

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Nos. EB-00-IH-0153
	)	and EB-01-IH-0652
MINORITY TELEVISION PROJECT, INC.	)	NAL/Acct. No. 200232080020
	)	FRN 0005704366
Licensee of Noncommercial Educational	)	Facility ID No. 43095
Television Station KMTP-TV,	)	
San Francisco, California	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 20, 2005**

**Released: October 26, 2005**

By the Commission:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we dismiss in part and otherwise deny a Petition for Reconsideration filed on January 24, 2005, by Minority Television Project, Inc. (“Minority”), licensee of noncommercial educational Station KMTP-TV, San Francisco, California (“*Petition*”). Minority seeks reconsideration of the Commission’s denial of its January 22, 2004, Application for Review.<sup>1</sup> In its Application for Review, Minority sought review of a *Forfeiture Order*<sup>2</sup> issued by the Chief, Enforcement Bureau (“Bureau”), which imposed a monetary forfeiture in the amount of \$10,000 against it for willful and repeated violation of the statute and Commission’s rules prohibiting the broadcast of advertisements on noncommercial educational stations.<sup>3</sup>

**II. BACKGROUND**

2. In the underlying *NAL* and *Forfeiture Order* proceeding, the Bureau sanctioned Minority for its willful and repeated broadcast of approximately 1,911 prohibited advertisements over noncommercial educational Station KMTP-TV, San Francisco, California, during a 26-month period commencing in January 2000.<sup>4</sup> In so acting, the Bureau also dismissed, as moot, Minority’s related June 13, 2000, Request for Declaratory Ruling.<sup>5</sup>

3. Thereafter, in the December 23, 2004, *Order on Review*, the Commission found that Minority’s arguments had been fully and correctly addressed and rejected in the Bureau’s

<sup>1</sup> *Minority Television Project, Inc.*, Order on Review, 19 FCC Rcd 25116 (2004) (“*Order on Review*”).

<sup>2</sup> *Minority Television Project, Inc.*, Forfeiture Order, 18 FCC Rcd 26611 (Enf. Bur. 2003) (“*Forfeiture Order*”); *Minority Television Project, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15646 (Enf. Bur. 2002) (“*NAL*”).

<sup>3</sup> See 47 C.F.R. § 73.621(e).

<sup>4</sup> See *Order on Review*, *supra*, at ¶ 4.

<sup>5</sup> See *Forfeiture Order*, *supra*, at ¶ 15.

underlying proceeding.<sup>6</sup> The Commission noted that the current statutory scheme, rules and policies governing noncommercial educational broadcasters have been in place for more than twenty years, and that, in this proceeding, the Bureau fully considered language-specific issues in reaching its findings at every stage of this proceeding.<sup>7</sup> Furthermore, the Commission rejected Minority's argument that the noncommercial underwriting statute, rules and policy impose an English-only standard or discriminate against non-English speakers or specific ideas in violation of the First Amendment or the equal protection guarantee of the Due Process Clause of the Fifth Amendment, finding that neither section 399B of the Act nor section 73.621(c) of the Commission's rules prohibit the use of a foreign language or discriminate against foreign language programming under the regulatory scheme.<sup>8</sup> Accordingly, the Commission found no constitutional infirmity in the regulatory scheme.<sup>9</sup> The Commission further declined Minority's request that it revisit its underwriting announcement standards and adopt ones that are "capable of meaningful prospective use."<sup>10</sup> Significantly, the Commission found that the existing standards are already clear.<sup>11</sup>

4. In its *Petition*, Minority repeats constitutional and other arguments previously made and rejected in this proceeding. It also advances an additional argument which it maintains warrants reconsideration and reversal of the *Order on Review*. Minority claims that it has recently adopted new "quantitative" methods to distinguish acceptable underwriting announcements from unacceptable commercial advertisements, and maintains that its methods are less subjective and more reliable than the Commission's standards,<sup>12</sup> and enjoy academic support.<sup>13</sup> Minority contends that these factors demonstrate that it has made "good faith" efforts to comply with the Commission's underwriting rules, and that the sanctioned underwriting announcements were within the discretion accorded it under pertinent Commission precedent and, accordingly, permissible.<sup>14</sup> For these reasons, Minority urges that the Commission either mitigate or rescind the forfeiture imposed against it in this case.<sup>15</sup>

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<sup>6</sup> See *Order on Review, supra*, at ¶ 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 8-14. Minority claims that it conducts focus group, academic text, educator, and advertising agency review to evaluate potential underwriting announcements, which steps include asking potential viewers to numerically grade sample announcements as to their relative degree of commercialism. *Id.*

<sup>13</sup> See *Addendum to Petition*, submitted May 2, 2005, at Attachment 1 (letter from Miriam A. Smith, Associate Professor, Broadcast & Electronic Communication Arts Department, San Francisco State University, to Bonnie Asano, President, KMTP-TV, dated April 8, 2005).

<sup>14</sup> *Id.* at 14-15; *Xavier University*, Letter of Admonition (Mass Med. Bur. 1989), *recon granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

<sup>15</sup> *Petition* at 14-15.

### III. DISCUSSION

5. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the original order or raises new facts or changed circumstances not known or existing until after the petitioner's last opportunity to present such matters.<sup>16</sup> A petition that merely repeats arguments previously considered and rejected will be denied or dismissed as "repetitious."<sup>17</sup>

6. The *Petition* repeats constitutional or other arguments regarding our underwriting standards that we have already considered and rejected.<sup>18</sup> We will not reconsider those already rejected arguments and dismiss the *Petition* in part as "repetitious" pursuant to 47 C.F.R. § 1.106(b)(3).

7. With regard to Minority's remaining argument, it does not warrant reconsideration of the *Order on Review* because the "quantitative" methods to evaluate underwriting announcements that Minority claims to have begun to develop in March 2003, are not timely presented facts or circumstances that warrant reconsideration. Minority fails to demonstrate, why, "through the exercise of ordinary diligence," it could not have at least supplemented its then pending Application for Review to raise this issue.<sup>19</sup>

8. Nor does Minority's *post-hoc* adoption of quantitative methods to screen its underwriting message content demonstrate that the licensee has made "good faith" efforts to comply with the Commission's standards. Even if Minority's use of these quantitative methods was effective in complying with the Commission's standards, Minority did not begin to implement these methods until March 2003, more than a year after the January 2000, to February 2002, period of its violations of the Commission's rules prohibiting the broadcast of advertisements on noncommercial educational stations. Moreover, we are unconvinced that Minority's use of quantitative methods is, in fact, any substitute for our established methods of evaluating whether a noncommercial station has broadcast commercial advertisements, or that Minority made a good faith effort to comply with our underwriting rules. We therefore deny Minority's *Petition*.<sup>20</sup>

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<sup>16</sup> *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106(b)(2)(ii), (b)(3) and (c).

<sup>17</sup> *Bennett Gilbert Gaines*, Memorandum Opinion and Order, 8 FCC Rcd 3986 (Rev. Bd. 1993); 47 C.F.R. § 1.106(b)(3).

<sup>18</sup> *Order on Review, supra*, ¶¶ 2-4; *Forfeiture Order, supra*, 18 FCC Rcd at 26613-18, ¶¶ 9-15.

<sup>19</sup> See 47 C.F.R. § 1.106(b)(2)(ii); see also *Sagir, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15967, 15972 (2003) (burden squarely on petitioner to satisfy threshold showing under 47 C.F.R. § 1.106).

<sup>20</sup> We also note that the Commission has declined to adopt quantitative timing and message frequency limitations in light of the effectiveness of extant deterrents. See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Second Report and Order, 86 FCC 2d 141, 156 (1981) (finding that quantitative timing and message frequency limitations were unnecessary); *WNYE-TV*, Memorandum Opinion and Order, 7 FCC Rcd 6864, 6865 (Mass Med. Bur. 1992).

**IV. ORDERING CLAUSES**

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106(b)(2), (b)(3), the Petition for Reconsideration filed on January 24, 2005, by Minority Television Project, Inc., **IS DISMISSED IN PART AND OTHERWISE DENIED.**

10. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail/Return Receipt Requested, to Minority Television Project, Inc., c/o its attorney, James L. Winston, Esq., Rubin, Winston, Diercks, Harris & Cooke, L.L.P., Sixth Floor, 1155 Connecticut Avenue, N.W., Washington, D.C. 20036, and by regular mail to Lincoln Broadcasting Company, c/o its attorney, Michael D. Berg, Esq., Law Offices of Michael D. Berg, 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary