

Federal Communications Commission  
Washington, D.C. 20554

In reply refer to:

1800C1-GU/KMS  
97110071

June 29, 1999

Released: July 1, 1999

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Russellville Educational Broadcast Foundation  
Licensee, Noncommercial Educational Station KMTC(FM)  
P.O. Box 570  
807 Dike Road  
Russellville, AR 72811

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 73.503 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 73.503 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 Station KMTC(FM), transcriptions of which we previously provided the licensee, Russellville Educational Broadcast Foundation ("REBF"), appear to promote the products, services or businesses of for-

profit enterprises.

In response to this information, we issued a letter of inquiry to REBF dated October 7, 1997. In its October 24, 1997, reply, REBF concedes that sponsored underwriting acknowledgements "similar"<sup>1</sup> to those described in our October 7, 1997 letter of inquiry were broadcast. The licensee also provided a log indicating that the subject announcements were broadcast approximately 828 times during the January 1997 through October 1997 period in exchange for monetary or trade remuneration. While REBF essentially concedes that the cited announcements were promotional of for-profit entities, it explains that, on the whole, it has endeavored to exercise "reasonable, good faith judgments" in broadcasting sponsorship identification announcements that comply with the applicable Commission guidelines. Upon review of our letter of inquiry, however, it concluded that "changes need to be made," and thereupon implemented corrective measures by replacing station personnel associated with the announcement review process.

Upon careful consideration of the record in this case, taking into account the full circumstances including the licensee's response, we find that REBF broadcast impermissible advertisements for the benefit of for-profit entities, in apparent violation of Section 399B of the Communications Act, and Section 73.503 of the Commission's Rules. We find that the announcements are promotional in nature, through their inclusion of language that contains qualitative descriptions, comparative language, calls to action, inducements to buy, or that otherwise exceeds the identification-only purpose of underwriting announcements by promoting the goods or services of for-profit entities.

Although we acknowledge that the licensee has taken corrective measures by replacing staff responsible for reviewing its underwriting announcements, we must also consider that these measures were not taken until the apparent violations were first pointed out by the Commission. As to the acts of the licensee's former staff, we note that the Commission has consistently held that such factors as employee error or ignorance of the pertinent statute and underwriting rules will not excuse a licensee from its obligation to operate a station in compliance with the terms of its authorization and the Commission's rules. Additionally, licensees cannot be excused from responsibility for the acts of their employees. Empire Broadcasting Corp., 25 FCC 2d 68 (1970).

Accordingly, we find that REBF has apparently violated: (1) Section 399B of the Communications Act and Section 73.503 of the Commission's Rules regarding permissible donor and underwriting announcements on noncommercial educational stations, for the reasons set forth above. From the information supplied, it appears that the announcements made on behalf of

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<sup>1</sup> We note that REBF did not indicate how the announcements' texts differed, if at all, from those set forth in our audiotape transcript.

Randy Casey Wrecker Service, Dial-a-Page, Ragsdale Insurance, Firearms Limited, and D&R Pittsburgh Paints were broadcast approximately 828 times during the period January 1997 through October 1997. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Russellville Educational Broadcast Foundation, licensee of KMTC(FM), Russellville, Arkansas, is hereby advised of its apparent liability for a forfeiture of two thousand five hundred dollars (\$2,500.00) for its apparent willful, repeated violations of 47 U.S.C. Section 399b and Section 73.503 of the Commission's Rules.

In assessing this monetary forfeiture, we have taken into account the nature, circumstances, extent and gravity of the violations, the degree of culpability, as well as the station's prior unblemished 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, we believe that the facts of this case are substantially similar to Economic Opportunity Board of Clark County, 6 FCC Rcd 2034 (MMB 1991) (forfeiture of \$3,000 imposed for first-time violation involving similarly promotional announcements made during seven-month period). Given these circumstances, we believe that a forfeiture of \$2,500 is appropriate.

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

Enclosures