

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

In the Matter of)	
)	File No. EB-03-IH-0333
FORT WAYNE PUBLIC TELEVISION,)	Acct. No. 200532080006
INC.)	FRN 0007158843
)	Facility ID # 22108
Licensee of Noncommercial Educational)	
Television Station WFWA(TV)/DT, Fort)	
Wayne, Indiana)	

ORDER

Adopted: October 21, 2004

Released: October 22, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation by the Enforcement Bureau (the "Bureau") into the possible violation by Fort Wayne Public Television, Inc. ("Fort Wayne"), licensee of noncommercial educational television Station WFWA(TV)/DT, Fort Wayne, Indiana, of section 399B of the Communications Act of 1934, as amended,¹ and section 73.621(d) of the Commission's rules,² in connection with the broadcast by Fort Wayne of underwriting acknowledgments over Station WFWA(TV)/DT.

2. The Bureau and Fort Wayne have negotiated the terms of the Consent Decree, a copy of which is attached hereto and incorporated by reference. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by approving the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that there are no substantial or material questions of fact as to whether Fort Wayne possesses the basic qualifications, including character qualifications, to be or remain a Commission licensee.

3. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and the authority delegated by sections 0.111

¹ 47 U.S.C. § 399b.

² 47 C.F.R. § 73.621.

³ 47 U.S.C. § 154(i).

and 0.311 of the Commission's rules,⁴ the attached Consent Decree IS ADOPTED.

4. IT IS FURTHER ORDERED that the confidential complaint dated June 23, 2003, IS DISMISSED.

5. IT IS FURTHER ORDERED that the referenced investigation IS TERMINATED.

6. IT IS FURTHER ORDERED that copies of this Order shall be sent by regular first class mail and certified mail - return receipt requested, to Fort Wayne Public Television, Inc., 2501 East Coliseum Boulevard, Fort Wayne, Indiana 46805, and to its counsel, Richard Bodorff, Esq., Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁴ 47 C.F.R. §§ 0.111, 0.311.

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, and Fort Wayne Public Television, Inc., by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of resolving and terminating the Enforcement Bureau's investigation into possible violations of section 399B of the Communications Act of 1934, as amended, 47 U.S.C. 399b, in connection with Fort Wayne Public Television, Inc.'s broadcast of underwriting acknowledgments over noncommercial educational television Station WFWA(TV)/DT, Fort Wayne, Indiana.

2. For the purposes of this Consent Decree, the following definitions apply:

- a) The "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*;
- b) "Adopting Order" or "Order" means an order of the Enforcement Bureau adopting this Consent Decree;
- c) The "Bureau" means the Enforcement Bureau of the Federal Communications Commission;
- d) The "Commission" or "FCC" means the Federal Communications Commission;
- e) "Complaint" means the confidential complaint filed against Fort Wayne dated June 23, 2003;
- f) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- g) "Final Order" means the status of the Adopting Order after the period for administrative and judicial review has lapsed;
- h) "Fort Wayne" means Fort Wayne Public Television, Inc., the licensee of noncommercial educational television Station WFWA(TV)/DT, Fort Wayne, Indiana, their parents, subsidiaries, divisions and affiliates, and each of their respective officers, directors, employees, agents, representatives, or any other person acting or purporting to act on behalf of Fort Wayne or their successors or assigns;
- i) "Investigation" means the investigation of the allegations contained in the Complaint, including the letter of investigation issued by the Bureau to Fort Wayne on May 21, 2004;
- j) "Parties" means Fort Wayne and the Bureau;

- k) "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations; and
- l) "Underwriting Laws" means section 399B of the Communications Act of 1934, 47 U.S.C. § 399B, and section 73.621(d) of the Commission's rules, 47 C.F.R. § 73.621(d).

I. Background

3. The Bureau received the Complaint alleging that Fort Wayne has broadcast certain material in violation of the Underwriting Laws over noncommercial educational television Station WFWA(TV)/DT. The Bureau thereafter commenced an Investigation to determine whether Fort Wayne may have violated section 399B of the Act and section 73.621(d) of the Commission's rules in connection with such broadcasts. Both the Bureau and Fort Wayne acknowledge that any proceeding that might result from the Investigation will be time consuming and will require the expenditure of public and private resources.

II. Terms of Settlement

4. In accordance with the terms of this Consent Decree, the Parties agree to the following terms, conditions, and procedures.

5. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.

6. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. Fort Wayne agrees that the Bureau has jurisdiction over the matters that are the subject of this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. As part of the Adopting Order, the Bureau shall terminate the Investigation and shall dismiss with prejudice the Complaint. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Fort Wayne, or Station WFWA(TV)/DT, based in whole or in part on (i) the Investigation, (ii) the Complaint, (iii) any other similar complaints alleging violation by Fort Wayne of the Underwriting Laws, with respect to any broadcast of any of the announcements specified in the Complaint occurring prior to the Effective Date, or (iv) the allegations contained in any of the foregoing. The Bureau agrees that, in the absence of material new evidence, it will not, on its own motion, initiate or

recommend to the Commission, any new proceeding, formal or informal, regarding the matters discussed in paragraph 3, above, with regard to broadcasts prior to the Effective Date. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in this Investigation prior to the Effective Date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against Fort Wayne with respect to its basic qualifications to be or remain a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against Fort Wayne, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's rules, consistent with the provisions of this Consent Decree.

9. Fort Wayne admits, solely for the purpose of this Consent Decree and for FCC civil enforcement purposes, and in express reliance on the provisions of Paragraph 8 hereof, that the underwriting announcements at issue in the Investigation (other than the announcements aired with respect to AquaTek and the not-for-profit enterprises) are in violation of the Underwriting Laws. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree is breached by the Bureau, or is invalidated or modified to Fort Wayne's prejudice by the Commission or by any court, then the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Fort Wayne shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any announcements broadcast on Station WFWA(TV)/DT.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Bureau's Investigation of the matters discussed in paragraph 3, above.

11. In consideration of the Bureau's termination of its Investigation into these matters, Fort Wayne agrees to the terms set forth herein.

12. Fort Wayne agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$1,000.00 within five (5) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

13. As a further condition to this agreement, Fort Wayne will institute and follow the terms of the Compliance Plan identified in the Attachment to this Consent Decree within thirty (30) days of the Effective Date.

14. Fort Wayne agrees that it is required to comply with each individual

condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Fort Wayne fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment, or forfeitures.

15. Fort Wayne waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification adverse to Fort Wayne.

16. Fort Wayne agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

17. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, Fort Wayne and the FCC shall not contest the continuing validity of the Consent Decree or Adopting Order.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

19. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

David H. Solomon
Chief, Enforcement Bureau

Date

For Fort Wayne Public Television, Inc.

Roger Rhodes
President and General Manager

Date

Attachment

Compliance Plan

1. Fort Wayne has established and will maintain a multi-level review procedure for underwriting content to be aired on Station WFWA(TV)/DT. All scripts of announcements will be reviewed, prior to broadcast, for compliance with FCC underwriting rules and regulations by: (i) the Marketing/Underwriting Manager, (ii) Operations Division Manager, (iii) the producer of the announcement, and (iv) if there is uncertainty as to the legality of such announcement, then the General Manager and/or outside communications counsel.
2. Fort Wayne has and will conduct training on acceptable underwriting content for all station general management and staff responsible for underwriting content with PBS staff and communications attorneys. To augment this training, outside counsel conducted an on-site training session for the foregoing stations' staff and management with respect to practical application of the underwriting content standards and guidelines. Outside counsel, or other comparable professionals, will conduct a second on-site workshop in the fall of 2004 or early 2005. The station will videotape this workshop and use it as refresher training for staff and management at least every twelve (12) months, include it as a mandatory part of underwriting sales executive training, and use it to train any new station employees involved in underwriting promptly after they commence their duties.
3. Fort Wayne has also implemented and will maintain a plan to proactively educate prospective underwriting clients about appropriate underwriting content. To that end, underwriting account executives are and will be required to provide an overview of underwriting announcement guidelines to prospective clients before contracts are accepted.