

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

In the Matter of)	
)	
CHRISTIAN VOICE OF CENTRAL OHIO, INC.)	File No. EB-03-IH-0501
)	NAL/Acct. No. 200532080016
)	Facility ID No. 11126
Licensee of Formerly Noncommercial Educational Station WCVZ(FM), South Zanesville, Ohio)	FRN No. 0002990828

MEMORANDUM OPINION AND ORDER

Adopted: October 21, 2008

Released: October 23, 2008

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny a Petition for Reconsideration (“Petition”) filed by Christian Voice of Central Ohio, Inc. (“Christian Voice”),¹ licensee of formerly noncommercial educational broadcast Station WCVZ(FM), South Zanesville, Ohio (the “Station”).² Christian Voice seeks reconsideration of a May 9, 2008, *Forfeiture Order*,³ in which the Enforcement Bureau (the “Bureau”) imposed a \$9,000 forfeiture against Christian Voice for its willful and repeated broadcast of advertisements over the Station in violation of Section 399B of the Communications Act of 1934, as amended (the “Act”),⁴ and Section 73.503(d) of the Commission’s rules.⁵ In its Petition, Christian Voice contends that the Bureau committed legal error by misapplying applicable precedent in reaching its legal conclusions. At the same time, Christian Voice, in its Petition, appears to concede that it violated our underwriting rules, but argues that the forfeiture imposed is not commensurate with past enforcement actions for similar violations.⁶ Christian Voice requests that the monetary forfeiture be rescinded and replaced

¹ See Christian Voice of Central Ohio, Petition for Reconsideration (filed June 9, 2008) (“Petition”). The Enforcement Bureau has referred this matter to the full Commission pursuant to Section 0.5(c) of the Rules. See 47 C.F.R. § 0.5(c). See also 47 C.F.R. § 1.106(a)(1).

² In April 2004, after the complaint initiating this matter had been filed, but before the Enforcement Bureau had inquired into the matter, Christian Voice sought to modify the Station’s noncommercial educational license so that it could operate WCVZ(FM) as a commercial facility. See File No. BMLH-20040415AEI, granted July 19, 2004.

³ See *Christian Voice of Central Ohio, Inc.*, Forfeiture Order, 23 FCC Rcd 7594 (Enf. Bur. 2008) (“*Forfeiture Order*”).

⁴ See 47 U.S.C. § 399B.

⁵ See 47 C.F.R. § 73.503(d) (prohibits noncommercial stations from broadcasting promotional announcements on behalf of for-profit entities in exchange for the receipt, in whole or in part, of consideration to the licensee).

⁶ See Petition at i, 10 (“*Even with respect to actual violations*, the stated reasons for distinguishing Christian Voice from other cases where other violations were treated far more leniently were unavailing and cannot withstand scrutiny.”) (emphasis added).

instead with an admonishment.⁷ As discussed below, we deny the Petition and thereby affirm the \$9,000 forfeiture imposed by the Bureau.

II. DISCUSSION

2. The matter before us does not warrant reconsideration. Reconsideration is appropriate only where the petitioner shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters.⁸ A petition that simply repeats arguments previously considered and rejected will be denied.⁹ Christian Voice has failed to either demonstrate error, or to present new facts or changed circumstances, as required.

3. We reject Christian Voice's main contention that the Bureau erred in finding that the announcements made on behalf of underwriters Tastee Freeze and Prindle-GMAC Real Estate violate the Commission's underwriting rules.¹⁰ We find that the Bureau properly concluded that the Station's broadcasts of the Tastee Freeze and Prindle-GMAC Real Estate underwriting announcements constituted announcements that induce patronage and advert to favorable qualities possessed by the underwriter that seek to distinguish its business from similar enterprises, in violation of Section 399B of the Act and Section 73.503(d) of the Commission's rules.¹¹

4. Christian Voice argues that two cases, *WTTW*¹² and *Family Vision*,¹³ which the Bureau distinguished from the present case in the *Forfeiture Order*, actually support its position that the announcements made on behalf of underwriters Tastee Freeze and Prindle-GMAC Real Estate did not violate the Commission's underwriting rules.¹⁴ We disagree. Christian Voice notes that, in *WTTW*, the Bureau determined that the phrase "excellent service" passed muster under *Xavier University*¹⁵ because it was part of an established corporate slogan.¹⁶ Christian

⁷ See *id.*

⁸ See *WWIZ, Inc.*, 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 (c).

⁹ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216, 4216 (2004); *Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993).

¹⁰ See Petition at 4-6. We note that the Bureau's \$9,000 forfeiture was issued in response to a finding of nine violative announcements broadcast by Christian Voice. Christian Voice's Petition, however, appears to dispute only two of the nine announcements.

¹¹ See *Forfeiture Order*, 23 FCC Rcd 7594, 7596, *citing Minority TV, infra* n. 20 at 15652 (message found to impermissibly encourage business patronage where airline underwriter was depicted as "harmoniously-run carrier" through portrayal of its content workers).

¹² See *Window to the World Communications, Inc.*, Notice of Apparent Liability, 12 FCC Rcd 20239, 20241 n.2 (Enf. Bur. 1997), *Forfeiture Order*, 15 FCC Rcd 10025 (Enf. Bur. 2000) ("*WTTW*").

¹³ See *Family Vision Ministries*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 n.5 (2003) ("*Family Vision*").

¹⁴ See Petition at 6.

¹⁵ In *Xavier University*, the Commission acknowledged that it can at times be difficult to distinguish between language that identifies versus that which promotes, and that it expects only that licensees exercise "reasonable good faith judgment" in this area. See *Xavier University*, Letter of Admonishment (Mass Med. Bur. Nov. 14, 1989), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990)

(continued . . .)

Voice, however, makes no specific arguments or comparisons which demonstrate that similar circumstances apply to the announcements at issue here. In *Family Vision*, the Commission concluded that the use of the phrase “daily lunch specials” in a restaurant’s underwriting announcement did not render the announcement impermissible. The Commission found that the phrase simply denoted the fact that there were varied offerings each day¹⁷ and that it was neither a prohibited call to action nor an improper attempt to convey price information.¹⁸ Christian Voice contends that the reference to “planning a special occasion” in its Tastee Freeze announcement is similarly permissible. We disagree. We concur in the Bureau’s view that the exhortation to listeners to consider Tastee Freeze when “planning a special occasion” invited patronage, rather than merely describing a range of standard services or products available from the underwriter

5. Moreover, as the Bureau found, both the Tastee Freeze and Prindle-GMAC Real Estate announcements also contained promotional qualitative characterizations that render them unacceptable. For example, the Tastee Freeze announcements characterize the underwriter’s ice cream products as “tastefully decorated.” Similarly, the Prindle-GMAC Real Estate announcements aver to favorable qualities possessed by the underwriter that seek to distinguish its business from similar enterprises, and thus contain prohibited qualitative characterizations by stating that “we’re all about family,” and that “we love selling real estate.” Christian Voice has offered no arguments to rebut this conclusion.

6. We also find unpersuasive Christian Voice’s attempts to demonstrate that the Bureau failed to apply appropriate precedent and to fully consider the circumstances of this case in deciding the appropriate forfeiture to impose. As reflected in the *Forfeiture Order*, the Bureau took steps to make adjustments to the original forfeiture assessment after full consideration of Christian Voices’ response to the *NAL*. The Bureau reassessed its analysis of certain announcements broadcast and agreed with Christian Voice that the announcements that it aired on behalf of The School House are permissible under *Xavier University*, and in keeping with Commission policy that underwriting announcements may identify, but not promote, their for-profit sponsors.¹⁹ The Bureau also took account of Christian Voice’s good overall prior compliance record and, based on these considerations, reduced the forfeiture from \$20,000 to \$9,000.

7. Christian Voice argues, nonetheless, that the Bureau’s decision is inconsistent with the Commission’s decision in *Minority Television Project (“Minority TV”)*,²⁰ because the licensee in that case, unlike Christian Voice, had a greater ability to pay and gained greater monetary benefit from airing violative announcements, yet the Commission only imposed a

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(“*Xavier*”). See also *Public Notice*, “In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations” (April 11, 1986), reprinted in, 7 FCC Rcd 827 (1992) (“*Enhanced Underwriting and Donor Acknowledgment Statement*”).

¹⁶ See *WTTW*, 15 FCC Rcd at 10025-10026 ¶ 3.

¹⁷ See *Family Vision*, 18 FCC Rcd at 1419 n.5.

¹⁸ *Id.* at 1419 & n.5.

¹⁹ In this regard, The School House announcements briefly describe their underwriter’s products or services in value-neutral terms, and list business addresses and telephone numbers, consistent with the identification-only purpose of underwriting announcements.

²⁰ See *Minority Television Project, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15646 (Enf. Bur. 2002), Forfeiture Order, 18 FCC Rcd 26611 (2003), *pet. for rev. den’d*, Order on Review, 19 FCC Rcd 25116 (2004), *aff’d*, Memorandum Opinion and Order, 20 FCC Rcd 16923 (2005) (forfeiture paid) (collectively “*Minority TV*”).

\$10,000 forfeiture.²¹ It also contends that the Bureau failed to acknowledge the relatively modest nature of Christian Voice's facilities and market in determining the amount of the forfeiture. Christian Voice concludes that the \$10,000 forfeiture imposed in that case cannot be reconciled with the \$9,000 forfeiture that the Bureau imposed in the instant case, and that the Bureau therefore exceeded its authority in not fully considering the impact of that Commission decision.²²

8. We agree that the *Minority TV* decision, issued by the Commission, binds the Bureau; we find, however, that the Bureau's *Forfeiture Order* in this case properly considered the relevant circumstances here as compared to those in *Minority TV*. In *Minority TV*, the Commission imposed a \$10,000 forfeiture for just over 1900 violations of the Commission's underwriting rules over a two-year period, whereas in this case Christian Voice broadcast over 3,000 impermissible announcements over a fifteen-month period. Based on that comparison, we find the forfeiture imposed here to be reasonable and consistent with our decision in *Minority TV*. Christian Voice argues that the Bureau, in setting the instant forfeiture amount, failed to consider the relative burden imposed by such penalty as compared to licensees in similar cases -- namely, that the licensee in *Minority TV* derived allegedly greater benefit from airing prohibited advertisements and incurred less hardship paying the penalty assessed against it -- as compared to other licensees, such as Christian Voice, that operate lesser facilities in more modest markets. This argument is misplaced. These factors may be relevant components of a licensee's contention that it lacks the ability to pay a particular forfeiture, but Christian Voice has not presented the documentation necessary to support such a contention in this case.²³ In sum, the Bureau properly considered the key determinants of a forfeiture that were properly before it -- the promotional nature of the announcements aired, the number of announcements, and how long and how often they were repeated. On these grounds, as we have noted above, the Bureau's forfeiture determination is consistent with *Minority TV*.

9. Christian Voice further argues that the Bureau, rather than relying on *Minority TV*, should have relied instead on its prior decision in *Family Life*²⁴ in deciding the appropriate forfeiture amount.²⁵ We disagree. In *Family Life*, a \$2,000 forfeiture was imposed against the licensee for the broadcast of 120 violative announcements over a three-month period. The far fewer number of violations over a much shorter period of time in that case -- as compared with Christian Voice's 3,000 violations aired over fifteen months -- justifies the higher forfeiture amount in this case.

10. Finally, Christian Voice attempts to rely on *Fort Wayne*, a case which was settled through consent decree.²⁶ That reliance is misplaced. The voluntary contribution amount set in a consent decree case takes into account many additional factors not present in a forfeiture

²¹ See Petition at 8.

²² See *id.* at 8-9.

²³ See *Christian Voice of Central Ohio, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 23663, 23667 ¶ 15 (Enf. Bur. 2004) ("*NAL*"); *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17105-107 (1997).

²⁴ See *Family Life Educational Foundation*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 16317 (Enf. Bur. 2003) ("*Family Life*").

²⁵ See Petition at 7-8.

²⁶ See *Fort Wayne Public Television, Inc.*, Order, 19 FCC Rcd 20869 (Enf. Bur. 2004) ("*Fort Wayne*").

proceeding, including other negotiated terms and the avoidance of further enforcement efforts by the Commission. Accordingly, *Fort Wayne*, in which the Commission agreed to a voluntary contribution amount of \$1,000 because the licensee had voluntarily proposed acceptable settlement terms, is inapt to the circumstances of this case. Given the substantially different postures inherent in settlement and in forfeiture proceedings, we do not find Christian Voice's argument persuasive. Therefore, after reviewing Christian Voice's Petition, and the underlying record, we find no basis on which to overturn the Bureau's prior decision and we conclude that the decision to impose a \$9,000 forfeiture was correct.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed June 9, 2008, by Christian Voice of Central Ohio, Inc. **IS DENIED**, that the Enforcement Bureau's May 9, 2008, decision **IS AFFIRMED**.

12. **IT IS FURTHER ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,²⁸ that Christian Voice of Central Ohio, Inc., licensee of then-noncommercial educational Station WCVZ(FM), South Zanesville, Ohio, **FORFEIT** to the United States the sum of Nine Thousand Dollars (\$9,000) within 20 days from the release date of this *Memorandum Opinion and Order* for willfully and repeatedly broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399B, and Section 73.503(d) of the Commission's rules, 47 C.F.R. § 73.503(d).

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Christian Voice will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Kenneth.Scheibel@fcc.gov and to Jennifer.Lewis@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁹ Christian Voice may contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. **IT IS FURTHER ORDERED**, that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested, to Christian Voice of Central

²⁷ See 47 U.S.C. § 503(b).

²⁸ See 47 C.F.R. §§ 0.111, 0.311, and 1.80.

²⁹ See 47 C.F.R. § 1.1914.

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FEDERAL COMMUNICATIONS COMMISSION

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