

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DA 96-1447

August 26, 1996

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IN REPLY REFER TO:
1800C1-CMW
95090156

Mr. Anthony S. Tiano,
Chairman and CEO
Santa Fe Ventures, Inc.
582 Market Street
13th Floor
San Francisco, CA 941104

Dear Mr. Tiano:

We have received a complaint regarding the airing of a program, Today's First Edition, which is produced by Santa Fe Ventures, Inc. Specifically, the complaint questions whether the program complies with Commission Rules and policies regarding the airing of promotional materials on noncommercial stations. Upon review of the complaint, we were concerned about the announcements at the end of the program which appeared to promote the books featured on each episode.

When Catherine Withers of this office spoke to you on June 10, 1996, you informed her that you distributed Today's First Edition at no charge to noncommercial stations throughout the country. You indicated, however, that the program no longer offers viewers the opportunity to purchase the featured books, but instead now offers the opportunity to purchase a magazine and literary guide. By letter dated June 10, 1996, you provided us with a tape of the program as it currently airs and a copy of the magazine, "The San Francisco Review," and the literary guide, "The Critics' Choice."

Section 399B of the Communications Act of 1934, as amended (the "Act") (implemented by Section 73.503 of the Commission's Rules), prohibits public broadcast stations from broadcasting advertisements. 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. Remuneration has been defined to include the provision of programming to a station. Although on-air acknowledgements of the receipt of such consideration is permissible, and in some cases required, the Commission has unequivocally stated that such acknowledgements may be made for identification purposes only and should not promote the contributor's products, services, or company. 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 the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations," 7 FCC Rcd 827 (1986), a copy of which is attached.

Although the *Public Notice* describes a special exemption to this general rule for the purpose of promoting the sale of program-related materials in certain circumstances, we do not believe that the magazine and literary guide offered for sale in Today's First Edition are "program-related." They do not appear to be directly linked to the program in that they do not, for example, expand on or otherwise enhance the specific material broadcast in each episode. Rather, they seem only tangentially related to the program to the extent that anyone interested in a program featuring critiques of books and related material, might also be interested in literary publications which critique similar material.

Accordingly, we do not believe that the broadcast of Today's First Edition with promotional announcements offering the opportunity to purchase *The San Francisco Review* and *The Critics' Choice*, is consistent with our noncommercial rules and policies. It would be permissible, however, for the program to include announcements which mention such publications, and even provide the address and phone number of the publisher, provided such announcements are consistent with our underwriting guidelines discussed above.

Should you have any questions regarding our findings in this regard, you may contact this office at (202) 418-1430.

Sincerely,

Norman Goldstein, Chief
Complaints & Political Programming Branch
Enforcement Division
Mass Media Bureau

Enclosure

cc: Warren Cassell