

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

August 12, 1999

In reply refer to:
1800C1-KMS
99060391

American Family Association
Licensee, Noncommercial Educational Translator Station W204AV, Sanford, NC
P.O. Drawer 2440
Tupelo, MS 38803

Dear Licensee:

By this letter, we conclude our investigation into allegations that noncommercial educational translator station W204AV, Sanford, NC, licensed to American Family Association ("AFA"), 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 alleged violations involve donor and underwriting announcements which were broadcast on Station W204AV.

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 (1992). In this case, a complaint was filed alleging that certain 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 The Carpenter Shop and Southern Jewelers.

So that we might be better informed concerning the matters raised by the complaint, we issued a letter of inquiry dated July 15, 1999. In your July 21, 1999 response, you acknowledge that the two announcements were made on behalf of for-profit entities and that they exceeded the limitations set forth under the relevant statute and the Commission's rules. You contend, however, that the subject announcements were not carried on primary station WAFR(FM), but were instead broadcast on the translator station alone, through an exception set forth in Section 74.1231(g) of the Commission's Rules, a total of 44 times each during the period November 1, 1998 through November 10, 1998. In mitigation, you assert that AFA "has endeavored scrupulously to comply with the Commission's rules governing underwriting," as evidenced by its internal policy memoranda and ongoing staff training efforts. Moreover, you claim that the instant lapses occurred because the announcements were not submitted by the translator station's staff to your general counsel's office for prior review and approval, as AFA's programming criteria normally require. You further indicate that the staff took corrective actions immediately following the receipt of our inquiry letter.

Upon careful consideration of the record in this case, taking into account your response, we find that you broadcast impermissible advertisements for the benefit of for-profit entities, in apparent violation of Section 399B of the Communications Act, and Section 73.503(d) of the Commission's Rules. See *Public Notice, supra*. It is long settled that, where rule lapses occur, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation. See *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970), citing *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962). Accordingly, we find that

you have apparently 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. Lacking evidence that the announcements in question were broadcast over the primary station, we accept your explanation that they were carried by the translator station alone, pursuant to an exception set forth in Section 74.1231(g) of the Commission's Rules that permits translator stations to air local messages in specific instances. From the information you provided, it appears that the offending announcements were broadcast repeatedly by the translator station during the period November 1, 1998 through November 10, 1998.

In considering these apparent violations, we note favorably that the translator station has maintained an unblemished record prior to the instant case. You are urged to conform your translator station's practices and procedures in this area to the applicable Commission policy and precedent at once. [Footnote 1](#). In view of the foregoing, you are hereby admonished for the violations described above. This letter will be made part of translator station W204AV's complaint file.

Sincerely,

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

Attachment

cc: Complainant

[Footnote 1](#): Although you indicate that the station's staff has taken corrective action, an issue raised by the materials included in your submission warrants our further comment. In this connection, your station's underwriting policy directive entitled "Attract Underwriting and Stay Out of Trouble with the FCC," opines that:

it is acceptable practice to "tell **what motivates the underwriter** to support the programming on AFR: "LifeLine is the long distance telephone company that was formed to advance the cause of Christ on earth." "Six Flags supports AFA's stand for family entertainment in a rodent-free environment. . . ." (Emphasis supplied.)

While it is appropriate for an underwriting acknowledgement to note that a sponsored program is approved or endorsed by the underwriter, you should bear in mind that Section 399B of the Communications Act expressly prohibits noncommercial stations from airing paid-for announcements that "express the views of any person with respect to any matter of public importance or interest." Consequently, we would caution you to avoid inserting messages within the text of underwriting announcements that might be deemed to express opinions on such matters.

Attachment:

November 5, 1998

The Carpenter Shop

The staff at The Carpenter Shop thanks you for listening to American Family Radio, where you're sure to hear the latest album by Point of Grace, "Steady On." *Pick up your copy today.* And if you're a Southern Gospel fan, you'll want the latest by [unintelligible], "Within the Rock." At the Carpenter Shop, *there's always something for the kids*, including the latest veggie tales video, "Madame Blueberry." *This hilariously funny video teaches kids about being thankful. Visit The Carpenter Shop, Monday through Saturday, 10 a.m. until 6 p.m. . . . (30 seconds).*

(The highlighted segments appear to promote underwriter through references that call the listener to action, encourage business patronage, or contain impermissible comparative, qualitative and descriptive language.)

Southern Jewelers

For many years you have shopped at 143 South Steel Street, Shipman's Jewelry. Now at the same location, a new store, Southern Jewelers. Offering the *same quality merchandise with personal service. Let Laura or Darryl help you choose that special gift from their large selection of beautiful wedding and jewelry items. Southern Jewelers now offers a new selection of home decorative pieces at a special low price.* Southern Jewelers, a sponsor of WAFR 88.7 on your FM dial. (30 seconds).

(The highlighted segments appear to promote underwriter through references that call the listener to action, encourage business patronage, contain impermissible comparative, qualitative and descriptive language, or prohibited price information.)