

Federal Communications Commission
Washington, D.C. 20554

In reply refer to:

1800C1-KMS
97040529

December 2, 1997

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CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Window to the World Communications, Inc.
Licensee, Station WTTW(TV)
5400 North St. Louis Ave.
Chicago, IL 60625

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), for violations of 47 U.S.C. Section 399B and Section 73.621(e) of the Commission's Rules. This action is taken under authority delegated to the Chief, Mass Media Bureau, pursuant to Section 0.283(c)(3) of the Commission's Rules.

Section 399B of the Communications Act, as implemented by Section 73.621 of the Commission's Rules, prohibits public broadcast stations from broadcasting advertisements. Advertisements are defined by the Communications 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. Although contributors of funds to a noncommercial station may receive on-air acknowledgements, 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 business. 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). In this case, we received information suggesting that various announcements broadcast by your station, videotapes of which we previously provided to you, appear to promote the products, services or businesses of for-profit enterprises.

In response to this information, we issued a letter of inquiry dated July 14, 1997. In your August 22, 1997 reply, you contend that, with the exception of the announcement broadcast on behalf of Zenith, none of the announcements in question violated the applicable statute or the relevant Commission rules. You assert that the number, length, frequency and scheduling of the announcements at issue were at all times consistent with Commission policy and case precedent on donor acknowledgements. Specifically, you indicate that the announcements were uniformly thirty seconds or less in length, and were broadcast no more than twice a day. You argue that, except for the Zenith announcement noted above, none of the

cited announcements promote the relevant underwriters' products, services or businesses. In this regard, you contend that they contain no comparative or qualitative descriptions, calls to action, inducements to buy, or price information. Furthermore, you contend that because the announcements made on behalf of A.G. Edwards and Sons, Inc. ("A.G. Edwards") and Prudential Securities ("Prudential") were not aired in exchange for monetary consideration, they cannot be deemed to violate Section 399B of the Act or the relevant Commission rules, even if found to be promotional in nature.¹

Upon careful consideration of the record in this case, taking into account your response, we find that you did broadcast impermissible advertisements for the benefit of for-profit entities, in violation of Section 399B of the Communications Act, and Section 73.621(e) of the Commission's Rules. We note that, in your response, you conceded that the Zenith announcement was promotional and should not have been broadcast. That announcement contained inappropriate text identifying favorable qualities of the underwriter's product, a remote control device, in which the device was described as rendering televisions "easier to control," and providing "colors more vivid," and "images more realistic than ever before." Furthermore, we find that the Amoco, Sun America and Prudential announcements, when considered in their entire context, are, in fact, promotional in nature, and constitute prohibited advertisements.

In this regard, we find that the Amoco announcement promoted the underwriter's product, Amoco premium gasoline. In the announcement's storyline, a customer introduces the underwriter's product into an automobile, which thereupon revives, becoming animated – doll-figures on its rear deck are depicted bobbing their heads in apparent smiling approval, while the customer stomps her foot to background music. In response to our query, you explain that the doll-figures, in bobbing their heads, respond not to the product, but to the background music, "provoking an amazed reaction from the [customer] which is inconsistent with product approval." However, this explanation ignores other promotional elements of the announcement, and seems implausible. In this case, the announcement contained both visual and aural elements. The musical lyric in question directly accompanied the product's introduction into the automobile, and its text, "*can't get enough of that funky stuff*," also appears to refer approvingly to the product. Moreover, visual messages concerning the product were spliced between scenes of the revived automobile storyline. Contrary to your assertion, the announcement conveyed more than the mere identification or description of the underwriter's product to the viewer in a non-qualitative fashion. Rather, the announcement, in its full context, appears to promote a favorable quality associated with a specific product, Amoco premium gasoline, viz., that it will help revive your automobile, and is thus prohibited. In this connection, we have found similar presentations to be qualitative and promotional. See, e.g., *In re WNYE-TV*, 7 FCC Rcd 6864 (1992) (where an announcement depicted the demonstration, use, consumption, and customers' apparent satisfaction with an underwriter's products, the message was found to be qualitative and promotional).

We also reject your argument that the Sun America announcement contained merely "factual" information about the underwriter and was therefore non-promotional. In the first instance, the "factual[ity]," or truth, of underwriting text has no relevance to the analysis of whether such information promotes as opposed to merely identifies a product, service or business. Moreover, even assuming that the phrase "Sun America, because it's not just your retirement, it's your future," standing alone, should be

¹You explain that these announcements were "program underwriting credits" broadcast in conjunction with "Wall Street Week with Louis Rukeyser," a program distributed nationally by Public Broadcasting Service ("PBS"), and that no consideration was received by the station from the corporate underwriters for broadcasting the announcements.

deemed acceptable as an established corporate slogan, that text was prefaced with a cautionary remark "calling to action" potential investors, i.e., "many Americans haven't saved enough to enjoy it [retirement]. That's why there's Sun America . . ." Consequently, the overall presentation was promotional in nature and prohibited. See, e.g., Public Notice, supra.

Finally, we find that the text of the Prudential announcement exceeds the bounds of our rules and policies governing underwriting credits by impermissibly "calling to action" potential investors and promoting its favorable qualities, i.e., "[w]ith more than 5,600 financial advisers nationwide, Prudential Securities can help you invest your money wisely." See, e.g., Penfold Communications, Inc., 8 FCC Rcd 78 (MMB 1992) (where text reciting that "bank reaches out to the business community to deliver quality financial services" was found promotional); cf. Xavier University, 5 FCC Rcd 4920 (1990) (broadcast of text making reference to longevity of business or specific category of product or service not necessarily promotional and within exercise of licensee's discretion).² We further reject your argument that because the station received no payment for the broadcast of this announcement, it could not be deemed an "advertisement," as a matter of law, under Section 399B of the Act. Remuneration or consideration has been construed to include various forms. See, e.g., Fuqua Communications, Inc., 30 FCC 2d 94, 97 (1971). In this case, you indicate that the announcement was broadcast as an "underwriting credit" on behalf of PBS, who supplied the program "Wall Street Week with Louis Rukeyser." The "consideration" received by the station for broadcasting the announcement appears, in this case, to have been the program itself. Although licensees are obligated to monitor the content of their own programming, and we caution the station to take greater care to do so in the future, we take cognizance, as a mitigating factor, that the Prudential announcement was supplied by PBS, a national program supplier, and was not produced by the station itself. Consequently, we will not consider the broadcast of this announcement in determining the forfeiture amount.

Accordingly, we find that you have apparently violated: (1) Section 399B of the Communications Act and Section 73.621(e) of the Commission's Rules regarding permissible donor and underwriting announcements on noncommercial educational stations, for the reasons set forth above. From the information that you have supplied, it appears that the announcements made on behalf of Zenith, Amoco, and Sun America were broadcast a total of 181 times during the period January, 1996 through March, 1997. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Windows to the World Communications, Inc., licensee of WTTW(TV), Chicago, Illinois, is hereby advised of its apparent liability for a forfeiture of five thousand dollars (\$5,000) for its apparent willful, repeated violations of 47 U.S.C. Section 399b and Section 73.621(e) of the Commission's Rules.

In assessing this monetary forfeiture, we have taken into account the nature, circumstances, extent and gravity of the violations, as well as the degree of culpability and the station's prior enforcement history. Section 503(b)(2)(D) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b)(2)(D). In this connection, our prior letter of caution, in October, 1995, regarding the station's broadcast of programming inconsistent with the Commission's noncommercial fundraising policy, warned that you should take greater care to "comply with the Commission's noncommercial rules and policies in the future." Given these circumstances, we believe that a forfeiture of \$5,000 is appropriate. See, e.g., Penfold Communications, Inc., DA 97-1740, __ FCC Rcd __ (MMB August 15, 1997) (forfeiture of \$6,000 imposed against noncommercial licensee in case of repeated violation of Section 399B of the Act).

²We accept your explanation that the text of the A.G. Edwards announcement, identifying the brokerage as providing "exceptional service," is an established corporate slogan that, employed in this context, should be deemed non-promotional.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION



Roy J. Stewart
Chief, Mass Media Bureau