

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

March 23, 1999

In reply refer to:
1800B1-KMS
98020334
98020274

Evansville-Vanderburgh School Corporation
Licensee, Noncommercial Educational Station WPSR(FM)
5400 First Avenue
Evansville, IN 47710

Dear Licensee:

By this letter, we conclude our investigation into allegations that noncommercial radio station WPSR (FM), Evansville, Indiana, licensed to Evansville-Vanderburgh School Corporation ("EVSC") violated Section 399B of the Communications Act of 1934, as amended ("the Act"), and Section 73.503(d) of the Commission's Rules, as well as related policies. The possible violations involve donor and underwriting announcements on noncommercial educational stations.

Section 399B of the Act, as implemented by Section 73.503 of the Commission's Rules, prohibits public radio and television 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. 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, a complaint was filed alleging that various announcements broadcast by your station, the transcriptions of which we have attached, appear to promote the products or services of presumably for-profit entities in apparent contravention of the statute, as interpreted and implemented by applicable Commission rules, precedent and policy. These include Orthopedic Associates, Lady Eagle Basketball Camp, Schnucks, Mediamix Communications, Ohio Valley

Cable and Wireless Systems, Subway Sandwiches, Raben Tires, Old National Bank, Evansville State Farm, Shyler's Memphis Pit Barbecue, Clayton's Dry Cleaning, Edco Evansville, Prudential, and Shaffer Tours.

In response to the complaint containing these allegations, we issued a letter of inquiry dated June 25, 1998. In your August 27, 1998 response,¹ you contend that no violation of the relevant statute or the Commission's rules occurred. You assert that the content of the announcements at issue was at all times consistent with Commission policy and case precedent on donor acknowledgements, and was based on a "good faith" interpretation of the applicable law. Specifically, you claim that none of the more than twenty cited announcements may be deemed to promote the relevant for-profit donors' products or services. In this regard, you contend that any comparative or qualitative language used in the announcements was rendered nonpromotional and permissible because the underlying message was "verifiable;"² that any comparative or qualitative language was contained in an established company logogram or slogan; and that references to sponsor products or services provided "free of charge" or as "fresh value meals" did not constitute prohibited price information or an inducement to patronize the sponsor's business establishment.

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 503(d) of the Commission's Rules. Contrary to your assertion, the use of comparative, qualitative descriptive language is not rendered nonpromotional and permissible merely because the message conveyed is "verifiable." Moreover, prohibited price information may be deemed to include reference to specific price information, available sponsor discounts, or products or services offered by the sponsor at no cost or "free." See Public Notice, *supra*.³ Furthermore, although the Commission acknowledged in the Public Notice that licensees may exercise their "good faith" discretion to determine the text of their underwriting announcements, it specifically cautioned that logograms or slogans used by corporations and businesses are permitted only "*so long as they do not contain comparative or qualitative descriptions of the donor's products or services.*" Finally, we reject your separate argument that the "menu listing" of the qualifications or attributes of a sponsor's personnel may be reasonably construed to be nonpromotional. In this regard, you do not explain how this practice renders the message nonpromotional or is consistent with the "identification only" purpose of underwriting announcements.

¹ In this response, you requested a 30-day extension, indicating that, during the summer months, the station had no procedure in place to respond to Commission correspondence in a timely manner.

² You further argue that the "menu listing" of the qualifications of a sponsor's personnel is acceptable where, as here, the statements contained in the announcement are factually true.

³ On page 4 of the Public Notice, the Commission stated that "announcements containing an inducement to buy, sell, rent or lease are not permissible. Examples of such announcements are : '*six months' free service.*'" (Emphasis added.)

Accordingly, we find that you have violated Section 399B of the Communications Act and Section 73.503(d) of the Commission's Rules regarding permissible donor and underwriting announcements on noncommercial educational stations. From the information you provided, it appears that the approximately twenty offending announcements were broadcast repeatedly during the period November 1997 through March 1998.

In considering these apparent violations, we note favorably that the station has maintained an unblemished record prior to the instant case. Due to your contention that the announcements in question were uniformly acceptable, however, we remain concerned that your station's existing practices in this area are deficient, and that the broadcast of similarly impermissible underwriting acknowledgements may be continuing. You are therefore urged to conform your practices and procedures in this area to conform to the applicable Commission policy and precedent at once.⁴ In view of the foregoing, you are hereby admonished for the violations described above. This letter will be made part of Station WPSR(FM)'s complaint file.

Sincerely,

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

Attachment

cc: Complainant

⁴ These concerns are compounded by the reason you provided for the lateness of your response to our initial query. Specifically, you explain that this delay was "due to a school corporation policy of keeping all mail that is sent to all of the schools in the corporation in the central administration office until the week before school starts." While we recognize that certain educational broadcast licensees choose to operate their stations on a limited, school-year based schedule, they must nevertheless remain able to respond to Commission correspondence throughout the year, consistent with the specific requirements of Section 73.1015 of the Commission's Rules. While we do not believe that your failure to respond timely to our initial correspondence warrants the imposition of a further sanction, we advise that you take steps to correct the station's practices in this area immediately.

February 7th, 1998

Orthopedic Associates

Orthopedic Associates, professionals in sports medicine, are happy to join other community leaders in underwriting USI Basketball radio broadcasts. Orthopedic Associates operates an emergency sports clinic for diagnosis and treatment of sports injuries. *Each doctor is board-certified by the American Board of Orthopedic Surgery.* There is also an on-site physical therapy unit available. *Orthopedic Associates, your first team for quality care. . . .*

(The highlighted segments appear to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language.)

Lady Eagle Basketball Camp

The Lady Eagle Basketball Coach James Dougal will once again hold a series of basketball camps on the USI campus during the summer of '98. *Six of the current Lady Eagles attended camps during their junior high and high school days.* The [unintelligible] basketball camps include camps for grade school players as well as an overnight junior high camp. *And new this year separate shooting and post-player camps, former and current USI players will be assisting the Lady Eagles basketball coaching staff in the 8th annual [unintelligible] basketball camps. For more info, contact the USI Basketball Office.*

(The highlighted segments appear to exceed the identification-only purpose of underwriting announcements through impermissible descriptive references to the underwriter's instructional camps.)

Schnucks

Schnucks, *the friendliest store in town, has made it convenient for those people wanting to order a flower bouquet or just buy a single flower, for any occasion.* The floral department is located inside many of the Schnucks' stores, the floral department has predesigned bouquets available or can design to individual specifications. Along with the flowers there is a full line of party balloons to choose from. Food, flowers and more, Schnooks and it's floral department. That's Schnucks, a proud sponsor of USI Basketball.

(The highlighted segments appear to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language.)

Mediamix Communications

Communication. *Effective communication is imperative for any successful company. Effective*

communication is Mediamix. Whether your audience is your customer or your employees, Mediamix Communications will design a unique and meaningful plan for you. From corporate publications and videos to creative broadcast production, and effective advertising strategies, the energetic and experienced Mediamix staff maximizes their every resource and talent, and we deliver results. Mediamix Communications, because our business is yours.

(The highlighted segment appears to be replete with references that promote the underwriter through use of impermissible comparative, qualitative and descriptive language.)

Ohio Valley Cable and Wireless Systems

Ohio Valley Cable and Wireless Systems is proud to join the Screaming Eagles as a basketball and radio underwriter. Ohio Valley Cable offers movies, weather and sports. There's TCM, Turner Classic Movies, the Weather Channel, and ESPN 2. The Sports Deuce includes its entire lineup of college basketball games. In addition, all local network affiliates are included, including WAOZ. *The service from Ohio Valley Cable, there's no equipment to purchase, and no contract needed.* Serving all the Evansville metro area, Ohio Valley Cable and Wireless Systems

(The highlighted segment contains language that appears to provide impermissible price information and otherwise seeks to induce business patronage.)

Subway Sandwiches

Subway Sandwiches on West Lloyd is a proud sponsor of University of Southern Indiana Basketball on radio. *Subway Sandwiches on West Lloyd is currently featuring its fresh value meals. One can choose from one of eight different sandwiches, complete with chips and a 21 oz. drink. The fresh value meals from subway sandwiches comes with a money-back guarantee for satisfaction. That's a Subway Sandwiches fresh value meals and USI Basketball.*

(The highlighted segment appears to promote underwriter through references that contain impermissible price information, and otherwise seek to induce business patronage.)

Raben Tires

Since 1952, Raben Tires has been serving the tri-state's tire and automotive service needs. *Some of Raben Tires' most recognized brand-name tires are Goodyear, Michelin, and Dayton. Raben has a large selection of all-season tires for pasture performance, light trucks, and 4x4's on many sizes and styles. Raben Tires offers free tire mounting, free lifetime tire rotations with purchase, and free estimates and brake inspections. Raben also offers a free shuttle service if you need a ride. Raben would like to thank the tri-state area for 45 good years. See your friends at any of the 10 convenient tri-state Raben Tires locations.*

(The highlighted segment is replete with references that induce the listener to buy and appear to promote the underwriter through language that is impermissibly comparative, qualitative, and descriptive; and that provide prohibited price information.)

Old National Bank

Financial services from people with old-fashioned know-how is a way of life for us at Old National. Because being your bank for life is more than just a good day's work, it's our life's work. Here's to life, from your bank for life, Old National.

(The highlighted segment appears to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language.)

Evansville State Farm

With Evansville State Farm agent Jim Doman you're not just a number, you're an individual with your own insurance needs. Whether its car, home, health or life insurance, your good-neighbor State Farm agent can make sure that one has the insurance that's right. State Farm Agent Jim Doman at . . . for all your insurance needs, or any questions you have about insurance. Jim Doman State Farm Insurance is proud to underwrite these USI Basketball games on radio.

(The highlighted segment appears to promote underwriter through references that impermissibly intend favorable comparison to competitors, or otherwise invite business patronage.)

Shyler's Memphis Pit Barbecue

When you're really hungry, remember Shyler's Memphis Pit Barbecue, where there's the salad, the potatoes, and the barbecue. Shyler's got babyback ribs and St. Louis style too. Whether it's to eat in, carry out, or catering for that small to large party. Shyler's Memphis Pit Barbecue, you don't know barbecue until you've had Shyler's.

(The highlighted segments appear to promote underwriter through references that impermissibly intend favorable comparison to competitors, or otherwise invite business patronage.)

Clayton's Fine Dry Cleaning

Clayton's Fine Dry Cleaning is right on the way to wherever one is going with nine locations in Evansville, Newburgh, and Mt. Vernon. Clayton's has canopy-covered drive-thrus and attendants to offer in-car service to make dropping off and picking up one's cleaning convenient. And with Clayton's Sanitone dry cleaning process, it's easy to see why people trust Clayton.

(The highlighted segments appear to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language, and that otherwise invite business patronage.)

Edco Evansville

Edco Evansville wishes good luck to Screaming Eagles during the 1997-98 campaign. Edco Evansville operates two gas stations with convenience stores in Evansville . . . Each store offers Pennzoil gasoline while the convenience store offers items for the person on the go. Edco

Evansville is also the number-one lottery ticket retailer for Hoosier and Powerball lottery tickets in Region Seven. That's Edco of Evansville.

(The highlighted segment appears to promote underwriter through reference that impermissibly intends favorable comparison to competitors.)

Shyler's Memphis Pit Barbecue

When you're in the mood for barbecue, you can take Shyler's home with you. For a meal fit for the family, one can call and carry-out for that extra large meal, there's also catering too. Parties, lunches, reunions and more, the catering van brings it to your door. For Shyler's and catering too, one can call. . . . Shyler's Memphis Pit Barbecue, you don't know barbecue until you've had Shyler's.

(The highlighted segments appear to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language, and that otherwise invite business patronage.)

Old National Bank

Dear Mom and Dad, school is good, send money. Dear Son, your writing skills are improving. *We'll send cash on one condition, get collegiate checking from Old National. Unlimited check writing, no monthly service charge, no minimum balance, plus a MAC/ATM card, 24 hour banking, no transaction fees, no matter where you use it, even that dreadful Daytona Beach, and with your own Visa or Mastercard you won't have to grovel for money. Get collegiate checking from Old National, and get a haircut.* Love, Dad. Old National, you bank for life, an equal opportunity lender.

(The highlighted segment appears to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language; that provide prohibited price information; and that otherwise invite business patronage.)

Prudential

(first voice) Look at those little hands, he'll be a surgeon, a brain surgeon, we'll send him to the best schools, well, that's like \$160,000. OK maybe not a brain surgeon, a regular surgeon, that gets it down to \$140,000. Hey, maybe a tree surgeon, what am I saying. How did dad do it?

(second voice) Son, I called Prudential.

(first voice) I think I'll call Prudential. . . .

(The announcement appears to exceed identification-only purpose of permissible underwriting acknowledgements through references that imply sponsor provides exemplary service.)

February 14, 1998

Clayton's Fine Dry Cleaning

Clayton's Fine Dry Cleaning is proud to sponsor USI basketball. *Clayton's offers free pick-up or delivery at one's home or office, the Indiana Department of Environmental Management has named Clayton's a five-star designee as a certified master dry cleaner.* With locations in Evansville, Newburgh, Booneville, and Mt. Vernon, Clayton's offers sewing and repair as well as drive-thru car service. That's Clayton's Fine Dry Cleaning and USI Basketball.
(The highlighted segment appears to promote underwriter through references that contain comparative, qualitative and descriptive language, in addition to prohibited price information and an inducement to use dry cleaners.)

Raben Tires

Raben Tires has been serving the tri-state's tire and automotive service needs since 1952. Raben Tires carries Goodyear, Michelin, and Dayton and offers complete car care. *Raben's certified auto services guaranteed nation-wide and many of Raben's technicians are ASE certified, which means automotive service excellence. Raben's technicians work with state-of-the-art diagnostic equipment and attend training schools to stay abreast the latest auto service innovations.* Raben Tires would like to thank the tri-state for 45 good years. *See your friends at any of the ten convenient tri-state Raben Tires locations.*
(The highlighted segments appear to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language. In addition, use of the term "guaranteed" appears to constitute inducement to patronize underwriter's business.)

Old National Bank

It's the people who make a difference in your community. *And in your community bank. I'm Mike Hanton, president of Old National Bank, providing you with the latest in financial services, from people with old-fashioned know-how is a way of life for us at Old National.* Because being your bank for life is more than just a good days work, it's our life's work. Here's to life, from your bank for life, Old National.
(The highlighted segment appears to promote underwriter through references that contain impermissible comparative, qualitative and descriptive language.)

Prudential

There are lots of ways you can make money with a quarter. You can put it in a bank, and over the next 30 years, with compounded interest, your quarter could earn \$1.78. You might invest it in the stock market, or you can invest a quarter and change your whole financial future. For a mere quarter you could be on the road to financial security. With money for the kid's education and a weekend home in the country. Where can you get such a return on 25 cents? By using it to call your Prudential representative. Someone who can start you on the way to a secure future.

From life insurance to annuities, Prudential's financial products can provide you with tax-deferred growth. Representing Prudential in Posen and Vanderburgh counties is John Willis. He can help one find solutions in tune with one's insurance and financial security needs. One can call John at. . . .

(The highlighted segment appears replete with references promoting the underwriter through impermissible comparison to business competitors, and that otherwise invite business patronage.)

Shaffer Tours

March and April are busy months from Motorcoach Tours at Shaffer Tours on Evansville, as basketball, baseball, and hockey take center stage. It's hockey on March 7th as the St. Louis Blues play host to the Dallas Stars. Then on March 8th its time for the NBA with the Indiana Pacers and Coach Larry Bird matching up against his old team, the Boston Celtics in Indianapolis. For those looking for an early taste of baseball, the week of March 7th its off to spring training in Orlando complete with seven games and sightseeing. That's Shaffer Motorcoach tours at. . . .

(The highlighted segment appears to promote underwriter through references that impermissibly call listeners to action.)

