

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

	)	File No. EB-04-IH-0041
In the Matter of	)	
	)	NAL/Acct. No. 200832080088
<b>WNYC Radio</b>	)	
	)	FRN No. 0004015020
Licensee of Noncommercial Educational	)	
Stations WNYC(AM) and	)	
WNYC-FM, New York, New York	)	

**ORDER**

**Adopted: June 11, 2008**

**Released: June 11, 2008**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and WNYC Radio (“WNYC”). The Consent Decree terminates an investigation by the Bureau against WNYC for possible violations of section 399B of the Communications Act of 1934, as amended,<sup>1</sup> and section 73.503(d) of the Commission’s rules<sup>2</sup> regarding the broadcast by WNYC of underwriting acknowledgments over Stations WNYC(AM) and WNYC-FM, New York, New York.

2. The Bureau and WNYC have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether WNYC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

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<sup>1</sup> See 47 U.S.C. § 399b.

<sup>2</sup> See 47 C.F.R. § 73.503.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>3</sup> and sections 0.111 and 0.311 of the Commission's Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that the third-party complaint against WNYC Radio before the Enforcement Bureau related to the above-captioned investigation as of the date of this Consent Decree **IS DISMISSED**.

8. **IT IS FURTHER ORDERED** that WNYC Radio shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). WNYC Radio will also send electronic notification on the date said payment is made to [Hillary.DeNigro@fcc.gov](mailto:Hillary.DeNigro@fcc.gov), [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov) and to [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

9. **IT IS FURTHER ORDERED** that WNYC Radio will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and upon expiration of the attached Consent Decree, three years after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of WNYC Radio, stating that the officer has personal knowledge that WNYC Radio has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

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<sup>3</sup> See 47 U.S.C. § 154(i), 503(b).

<sup>4</sup> See 47 C.F.R. §§ 0.111, 0.311.

10. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent to WNYC Radio, by first-class, certified mail, return receipt requested, to WNYC Radio, One Centre Street, 26<sup>th</sup> Floor, New York, New York 10007, and by certified mail, return receipt requested, to its counsel, Richard D. Bodorff, Esq., Wiley Rein, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

**Before the  
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Washington, D.C. 20554**

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In the Matter of	)	
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<b>WNYC Radio</b>	)	
	)	FRN No. 0004015020
Licensee of Noncommercial Educational	)	
Stations WNYC(AM) and	)	
WNYC-FM, New York, New York	)	

**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and WNYC Radio (“WNYC” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether WNYC violated section 399B of the Communications Act of 1934, as amended,<sup>1</sup> and section 73.503(d) of the Commission’s rules,<sup>2</sup> in connection with the broadcast by WNYC of underwriting acknowledgments over its noncommercial educational stations WNYC(AM) and WNYC-FM, New York, New York.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (d) “Underwriting Laws” mean section 399B of the Communications Act of 1934, 47 U.S.C. § 399b, and Section 73.503(d) of the Commission’s Rules, 47 C.F.R. § 73.503(d).
  - (e) “Stations” mean Stations WNYC(AM) (Facility ID No. 73357) and WNYC-FM (Facility ID No. 73355).

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<sup>1</sup> See 47 U.S.C. § 399b.

<sup>2</sup> See 47 C.F.R. § 73.503(d).

- (f) “Complaint” means a third-party complaint alleging violations of the Commission’s Underwriting Laws, dated December 16, 2003, that may have been received by, or is in the possession of, the Commission or Bureau.
- (g) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
- (h) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau’s October 7, 2004, Letter of Inquiry<sup>3</sup> regarding whether WNYC violated the Commission’s Underwriting Laws in connection with its operation of the Stations during the period March 2003 and February 2004.
- (j) “WNYC” means WNYC Radio and its predecessors-in-interest and successors-in-interest.
- (k) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (l) “Parties” mean WNYC and the Bureau.
- (m) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Pursuant to section 399b(a) of the Act<sup>4</sup> and section 73.503(d) of the Rules, advertisements are defined as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.<sup>5</sup> Section 399b(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>6</sup> Although contributors of funds to such 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 businesses.<sup>7</sup> Specifically, such announcements may not contain comparative or qualitative

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<sup>3</sup>See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to WNYC, dated October 7, 2004 (“October 7<sup>th</sup> LOI”); Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to WNYC, dated June 21, 2005 (“June 21<sup>st</sup> LOI”).

<sup>4</sup> See 47 U.S.C. § 399b.

<sup>5</sup> See 47 U.S.C. § 399b(a).

<sup>6</sup> See 47 U.S.C. § 399b(b)(2).

<sup>7</sup> See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), republished, 7 FCC Rcd 827 (1992) (“Public Notice”).

descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.<sup>8</sup> 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 that licensees exercise reasonable, “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.<sup>9</sup>

3. On October 7, 2004, the Bureau initiated an investigation. Specifically, the Bureau investigated a complaint alleging that WNYC had aired advertisements in violation of the Underwriting Laws. WNYC responded on November 17, 2004, and July 1, 2005, informing the Bureau that it aired, among others complained about, an underwriting announcement on behalf of the executive search recruiter Korn/Ferry International on the Stations during the period March 31, 2003, through February 14, 2004.<sup>10</sup> This announcement appears to have violated the Underwriting Laws because they have exceeded the bounds of what is permissible and within licensee discretion under the Act and pertinent Commission precedent.<sup>11</sup>

### III. TERMS OF AGREEMENT

4. **Adopting Order.** 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 the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** WNYC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation and dismiss the Complaint. In consideration for the termination of said Investigation and dismissal of the Complaint, WNYC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on

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<sup>8</sup> *See id.*

<sup>9</sup> *See Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

<sup>10</sup> *See* Letter from Ivan Zimmerman, Esq., to Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, dated November 17, 2004 (“*November 17<sup>th</sup> Response*”) at 3.

<sup>11</sup> *See Xavier University*, *supra*, note 9.

its own motion, any new proceeding, formal or informal, or take any action on its own motion against WNYC concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against WNYC with respect to WNYC's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, WNYC agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

a. WNYC will continue to utilize a multi-level review procedure for underwriting content to be aired on the Stations. In working with prospective underwriters, the WNYC staff will continue to brief potential donors on the Underwriting Laws, provide them with the current WNYC Copy Guidelines, and work with them to fashion acceptable language.

b. WNYC will continue to train employees on acceptable underwriting content that complies with the Underwriting Laws, as it has done in the past, as described in its response to the Bureau's letter of inquiry in connection with the Investigation, which response is incorporated herein by reference.

c. WNYC will make good faith efforts, with respect to nationally distributed programming aired on the Stations, to obtain from the distributors of such programming the copy for underwriting announcements contained in such programming in advance of such programming's broadcast, for the purposes of independently reviewing such copy for compliance with the Underwriting Laws.

9. **Compliance Reports.** WNYC will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, twenty-four months after the Effective Date, and upon expiration of this Consent Decree, three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of WNYC, stating that the officer has personal knowledge that WNYC has established and maintained on an ongoing basis operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. Each compliance report will describe any significant difficulties the Licensee has encountered during the reporting period in ensuring compliance with the Underwriting Laws, what steps it has taken to resolve those difficulties, and the success of those steps in doing so. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

10. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three (3) years after the Effective Date.



11. **Voluntary Contribution.** WNYC agrees that it will make a voluntary contribution to the United States Treasury in the amount of Five Thousand Dollars (\$5,000.00). The payment in full will be made 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 NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). WNYC Radio will also send electronic notification on the date said payment is made to [Hillary.DeNigro@fcc.gov](mailto:Hillary.DeNigro@fcc.gov), [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov) and to [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

12. **Waivers.** WNYC 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 Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. WNYC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither WNYC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and WNYC shall waive any statutory right to a trial *de novo*. WNYC hereby 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 addressed in this Consent Decree.

13. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which WNYC does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** WNYC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent



Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
Kris Anne Monteith  
Chief  
Enforcement Bureau

\_\_\_\_\_  
Date

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Laura R. Walker  
President and Chief Executive Officer  
WNYC Radio

\_\_\_\_\_  
Date