

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

LETTER
October 23, 1995

Released: October 31, 1995

Chicago Educational Television Association Licensee, Station WTTW(TV) 5400 North St. Louis Avenue Chicago, IL 60625	IN REPLY REFER TO: 1800C1-CMW 94070142 94100210
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Dear Licensee:

We have before us a complaint filed on July 7, 1994, by The Coalition for Democracy in Public Television (the "Coalition") against Station WTTW(TV), and your October 13, 1994, response thereto. We also consider comments filed in this matter by the Association of America's Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service (collectively the "Public Broadcasters").

The Coalition alleges that a series of "program-length sales presentations" entitled the "Chicago Holiday Gift Exchange" (the "Gift Exchange"), which aired on Station WTTW between October 16 and October 31, 1993, violated Commission rules and policies regarding the noncommercial nature of public broadcasting stations. Specifically, the Coalition contends that the Gift Exchange's "home shopping" format violated Section 73.503(d) of the Commission's Rules and Section 399B of the Communications Act of 1934, as amended. 47 CFR § 73.503(d); 47 U.S.C. § 399b. Further, it contends that Station WTTW violated Commission rules and policies by substantially altering or suspending regular programming to raise funds to benefit entities other than the station itself.¹

You describe the Gift Exchange as a series of programs which were originated and produced by the station as a mechanism to raise funds for the station. You explain that the programs offered merchandise for sale from five of Chicago's leading nonprofit cultural institutions, including the station itself. Each of the institutions offered merchandise to the public to raise income to support its educational activities. In addition, you indicate that informational and educational programming concerning the five institutions was aired as part of the series, including information regarding the institutions and their programs and exhibits. You admit, however, that not every segment included a substantial educational component.

Section 399B of the Communications Act states that "[n]o public broadcast station may make its facilities available to any person for the broadcasting of any advertisement." 47 U.S.C. § 399b. An advertisement is defined as "any message or other programming material which is

broadcast or otherwise transmitted in exchange for any remuneration, and which is intended . . . to promote any service, facility, or product offered by any person who is engaged in such offering for profit." 47 U.S.C. § 399b(a)(1). The Commission has interpreted "any person who is engaged in such offering for profit" to exclude nonprofit organizations. *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order*, 90 FCC 2d 895, 899-901 (1982) ("*Noncommercial Memorandum Opinion and Order*"), recon. 97 FCC 2d 255 (1984) ("*Reconsideration Order*"). Thus, promotional announcements on behalf of nonprofit organizations (including their services, facilities, or products), do not qualify as "advertisements" and are generally not prohibited. The Coalition challenges our interpretation, arguing that the classification of an organization as nonprofit does not automatically indicate that the services, facilities, or products at issue are not offered for profit. The Public Broadcasters contend that the Coalition's interpretation of Section 399B of the Communications Act is inconsistent with previous Commission decisions and that the Coalition has not advanced anything new which would justify a change in our long-standing interpretation. We agree with the Public Broadcasters and reject the Coalition's argument in this regard.

Nonetheless, while stations are permitted to air promotional announcements on behalf of nonprofit organizations, they may not suspend or substantially alter their regular programming to raise funds for such nonprofit entities. Absent a waiver, noncommercial stations may not engage in fundraising activities on behalf of any entity other than the station where such activities substantially alter or suspend regular programming. *Noncommercial Memorandum Opinion and Order*, 90 FCC 2d at 907. This policy, which is based on Section 399A(b) of the Communications Act, preserves the "primarily educational, instructional, and cultural character of public broadcasting programming." *Cohn and Marks*, 51 RR 2d 659, 660 (1982).

In this case, you contend that the primary purpose of the Gift Exchange was to raise funds for the station, and only incidentally to benefit the other participating nonprofit organizations. The Commission has held that it would not permit the broadcast of such joint fundraising efforts on a noncommercial station, where the station was not the sole beneficiary of the fundraising event. *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, First Report and Order*, 69 FCC 2d 200 (1978). Specifically, we found that allowing the broadcast of such joint fundraising efforts was not "necessary to the well being, or in the best interest, of noncommercial educational broadcasting." 69 FCC 2d at 226. Consistent with this decision, we have denied waiver requests irrespective of the significance or magnitude of the cause for which funds were being raised. See, e.g., Letter from Roy J. Stewart, Chief, Mass Media Bureau, FCC, to Karsten Amlie (August 18, 1995) (Muscular Dystrophy Association); Letter from Roy J. Stewart, Chief, Mass Media Bureau, FCC, to Joseph E. Dunne III (November 16, 1994) (crisis pregnancy center).

¹ In addition to requesting that we impose appropriate sanctions against Station WTTW, the Coalition also seeks the release of a public notice ruling that the broadcast of home shopping programs or other program-length "commercial" matter on

noncommercial educational television and radio stations is a violation of the Commission's rules and policies. We need not issue such a public notice or even reach this issue to resolve the Coalition's complaint against Station WTTW.

You also argue that the Gift Exchange was a scheduled program and therefore that it did not substantially alter or suspend the station's regular programming. We have held that "regular programming" is that programming which the broadcaster ordinarily carries, and does not include fundraising activities which alter or suspend normal programming. *Reconsideration Order*, 97 FCC 2d at 264. Therefore, while the Gift Exchange was a scheduled program, it is not, by your own admission, a program or even a type of program which is ordinarily carried by your station. Accordingly, we find that the airing of the Gift Exchange substantially altered or suspended your regular programming.

In view of the foregoing, we find that the broadcast of the Gift Exchange by Station WTTW(TV) was not consistent with our noncommercial fundraising policy. We recognize, however, that the Gift Exchange represented an effort by your station to engage in creative fundraising, with the primary purpose to raise funds for the station. We also understand that educational programming was run as part of the Gift Exchange. Accordingly, we feel that no further Commission action is warranted at this time. However, we caution you to use care to comply with the Commission's noncommercial rules and policies in the future.

Sincerely,

Roy J. Stewart, Chief
Mass Media Bureau

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