted that the station broadcast the four 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. While Calvary acknowledges that the announcements, from a general standpoint, "may not have been within the Commission's guidelines," it argues that we should consider as mitigating the fact that their broadcast was made in "ignorance" and not "intentional or a blatant disregard" of the pertinent Commission rules and policies. Calvary further represents that it has since taken measures to "clarify and improve its underwriting policies."

7. In addition, Calvary argues that the announcements made on behalf of The Veggie Tales Show and Fernando Ortega/Watermark's "The Storm Tour" were not broadcast "solely for remuneration" but were aired in order to inform listeners about these locally happening events consistent with the "transitory event exception" contemplated in the *Second Report and Order*. Calvary also argues that the fact that the events took place in a non-profit venue, First Baptist Church of Raytown, mitigates any rule violation that may have occurred. Finally, Calvary questions why we inquired concerning the Burrow Photography announcement, which it regards as permissible.

8. We find that all of 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*, for the reason that they encourage or invite business patronage, make prohibited price references, or depict the underwriters in a comparative and qualitative manner. We reject Calvary's argument that its concert events announcements were broadcast consistent with the "transitory event exception" cited above. In this case, the admitted fact that the licensee received donations from the concerts' for-profit promoters, \$1,500 from The Veggie Tales Show, and \$2,359 from Fernando Ortega/Watermark's "The Storm Tour," along with the circumstance that the announcements were aired by the station repeatedly five to six weeks in advance of the events, belies any assertion that they were based on public-spirited determinations rather than the licensee's private economic considerations. *See Policy Statement*, at 911; *see also Second Report and Order*, at 151. Moreover, we do not consider it significant in this case that the concerts took place at a non-profit venue. *See, e.g., In re Isothermal Community College (WNCW(FM))*, 16 FCC Rcd 21360 (EB 2001) (where the fact that concert event was "sponsored" by not-for-profit entity was found immaterial to the issue of compliance with

Section 399B because ticket proceeds directly benefited a for-profit entity).¹ More importantly, Calvary has conceded that the concert events themselves directly benefited for-profit concerns. Consequently, we reject any suggestion that Calvary's broadcast promotion of the concerts was permissible under Section 399B of the Act.

9. We next find that the announcement made on behalf of Burrow Photography appears to be impermissibly promotional because it represents that its proprietor is a member of the Professional Photographers of America, which suggests a favorable professional qualification or comparative distinction. *See Tri-State Inspirational Broadcasting Corporation*, 16 FCC Rcd 16800 (EB 2001) *citing Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to Station KOUZ(FM)* (July 12, 2000)(where use of the phrase "ICAR gold-class certification" to describe underwriter's service qualifications was found impermissible). We further find that the announcement made on behalf of Wilson & Associates was promotional because it improperly attempted to induce business patronage by referring to its firm's "reduced rates" on services and products. *See Public Notice*.

10. Finally, Calvary's professed ignorance of Commission underwriting policy is not a mitigating factor warranting its excusal from liability for any sanction we impose. Licensees are responsible for learning and complying with the statutes and rules administered by the Commission. *See In the Matter of Rego, Inc.*, 16 FCC Rcd 16795, 16797 (EB 2001), *citing Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970).

11. *Sanction*. In view of the foregoing, we conclude that a sanction is appropriate. However, we do not believe a monetary sanction is necessary to redress the instant rule violations, and instead conclude that an admonishment is sufficient at this time. *See Note to 47 C.F.R. § 1.80(b)(4)*.

IV. Ordering Clauses

12. Accordingly, IT IS ORDERED that Calvary Bible College, licensee of noncommercial educational station KLJC(FM), Kansas City, Missouri, IS ADMONISHED for broadcasting advertisements 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.

13. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Calvary Bible College, 15800 Calvary Road, Kansas City, Missouri 64147-1341.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Attachment

¹ Petition seeking reconsideration on other grounds is currently pending.

ATTACHMENT

The following text was transcribed from audio-taped recordings of underwriting announcements broadcast on KLJC(FM), Kansas City, Missouri, during the period March 11, 2002, through April 19, 2002:

1. The Veggie Tales Show (60 seconds.)

First Voice: Welcome. It's Veggie Tales like you've never seen them before. Live on stage, April 16th through the 21st at the Midland Theater. Have we got a show for you!

Second Voice: Hi kids! I'm Bob the Tomato!

Third Voice: And I'm Larry the Cucumber!

First Voice: That's right. Join Bob, Larry and all their veggie friends for a first ever live show. Tickets are available at Ticketmasters Outlets and the Midland Theater box office. 816-931-3330. Or online at Ticketmasters.com. It's the award-winning Veggie Tales, live on stage April 16th through the 21st at the Midland Theater. Call 816-931-3330. It's Veggie Tales live!

2. Fernando Ortega's "The Storm Tour" Concert (60 seconds.)

Two gifted artists; one extraordinary concert. Fernando Ortega's "The Storm Tour," with special guest, Watermark. Together, on one stage, Fernando Ortega and Watermark, performing their best-loved hits. Plus, songs from Fernando's new album, "Storm." And songs from Watermark's new album, "Constant." Fernando Ortega and Watermark, in one incredible night of music, Friday, April 19th at the First Baptist Church of Raytown. Calvary 88.5 KLJC welcomes Fernando Ortega and Watermark in concert. Tickets available at Christian bookstores or online at christianhappenings.com. Fernando Ortega at the First Baptist Church of Raytown, Friday, April 19th at 7:30 p.m.

3. Wilson & Associates (30 seconds.)

For their financial support of Calvary 88.5, we wish to thank Wilson & Associates, providers of dental, vision, prescription and chiropractic care membership plans. Wilson & Associates links with retailers and doctors' offices for reduced rates on services and products. 913-768-9852. Full or part-time positions available as representatives; not requiring buying or selling. Wilson & Associates, 913-768-9852.

4. Burrow Photography (30 seconds.)

Calvary 88.5 thanks Burrow Photography for their support. Jeff Burrow, a Calvary graduate, has owned and operated Burrow Photography for over seven years. Jeff can be reached at 816-322-9263. Jeff is a member of the Professional Photographers of America, and specializes in weddings, family portraits, and services, either on location or in-studio. 816-322-9263.

