

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

In the Matter of)	
)	
CHRISTIAN VOICE OF CENTRAL OHIO, INC.)	EB-03-IH-0501
)	Facility ID No. 11126
)	NAL/Account No. 200532080016
)	FRN 0002990828
Licensee of Formerly Noncommercial Educational Station WCVZ(FM), South Zanesville, Ohio)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 6, 2004

Released: December 7, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Christian Voice of Central Ohio, Inc. (“Christian Voice”), licensee of formerly noncommercial educational Station WCVZ(FM), South Zanesville, Ohio, has apparently violated 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, by apparently willfully and repeatedly broadcasting prohibited advertisements. Based upon our review of the facts and circumstances of this case, we conclude that Christian Voice is apparently liable for a monetary forfeiture in the amount of \$20,000.

II. BACKGROUND

2. This case arises from a complaint filed with the Commission in September 2003, alleging that then-noncommercial educational Station WCVZ(FM) broadcast prohibited underwriting announcements during the month of August 2003.¹ In April 2004, after the complaint had been filed but before the Enforcement Bureau (the “Bureau”) had inquired into this matter, Christian Voice sought to modify its station’s noncommercial educational license so that it could operate WCVZ(FM) as a commercial facility.² By letter dated June 17, the Bureau inquired of the licensee concerning the allegations contained in the complaint.³ The licensee responded to the staff’s inquiry by its filing dated July 19.⁴ Thereafter, the staff contacted the

¹ See Letter from confidential complainant to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, dated September 11, 2003 (“*Complaint*”).

² See File No. BMLH-20040415AEI, granted July 19, 2004 (“*WCVZ Commercial Application*”).

³ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Christian Voice of Central Ohio, Inc., dated June 17, 2004 (“*LOP*”).

⁴ See Letter from David J. Kaufman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated July 19, 2004 (“*July 19th Response*”). In its response, Christian Voice also provided CDs of the announcements in question, as well as a request for

licensee's counsel and directed that Christian Voice file a further response specifically responding to the inquiries posed in the *LOI*, and also provide a sponsoring affidavit or declaration, also as required by the *LOI*. Christian Voice further responded to the *LOI* on September 8, 2004.⁵

III. DISCUSSION

3. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁷ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.⁸ As described in greater detail below, we conclude under this procedure that Christian Voice is apparently liable for a forfeiture in the amount of \$20,000 for its apparent willful and repeated violations of Commission's underwriting rules.

confidentiality regarding the documents that it had provided in the binder. *See id.*; 47 C.F.R. § 0.459. Because this *NAL* discusses only that information already made public by Christian Voice, *i.e.*, the text of the announcements broadcast, the identity of the underwriters as revealed in such announcements, and when and how many times the announcements were aired, we need not rule on the confidentiality request. Until we do so rule, we will honor Christian Voice's request for confidential treatment of certain internal documents and business information that it has supplied to the Bureau during the course of this investigation.

⁵ *See* Letter from David J. Kaufman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated September 8, 2004 ("*September 8th Response*").

⁶47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

⁷47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁸*See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002). In *SBC Communications*, the Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to an Enforcement Bureau letter of inquiry. The Commission stated: "[T]he order here was squarely within the Commission's authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission's authority." *Id.* at ¶ 5.

A. Christian Voice Apparently Has Willfully and Repeatedly Broadcast Advertisements in Violation of Section 399B of the Act and Section 73.503 of the Commission's Rules

4. 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.⁹ The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.¹⁰ 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.¹¹ Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.¹² 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, the Commission expects only that licensees exercise reasonable, good-faith judgment in this area.¹³

5. At issue here are eleven underwriting announcements that Christian Voice admits that its station broadcast, not only during the month of August 2003 as alleged in the complaint, but throughout the period October 2002 through December 2003.¹⁴ Christian Voice also acknowledges that it received remuneration for airing the messages on behalf of the station's underwriters, all of which are for-profit entities, and that ten of those messages were repeated approximately 3,149 times.¹⁵ With respect to the announcements made on behalf of station underwriter Barnes Advertising, Christian Voice failed to identify the specific period of time that the station aired them, indicating only that those messages were broadcast "three times a day and four times a day on Saturdays."¹⁶ Because of this uncertainty, the total number of repetitions upon which we rely, 3,149, does not include the messages aired on behalf of Barnes Advertising.¹⁷ Christian Voice claims that, prior to its station's license modification to operate

⁹ 47 U.S.C. § 399b(a).

¹⁰ *Id.*

¹¹ See *In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) ("Public Notice").

¹² *Id.*

¹³ See *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

¹⁴ See *September 8th Response* at 3-4.

¹⁵ *Id.*

¹⁶ *Id.* at 4. Although we do not have the specific number of times the Barnes Advertising announcement ran, we note that, even assuming that Christian Voice only broadcast messages on behalf of Barnes Advertising during a single 30-day month, consisting of 22 weekdays, it would have run 70 such messages.

¹⁷ The licensee further represents that Barnes Advertising promoted the station on several billboards within the WCVZ listening area in exchange for its airing the underwriting messages. See *Fuqua Communications, Inc.*, Memorandum Opinion and Order, 30 FCC 2d 94, 97 (1971) (consideration has been construed to involve many forms, including barter of goods or services and "trade-outs").

commercially, management followed the Commission's noncommercial underwriting rules and policies "as best as they could discern the applicable standards."¹⁸

6. We have carefully reviewed the record in this case, and find that each of the eleven announcements at issue exceeds 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*. We so conclude because the announcements seek impermissibly to distinguish favorably their underwriters from competitors by directly stating or implying that they offer superior service or products, and the announcements, in many instances, also invite or urge business patronage. Moreover, the announcements were aired over a substantial period of time—fifteen months.¹⁹

B. Proposed Action

7. Section 503(b) of the Act and section 1.80(a) of the Commission's rules both state that any person who willfully or repeatedly fails to comply with the provisions of the Act, the rules or Commission orders shall be liable for a forfeiture penalty.²⁰ The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$2,000 for violation of the enhanced underwriting requirements.²¹ The *Forfeiture Policy Statement* sets forth a base forfeiture amount of \$4,000 for failure to respond to Commission communications.²² The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²³

8. In this case, it appears that, from October 2002 through December 2003, Christian Voice willfully and repeatedly broadcast advertisements in violation of section 399B of the Act and section 73.503(d) of the Commission's rules. We believe that a substantial forfeiture is necessary due to several factors, including the lengthy period of time over which the prohibited announcements were aired -- fifteen months -- and the great number of times that the announcements were repeated -- more than 3,149 -- indicating an utter failure of licensee practice and policy concerning its underwriting compliance responsibilities.²⁴

¹⁸ See September 8th Response at 5.

¹⁹ See September 8th Response at 4.

²⁰ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

²¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997) ("*Forfeiture Policy Statement*"), recon. denied 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

²² *Id.*

²³ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 27.

²⁴ See, e.g., *See, e.g., Minority Television Project, Inc. (KMTP-TV)*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15646 (Enf. Bur. 2002), Forfeiture Order, 18 FCC Rcd 26611 (Enf. Bur. 2003) (application for review pending) (where the Bureau found that such factors warranted a substantial upward adjustment in the case of a first-time violation).

9. In *Minority Television Project NAL*, the Bureau proposed a \$10,000 forfeiture against a noncommercial educational broadcast licensee for nearly 2,000 violations of the Commission's underwriting rules over a 26-month period of time.²⁵ In this case, Christian Voice broadcast substantially more prohibited announcements during a shorter period of time. Accordingly, we find that a significantly higher apparent forfeiture is necessary and propose a \$20,000 forfeiture.

10. Accordingly, applying the *Forfeiture Policy Statement* and the statutory factors to this case, we conclude that Christian Voice is apparently liable for a forfeiture in the amount of \$20,000, for violating the Commission's underwriting rules. We will not hesitate to take even stronger enforcement action against noncommercial educational licensees that engage in similarly egregious violations of our underwriting requirements.

IV. ORDERING CLAUSES

11. In view of the foregoing, we conclude that a monetary sanction is appropriate. Accordingly, 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, Christian Voice of Central Ohio, Inc., licensee of former noncommercial educational Station WCVZ(FM), South Zanesville, Ohio, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$20,000 for willfully and repeatedly 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.

12. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Christian Voice SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL 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 60601. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

14. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 4-C330, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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.

²⁵ *Id.* at 17 FCC Rcd 15646, ¶¶ 30-31.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

17. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Christian Voice of Central Ohio, Inc., P.O. Box 783, New Albany, Ohio 43054, and to its counsel, David J. Kaufman, Esq., Brown Nietert & Kaufman, Chartered, Suite 817, 2000 L Street, N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁶ See 47 C.F.R. § 1.1914.

ATTACHMENT

The following text was transcribed by the confidential complainant from underwriting announcements broadcast over then-noncommercial educational Station WCVZ(FM), South Zanesville, Ohio.

Tasty Freeze

Planning a special occasion? Tasty Freeze, at the airport exit off of I-70, has ice cream cakes for that office celebration, birthdays, anniversaries, or for that special event you've planned. These cakes, tastefully decorated by Bobby Tim, are available in 8 or ten inch. Tasty Freeze, at the airport exit off of I-70, is open 7 days a week from noon until 10 p.m. Also available at Tasty Freeze: Hearth and Home Ohio Bicentennial candles by lum-lite, ice cream treats or ice cream cakes, it's Tasty Freeze, 588-9314.

Runner Land Company

Are you looking for land for hunting, recreational purposes, home building or as an investment? Runner Land Company, a family-owned business, purchases large parcels of property and farms in Ohio, West Virginia, and Pennsylvania, for the purpose of subdividing them into potential home sites or recreational lots. Owner financing available, Runner Land Company for more than 16 years helping people become property owners. Runner Land Company, we don't list acreage, we buy it. Exit 41 off of I-77 in Byeville (740) 685-3064.

Salon Priorities

Want the look you've always dreamed of? Salon Priorities is a full service salon specializing in innovative hairstyles. Salon Priorities gas distinctive new styles to extenuate your features. Salon Priorities, where the atmosphere is relaxed and friendly, Salon Priorities, your premier source for hair design, features Alterna and Kenra products. Salon Priorities, 963 Linden Avenue, next to modern glass in Zanesville, Salon Priorities, hair with attitude head on, 454-3128.

Williamson Insurance

"You reach a certain age where suddenly it's not about where are we going to go on Friday night," [says] Phil Urban, president and CEO of Grange Insurance, "it's about children, and a mortgage, and responsibilities, and it can add up to a pretty good amount of money, and making sure you've got the right life insurance is absolutely a part of the strategy."

Protecting your assets and debt is the key to your financial responsibility. Grange Insurance is there and so is Williamson Insurance in Zanesville. Williamson Insurance is your local independent Grange agent, whether it's home, farm, business or life insurance. Williamson Insurances' personalized service and attention to detail can make a big difference in good times and bad. All backed by the strength of Grange Insurance, Williamson Insurance, 453-0791, and they're at 2115 Maple Avenue in Zanesville. Williamson Insurance is now located temporarily at 3562 Maple Avenue in the Colony Center while they build to serve you better.

Prindle GMAC Real Estate

Prindle GMAC Real Estate is proud to be an underwriter of Christian radio, located at 1805 Maple Avenue in Zanesville. Prindle GMAC Real Estate is experience din all types of real estate sales. At Prindle GMAC Real Estate, we're all about family. Dick Pryor of Prindle GMAC Real Estate offers over 25 years of home buying and home selling experience. Dick Pryor and Prindle GMAC Real Estate, we love selling real estate. Dick Pryor, 454-9191.

Snouffer Funeral Home

Snouffer Funeral Home with all the warmth of home. This is Josh Snouffer, owner and funeral director of Snouffer Funeral Home, Zaneville's nicest, largest, and most affordable funeral home. With the loss of a loved one, there are so many things to do. That's why Snouffer Funeral Home is there for you. Snouffer Funeral Home is here for you, with a convenient location, ample parking, large viewing rooms, a spacious chapel, and for your convenience, no steps, ramps, or elevators, an outdoor patio, and a special area for your children. I extend my personal invitation for you and your family to discuss with me your pre-planning funeral needs; in-home visits are available. Snouffer Funeral Home, we are here for you, before, during, and after your loss. Snouffer Funeral Home, 1150 West Military Road in Zanesville, 740-450-8000, or snoufferfuneralhome.com.

Barnes Advertising

Narrator: "Barnes Advertising, we are outdoor advertising. Barnes Advertising, we ARE outdoor advertising."

First Voice: "What are you doing?"

Second Voice: "Promoting who we are."

First Voice: "You're way over the top."

Second Voice: "Well, how would you do it?"

First Voice: "Just tell them what you do."

Second Voice: "We are a family-owned company since 1916, serving 13 counties in central and southern Ohio."

First Voice: "That's better, but don't forget the phone number."

Second Voice: "O.K., 1-800-458-1410."

First Voice: "What was that?"

Second Voice: "1-800-458-1410."

Hague Quality Water

The real flavor of water refreshes and satisfies, but today, enjoying a drink of water may not be as simple as filling your glass from the tap. Even in approved municipal systems, the goodness is often marred by minerals, organic matter, or chlorine. A Hague drinking water system, with reverse osmosis, turns ordinary tap water into a continuous supply of fresh water. Quality products, quality service, quality support by quality people, it's all in their name, Hague Quality Water, West Main Street in Zanesville, 740-455-3202.

Cambridge Classic Ford and Caldwell Classic Chevrolet

With any new car or truck purchased, Cambridge Classic Ford and Caldwell Classic Chevrolet will provide an oil change and car wash for five years or 50,000 miles. The 5/50 oil and bath, available at Cambridge Classic Ford and Caldwell Classic Chevrolet. Don't buy any old car, but a classic. 740-439-7767 or toll-free 888-882-5393.

The School House

Are you looking for creative learning materials? The School House, your parent-teacher supply store, has two locations, in Newark and Zanesville, to serve you. The School House has accessories for teachers, schools, home-schoolers, including Alpha-Omega home school curriculum, grandparents, youth-serving organizations, and anyone working with children. The School House, where learning and fun come together, 1218 Brandywine Boulevard in Zanesville, and 36 South Third Street in Newark. Zanesville, 455-6445; Newark, 345-7710.