

F.C.C. 74-77

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice
 CONCERNING THE APPLICABILITY OF COMMISSION
 POLICIES ON PROGRAM-LENGTH COMMERCIALS

JANUARY 29, 1974.

APPLICABILITY OF COMMISSION POLICIES ON PROGRAM-LENGTH
 COMMERCIALS

The Commission has received a number of pleadings, filed on behalf of various licensees of radio and television stations, which in essence petition the Commission to revise or to clarify its policies pertaining to program-length commercials.¹

The above-referenced filings appear to have been generated by the Commission's statements in its Public Notice, *Program-Length Commercials*, issued February 22, 1973.² In that Public Notice, the Commission noted its serious concern over broadcasts of program-length commercials and referred to several rulings concerning programs that interweave "non-commercial" program content so closely with the commercial message that the entire program must be considered commercial. The Commission further noted the three basic problems that typically attend the broadcast of program-length commercials: (1) broadcast of such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability; (2) the program-length commercial is typically inconsistent with the licensee's representations to the Commission regarding the maximum amount of commercial matter it will broadcast in any hour;

¹ These pleadings consisted of filings by the National Association of Broadcasters, June 1, 1973; the Elkins Educational Research Foundation, April 24, 1973; and the law firms of Cohn and Marks, March 16, 1973, and Haley, Bader and Potts, March 25, 1973. On August 13, 1973, the National Citizens Committee for Broadcasting (NCCB) filed a memorandum opposing revision of the Commission's program-length commercial policies, to which Haley filed a statement which essentially repeated what it had urged in its original petition. All parties agree that the Commission's policies should be clarified. To the extent that the material in this Public Notice provides the requested clarification, these petitions are granted, and in all other respects are denied.

² 39 FCC 2d 1062, 26 RR 2d 1023. Issued concurrently with the Public Notice was a letter admonishing *Taft Broadcasting Company*, licensee of Stations WDAF-AM and WDAF-TV for broadcasting program length commercials. *Taft Broadcasting Co.*, 39 FCC 2d 1070 (1973). Since then, the Commission has had occasion to issue similar admonishments to several licensees for their broadcasts of "chinchilla" programs, which the Commission found were program-length commercials. *Weigel Broadcasting Co.*, 41 FCC 2d 370 (1973); *Rush Broadcasting Corp.*, 42 FCC 2d 483, 486 (August 2, 1973); *United Television Company of New Hampshire*, 42 FCC 2d 632, 636 (1973); *Turner Broadcasting of North Carolina*, 42 FCC 2d 622, 626 (1973); *Midland Television Corporation*, 42 FCC 2d 587, 591 (1973); *WTON-TV, Inc.*, 42 FCC 2d 639, 642 (1973); *Mid New York Broadcasting Corp.*, 42 FCC 2d 594, 597 (1973); *Channel Seventeen, Inc.*, 42 FCC 2d 829 (1973). These admonishments, with the exception of *Channel Seventeen, Inc.*, were sent to those licensees together with Notices of Apparent Liability for their apparent failure to comply with the Commission's Rules pertaining to proper logging of commercial announcements. See Commission's Rules, Section 73.670(a)(2)(ii).

and (3) violations of the Commission's logging Rules are usually evident.³

Questions have been raised by petitioners concerning the meaning of the Commission's statement that certain programs may exhibit a pattern of subordinating the public interest in programming to an interest in the salability of the sponsor's products or services. Additionally, petitioner National Citizens Committee for Broadcasting (NCCB) states that the primary test in determining that a program falls within the definition of a program-length commercial is whether commercial interests are the program's "dominant purpose" which, it says, is another way of stating that the licensee has subordinated programming in the interest of the public to programming in the interest of salability.⁴ The Commission does not mean by this expression to question a licensee's judgment in selecting programming which it believes will attract an audience, even though its motive in so doing may, at least in part, be to sell advertising within such programs and thereby derive the revenue necessary to the operation of its station. The fact that an interested commercial entity sponsors a program the content of which is related to the sponsor's products or services does not, in and of itself, make a program entirely commercial. The situation which causes the Commission concern is where a licensee quite clearly broadcasts program matter which is designed primarily to promote the sale of a sponsor's product or services, rather than to serve the public by either entertaining or informing it. The primary test is whether the purportedly non-commercial segment is so interwoven with, and in essence auxiliary to, the sponsor's advertising (if in fact there is any formal advertising)⁵ to the point that the entire program constitutes a single commercial promotion for the sponsor's products or services. This test will be construed strictly and the determination that a program is entirely commercial will be reached only when the facts clearly justify that conclusion. The Commission's responsibility is to apply its policies to those situations where the facts make it obvious the entire program should be classified as commercial.

The petitioners have submitted numerous actual or hypothetical examples of programs typically broadcast by licensees and request the Commission's interpretation of its program-length commercial policies with respect to these examples. Because of the interest shown by petitioners and others in obtaining clarification, the numerous questions received by the Commission and its staff since the Public Notice was issued, and because information coming to the Commission's attention indicates that some licensees, either out of confusion about or disregard for the program-length commercial policies, continue to

³ In this regard, see specifically the following sections of the Commission's Rules: 73.112 (a) (2), et seq. (AM); 73.282(a) (2), et seq. (FM); 73.670(a) (2), et seq. (TV).

⁴ NCCB also urges that the Commission open the proceeding to a formal inquiry if it decides that the program-length commercial policies warrant revision. The Commission believes that revision of the basic program-length commercial policies is not warranted and that a formal inquiry would not be useful at this time. The Commission's statements herein provide clarification of the statements set forth in the February 22, 1973, Public Notice on program-length commercials and similar statements contained in its prior decisions in this area.

⁵ Some program-length commercials contain no separate or formal advertisements as such.

broadcast program-length commercials, it is believed that further interpretation and clarification of policy is warranted. The Commission has, therefore, set forth below a number of interpretative examples in question-and-answer form based in part upon the examples in petitioners' pleadings and in part upon other questions and information received by the Commission subsequent to the issuance of the Public Notice of February 22, 1973.

No attempt has been made to answer all of the numerous hypothetical questions asked, since many of them are repetitive and are variations of the same factual theme. Moreover, it would be impractical, if not impossible, to formulate rulings in advance regarding every conceivable type of program. Rather, the examples and interpretations are intended to provide licensees with a fuller understanding of the standards the Commission employs in determining what constitutes a program-length commercial in several areas of programming. Obviously, many questions will be close and, as in many other areas of Commission policy, the Commission will not impose sanctions if a licensee appears to have given careful consideration to the many factors involved in arriving at a good-faith determination as to whether a particular program is a program-length commercial under the Commission's policies. Each of the rulings issued to date has been concerned with obvious situations in which the licensee knew or reasonably should have known that the program was entirely commercial because the program's non-commercial segment was so closely interwoven with the commercial promotion of the sponsor's products or services.⁶

Petitioners' pleadings indicate that one popular program format that causes the broadcast licensee concern in the program-length commercial area is the sponsored "remote" broadcast, presented live or pre-recorded from a location other than the licensee's studios. Such remote broadcasts include, but are not limited to, the presentation of shopping center openings, county fairs, expositions and boat shows, and broadcasts from retailers' showrooms. The Commission notes that such remote broadcasts are not necessarily commercial, even when spots are sold to merchants or exhibitors sponsoring the broadcast. As in other types of programs, the crucial consideration is the extent to which the program content promotes the commercial interests of the sponsor. On the basis of the facts, the remote broadcast may constitute a program-length commercial in at least two situations: (1) when the allegedly non-commercial segment is so closely interwoven with the sponsor or sponsors' commercial announcements that the "non-commercial" segment has achieved a substantial identity with the sponsor's commercial interests, or (2) when no formal commercial spot announcements, as such, are broadcast but the presentation is sponsored and the program clearly is devoted to promoting the sponsor's products or services, as for example, a sponsored remote broadcast from a shopping center which devotes a large portion of time to displaying the products of the merchant-members of the sponsoring association.

⁶The Commission's prior rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); and *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972) and decisions cited in footnote 2, *supra*.

Similar considerations apply to the other types of programs set forth below.

The Commission reiterates its position that its function is not to pass upon the desirability or quality of a questioned program, but on the basis of the facts peculiar to each situation to determine whether the non-commercial segment of the program is so closely interwoven with the sponsor's commercial messages that it is apparent that the program as a whole promotes the sponsor's products or services.

The NAB suggests that if the Commission considers the grand opening of shops or shopping centers to be totally commercial in nature, it should exempt such remote broadcasts from its policies when they are broadcast on an infrequent basis, e.g., once a month, on the grounds that these broadcasts contain substantial public interest value. However, the Commission believes that there is no basis for such an exemption if the Commission's program-length commercial policies are to be applied and enforced in any consistent manner. As the examples given below indicate, coverage of grand openings is not inconsistent with the Commission's policies provided that the licensee takes steps to ensure that the non-commercial portion does not achieve a substantial identity with the sponsor's advertising.

Questions have also been raised as to whether a licensee may broadcast a program-length commercial if it logs the entire program as commercial and the total commercial time does not exceed whatever representations it made to the Commission regarding the maximum commercial content per hour. A specific example has been devoted to this question in view of the number of inquiries. See example 27(Q).

A number of questions have been asked regarding religious and political programs. The Commission has confined application of its program-length commercial policies to programs concerning the sale of goods or services and will continue to do so. Specific examples below clarify the Commission's policies in this regard. Many questions have been received by the Commission regarding the broadcast of musical programs sponsored by recording companies or record shops. Such questions are dealt with in example 8(Q) through 12(Q).

The NAB also asks whether an exemption from the Commission's program-length commercial policies is warranted for "want ad and classified programs" because of the public interest value the NAB asserts attaches to the broadcast of such programs.⁷ As explained in the answer to Question 29, a classified ad or swap shop program for which no charge is made to any advertiser is not a commercial program and therefore does not fall within the scope of the program-length commercial policy. Likewise, where the individual advertisers are not charged for their ads but where a single advertiser pays for the program and presents only his own discrete advertisements unrelated to the classified ads and in the quantity normally allowed by the station, the program does not constitute a program-length commercial. The only circumstance to which the program-length commercial policy applies is that in which each person pays for the broadcast of his own classified-type advertisement, since such a program is entirely com-

⁷ The Commission, on one occasion, approved one such classified advertising proposal on a limited and experimental basis. *McLendon Pacific Corporation*, 7 RR 2d 653 (1966).

mercial in content. Even in this situation, we are granting a limited exemption to the licensee from the program-length commercial policy, provided no more than 15 minutes per day is devoted to such programming and provided further than the advertisements are sponsored by private individuals rather than commercial enterprises. This limited exemption is warranted in our opinion because the classified ad or swap shop program may provide the only broadcast vehicle for an individual wishing to place a short advertisement at a reasonable cost. See answer to Question 29 for further discussion of this matter, including the logging of commercial content of such programs.

It is hoped that the specific examples contained in this Notice will provide substantial guidance to licensees. We repeat our statement in our previous Public Notice that the Commission considers the broadcast of program-length commercials to involve a serious dereliction of duty on the part of the licensee, and the Commission will impose sanctions when it believes sanctions are required to bring about a discontinuance of such practices.

1. (Q) A new shopping center opens. An association composed of the 10 merchants doing business in the center purchases one hour or more of time from a local television or radio station to cover opening day festivities. Ten one-minute commercial spots throughout the hour are given the association's members to promote their products and services. The station enters these 10 minutes on its logs as commercial announcements. Additionally, the station and the merchants' association tacitly agree that most of the time during the purportedly non-commercial segment of the coverage will be devoted to interviews with the owners of the shops, who will promote their shops and the merchandise for sale. Does the entire program constitute a program-length commercial?

(A) Under the Commission's previously stated standards, the entire program should be considered commercial because the purportedly non-commercial segment is closely interwoven with the commercial segments. Even though the purportedly non-commercial segment may contain information and some entertainment, these features are clearly incidental to the commercial promotions of the merchants' businesses. The fact that the association has purchased the entire broadcast period and has in effect dictated that most of the "non-commercial" segment will advertise the association's members and their merchandise indicates that the licensee has presented the program mainly to promote the sponsors' products and services. The sponsorship arrangement hypothesized in this example is not on its face violative of the Commission's program-length commercial policies. When, however, the facts indicate that the non-commercial segment is so closely interwoven with the sponsor's commercial promotions and has achieved a substantial identify with the products or services being advertised by the sponsor, the program must be considered a program-length commercial.

2. (Q) The licensee decides to cover one hour of a shopping center's grand opening as its own program. It sells 10 minutes of commercial spots to five of the 10 merchants doing business in the new center. These 10 minutes are logged as commercial announcements. Without consulting the five sponsors, the station decides to cover in a minimal fashion the ribbon-cutting ceremonies and speeches by the president of the center's association, and to interview shoppers. Additionally, the sta-

tion instructs its reporters and camera crew to devote a substantial portion of the non-commercial segment to covering the products and services of the five sponsors. Little or no attention is given to the other merchants and none to their products. Is this entire one-hour program a program-length commercial?

(A) This program so closely and substantially intermixes the content of the "non-commercial" portion with the commercial messages of the five sponsors that the program in its entirety must be considered a program-length commercial. On these facts, it appears that the entire hour was intended to induce the program's viewers to patronize the program's sponsors. Coverage of the speeches and interviews is not controlling in this example since such coverage was incidental to the commercial promotion.

3. (Q) A bank agrees to sponsor a one-hour broadcast of the opening of the city's new civic center, auditorium and theater complex. The complex is the first built in a period of years and includes facilities which house the city's various drama and music companies. The complex was financed by the sale of municipal bonds which the sponsoring bank underwrote. Proposed coverage includes speeches by the city's mayor, city assembly chairperson, the sponsoring bank's president, whose remarks generally relate to the functions the complex will serve but also refer in passing to the bank's role in the financing of the complex, and general coverage of other events and interviews. Additionally, approximately 30 minutes is to be devoted to a narrative discussion of the development of the city's drama and music companies, which have achieved excellent regional reputations over the years. The bank receives 12 one-minute commercial spots. One-half of these spots are broadcast live from the site of the opening day's ceremonies; the rest are recorded. Three of these spots discuss the financial strategies and techniques employed by the bank in establishing and underwriting the bond structure for financing construction of the complex. The remaining spots are general promotions for the bank, emphasizing its role in the community and its various savings, loan, trust and securities activities. Does the entire sixty-minute program constitute a program-length commercial? If not, what portion of this one-hour program should be counted as commercial?

(A) The 12 one-minute spots promoting the bank are clearly commercial announcements and under the Commission's logging rules must be logged as such. The basic question is whether the non-commercial and commercial segments are so interwoven as to make the entire program a commercial advertisement for the bank. Under the circumstances presented in the example, only the 12 one-minute commercial spots need be logged as commercial matter. This program is not one contemplated by the Commission's program-length commercial policies because the noncommercial presentation is unrelated to the bank or its services and because the 12 commercial messages presented by the bank are separate and distinct from the non-commercial segment of the broadcast, which contains no cross-references to the services in which the bank was engaged. The mere reference to the bank's role, made in passing by the bank's president in the speech on opening day, is not significant when considered in the context of the entire program.

4. (Q) A radio station broadcasts a daily one-hour program from the showroom of a local automobile dealer. The dealer has purchased 15 one-minute commercial spot announcements. The non-commercial portion of the program consists of talk or comments and the playing of records by the station's disc jockey and is presented in the same fashion as if it were originating in the station's studios. At the beginning of the program and the station break on the half-hour, the disc jockey announces that the program is being broadcast from the automobile dealer's showroom. Although the commercials are read by the same disc jockey playing the records, they are separate and distinct from the program content, and the disc jockey makes no cross-references during the entertainment portion of the program to the automobile dealer's products and services. Does this program constitute a program-length commercial?

(A) No. Only the 15 minutes of commercial announcements and the few seconds for the opening and mid-point references to the fact that the program is being broadcast from the dealership need be logged as commercial. In this case, the separation between program content and commercial material is carefully maintained. An opposite conclusion might result if during the non-commercial portion the disc jockey were to refer to the dealer's products or services or otherwise promote the dealer's business interests.

5. (Q) A local restaurant or night club provides musical entertainment nightly. It purchases one hour of broadcast time per week from a radio station for live coverage of the entertainment from the restaurant. Ten separate one-minute commercial spots for the restaurant are aired, as well as informal mentions, made from time to time during the broadcast, of the fact that the restaurant provides nightly entertainment. Listeners are repeatedly urged to patronize the restaurant. Two or three interviews with the restaurant's patrons are broadcast, during which the announcer questions whether the patrons are enjoying themselves. What portion of the broadcast should be logged as commercial matter?

(A) The question is whether the non-commercial segment of this program is so closely interwoven with the commercial promotions and interests of the sponsor as to constitute a continuous program-length commercial. In the example given, in addition to the formal commercials, the announcer (1) repeatedly identifies the restaurant as the site of the broadcast; (2) repeatedly mentions that the restaurant provides nightly entertainment; (3) repeatedly urges listeners to patronize the restaurant and (4) conducts interviews with patrons which tend to promote the restaurant. Thus, it appears that the entertainment portion of the broadcast is so closely interwoven with the promotion of the sponsor's services that the entire program consists primarily of an inducement to listeners to avail themselves of those services. The broadcast is therefore a program-length commercial. While such sponsorship arrangements are not *per se* prohibited, licensees must make certain that commercial advertising remains separate, distinct and wholly apart from the non-commercial segments of the program. When a program's non-commercial segment has achieved a substantial identity with the sponsor's promotion of its products or services, the program in its entirety must be considered commercial.

6. (Q) A well known restaurant in a major city and a local radio station have made the following agreement: Each week the station interviews a well-known personality active either in politics, the arts, athletics, or business. The program is one hour in length and is broadcast live each week from the restaurant at noon. The restaurant provides the luncheon and cocktails at no cost for the announcer and the person interviewed. A large, national food processor sponsors the one-hour broadcast and is allotted five two-minute commercial spots to be broadcast during the hour. At the beginning and end of the program and at each half-hour station break, the following announcement is broadcast: "Luncheon at ABC's, today with Richard Roe, is being (has been) brought to you by XYZ Corporation." No other reference to the restaurant is made during the program and no reference is made during the commercial spots to the fact that the sponsor distributes its products to the restaurant from which the interview is being broadcast. The interview is conducted by an employee of the station. What amount of time should be considered commercial?

(A) Only the commercial spots and the occasional references to the XYZ Corporation must be logged as commercial time. Because the licensee presents a program which keeps the commercial messages separate and distinct from the matters discussed during the interview, avoids promoting or mentioning the services of the restaurant more than necessary to carry out the interview, and makes no cross-references to the sponsor's business relationship with the restaurant, the broadcast cannot be considered a program-length commercial. Even though the restaurant provides the bill of fare without cost, no mention is made of that fact nor do the restaurant or sponsor dictate or influence the program's content to promote their products or services.

7. (Q) Same situation as in 6, but the restaurant is located in and operated by a performing arts center. The center buys fifteen one-minute spots to be broadcast during the hour. An interview at noon is conducted by the center's director and features only prominent performers from the casts of the production presented at the center during the week of the interview. The spot announcements promote the center's current attractions in which the interviewees appear. During the interview, the camera pans the center's restaurant, while the interviewer points out the restaurant's different features and refers to its swift and courteous service. Shots of food being prepared by the chefs in the kitchen are shown. The interview is generally limited to a discussion of the performer's roles in the productions billed at the center at the time of the interview, reviews of the productions by the city's newspapers and reactions of the audiences to the performances. What portion of this one-hour program constitutes commercial announcements for the center?

(A) The entire program must be considered as a program-length commercial. Although portions of the interview may possess informational and entertainment value, it appears that these aspects are incidental to the promotion of the center's restaurant and the performances taking place at the center. It appears further that the licensee has permitted the entire program to be shaped by the commercial interests of the center and has permitted the non-commercial portion of the program to achieve a substantial identity with the services being

promoted in the commercial spots. Interviews with actors, musicians, dancers, etc., can, of course, be conducted during programs sponsored by an arts center where the commercials are separate and distinct from the program content. Discussions of the performer's role in a current play and reference to appearances at the center do not violate the Commission's policies, provided that such presentations are not so closely interwoven with the commercial promotions. In the example, the interview is confined to the performers' roles in the productions at the center and thus appears essentially to constitute an advertisement for the center.

8. (Q) A local radio station broadcasts a one-hour program of popular music. The hour is purchased by a record manufacturer which presents twelve one-minute commercial spots. The disc jockey selects all the records played without regard to their manufacturer, although some of the records played are those of the sponsor. None of the records is identified by label and the commercial spot announcements generally promote the sponsor's recordings. How much of this program is commercial?

(A) Only the twelve one-minute spot announcements must be logged as commercial matter. Because no cross-references to the sponsor's records are made between commercial and program content, the commercial and non-commercial segments of the program are separate and distinct, and it cannot be said that any substantial interweaving of the commercial and non-commercial segments of the program has occurred.

9. (Q) Same facts as above, except that all of the records played are manufactured by the sponsor, and the spot announcements frequently cross-reference and promote the records which are played during the one-hour broadcast. Additional announcements, stating that all the records played during the broadcast are those of the sponsor and available for purchase, are given at the beginning and end of the program. How much of this program is commercial?

(A) The entire one-hour broadcast constitutes a program-length commercial. Since frequent cross-references are made during the commercial spots to the records played, the commercial and non-commercial segments are so closely interwoven as to be indistinguishable, and the entire program must be considered as commercial. Moreover, the fact that only the sponsor's records are played may raise questions as to whether the licensee has relinquished programming control to the sponsor, although this fact in and of itself does not establish abdication of program control. If the licensee has reviewed the proposed program in advance and made a good faith determination that the sponsor's records accord with the licensee's programming policies and their broadcast will serve the public interest, the fact that only the sponsor's records are played does not prove relinquishment of licensee control.

10. (Q) A record manufacturer purchases one-hour from a radio station and presents one-minute commercial spot announcements during the hour. All of the records presented during the hour are those of the sponsor, and announcements are made at the beginning and end of the hour identifying the sponsor and stating that all the records broadcast were those manufactured by the sponsor. Although the one-minute spot announcements generally promote the sponsor's records,

none of the spots make cross-reference to the records that are played during the program. Is this program entirely commercial?

(A) No. Only the one-minute commercials and the announcements made at the beginning and end of the program must be logged as commercial matter. Although all the records played are manufactured by the sponsor and although the announcements promote the products of the sponsoring manufacturer, the spot announcements are discrete and make no cross-references to the records that are aired during the hour. In a program such as this, where commercial announcements contain general advertisements for the sponsor and make few if any cross-references the sponsor's products or services which are presented during the non-commercial segment, no obvious interweaving of the program's commercial and non-commercial portions has occurred, and the Commission will not find that a program-length commercial was broadcast. As noted in the answer to Question 9 above, a record program which presents only the sponsor's records does not on its face violate the Commission's program-length commercial policies. However, if frequent cross-references to the sponsor's records are made, it would appear that the commercial segment is so closely interwoven with the non-commercial segment that the entire program would constitute a program-length commercial.

11. (Q) A classical music station selects its own music, but some of its programs are sponsored by record manufacturers or stores. The station prepares a one-hour program on the career of Leonard Bernstein. The program consists of a narrative concerning Mr. Bernstein's life, interspersed with selections from his recordings. Since Mr. Bernstein records exclusively for one company, the recorded segments would, of course, be from records made by that company. The record company also sponsors the broadcast of the program, inserting commercial spot announcements for its records therein. Is the program wholly commercial?

(A) The program involves considerations similar to those raised in Questions 8 through 10, above. If the commercial spots presented by Columbia make cross-references to the excerpted portions of Mr. Bernstein's recordings and encourage listeners to purchase the recordings, then the typical problems associated with the broadcast of program-length commercials would be present. If, however, the commercial announcements make no cross-references to the Bernstein recordings and the playing of the recordings is not accompanied by material promoting their sale, the Commission would not find that the presentation constitutes a program-length commercial. The facts that the record company sponsors the broadcast and that the featured artist records exclusively for the sponsor does not, absent other considerations, make the entire program commercial. Sponsorship identification announcements, or other similar announcements at the beginning or ending of the program, identifying the sponsor and the program's subject matter, i.e., that the program features Mr. Bernstein and is sponsored by the recording company, do not in themselves make the entire program commercial.

12. (Q) A large European record company buys three hours of time from a classical music station to present its new recording of *Carmen*. The record company uses six minutes of time for advertising messages,

but substantially all of the three hours is spent in performing the opera for the first time on the air in advance of its release to the public. Each of the six one-minute announcements identifies the recording as a new release from the record company and states the date recording will become available for sale. A brief statement is made at the end of the program again identifying the sponsor and the fact that the recording heard was made by the sponsor and is for sale. What portion of this three hour broadcast should be considered commercial?

(A) Although frequent cross-referencing of commercial matter and other program content may result in the commercial and "non-commercial" portions of a program becoming so inextricably intermingled that the entire program becomes commercial, we believe that there may be situations, such as that posed here, where the commercial references to the material constituting the body of the program are so infrequent that the two elements of the program cannot be said to be so closely interwoven as to make the entire program commercial. This would be true whether the body of the program consisted of classical or popular music, provided that the licensee itself made the determination that presentation of the recording was in the public interest. Thus, we believe that in this example, where only six one-minute commercial announcements and brief announcements at the open and close are given, it cannot be said that the program in its entirety constitutes a commercial message for the sponsor, and we believe that only the commercial announcements and those at the open and close need be logged as commercial. Although we decline to extend the scope of the program-length commercial policy to the three hour program cited in this question, licensees are expected to take cognizance of the fact that such programming has a potential for abuse if a sponsor promotes the sale of the very product being broadcast with any degree of frequency, taking into consideration the length of the program and the number of such promotional spots it contains.

13. (Q) A station broadcasts a 15-minute program which lists daily transactions in stock and bond issues. The transactions covered include only those of organizations doing business in the immediate metropolitan area and the program is entirely sponsored by one of the city's brokerage houses. An employee of the broker does the reports directly from the brokerage house and selects the issues to be covered on the basis of their interest to the community. Although a number of the issues reported or discussed are issues underwritten by the sponsoring broker, issues underwritten by the other brokers in the city are also included in the report. The program commences with a five-minute report on general market conditions, the averages on the major exchanges, and significant commercial news emanating from business and government. No commercial spots are broadcast, although the sponsoring brokerage house is identified as the sponsor at the beginning and end of the program. Is this program a program-length commercial for the sponsor?

(A) This program is not a program-length commercial. Neither the body of the program nor the initial and final identification of the sponsor makes cross-reference to the fact that the sponsor trades in any of the issues discussed, and the use of the sponsor's representative who randomly selects the stock issues and reports the business news

would not in and of itself make the entire program commercial. The Commission's policies pertaining to program-length commercials do not prohibit advertisers from sponsoring programs on subjects in which they may have a direct or related interest, if the various safeguards referred to in this Public Notice are adhered to. Moreover, the fact that a stock report may be announced as originating at the brokerage house does not, standing alone, make the entire program commercial. Where employees of the sponsor present the program, an identification of that fact must be made.

14. (Q) A retail book distributor purchases one-half hour from a local radio station to present a weekly book review. During the program, an employee of the sponsor reviews several new books on the best-seller list. Before and after the review of each book, the reviewer announces that each of the books reviewed is for sale at the sponsor's store. Additional references are made to books not specifically reviewed on the program and to the fact these books are for sale at the store. Six one-minute spot announcements are made promoting the sponsor's products and specifically refer to the books reviewed on the program. How much of this program is commercial?

(A) The non-commercial informational and entertainment portions of the program are so closely interwoven with the portions of the program advertising the sponsor's products that the entire one-half hour program must be considered a program-length commercial. References made at the beginning and end of book review programs indicating that the books reviewed are sold at the sponsor's store do not necessarily make such programs program-length commercials. Licensees, however, must take steps to ensure that the program's commercials remain separate and distinct from the book reviews. Furthermore, when an employee of the sponsor conducts the book review, disclosure should be made of the reviewer's relationship to the sponsor.

15. (Q) During a one-hour broadcast, the arts editor of a station reviews two books. A book store purchases the hour, and its advertisements are broadcast in close proximity to the book reviews. The books selected for review are chosen and reviewed by the editor according to his own standards, and no suggestion is made by the sponsor regarding selection of the books to be reviewed. There is no mention made that the reviewed books are available through the sponsoring book store. Should the amount of time consumed by the book reviews and the sponsoring book store's spots be considered commercial?

(A) Only the commercial spots advertising the book store must be considered commercial. The commercial messages of the sponsoring book store here are distinct from the informational segment. Absent specific identification of and cross-reference to the sponsor during the non-commercial segment, the fact that the book store purchases the entire hour with separate commercials for products sold by the sponsor does not make the broadcast a program-length commercial.

16. (Q) A direct broadcast from a local livestock market is sponsored exclusively by the livestock market. Information is given by a principal or employee of the market relative to prices for beef and pork, and other facts of importance to area farmers. The information also covers prices at other regional or national markets. Commercial announcements are not broadcast for the sponsoring market, which

realizes a commission on all livestock sales. Appropriate sponsorship identification is made at the end of each program. Is this program a program-length commercial under the Commission's policies?

(A) While it is implicit that the sponsoring livestock market has a commercial interest in informing the community of the prices of the products, and hence has a commercial interest in sponsoring such a livestock report, the commercial interests of the sponsoring market here appears to be incidental to the information segment of the program. The licensee need log only the specific commercial references. Programs of this nature, however, may become entirely commercial if from the facts of any situation presented it is apparent that the informational and commercial content are so inextricably interwoven as to constitute one continuing advertisement. The broadcast of commercial spots for the livestock market during the program would not change the conclusion reached here unless the commercials were interwoven with the program content in the fashion referred to in the introduction of this Public Notice. In each case the general principles applicable to all program-length commercials must be examined in relation to the facts of the case. Again, disclosure should be made of the fact that the person presenting the program is an employee of the sponsor.

17. (Q) A retail furniture outlet purchases commercial spot announcements to be presented during a station's one-half hour weekly program which features the art of furniture making. The program utilizes the expertise and personnel of small and large furniture manufacturers, including, from time to time, personnel employed by furniture manufacturers whose products are sold by the sponsor. Different topics, proposed and selected by a variety of furniture-making professionals and the station's program director, who conducts the program, are presented each week. The guests on the show make few if any references to the products sold, and the commercial announcements for the retail furniture outlet do not refer to the subject matter of the program. How much of this program is commercial?

(A) Only the commercial spot announcements must be entered on the station's logs as commercial announcements. The informational segment of the program does not exhibit a pattern of cross-referencing to the sponsor's products and does not primarily promote the sponsor's commercial interests. A program of this nature, broadcast live from the retail outlet, will not be considered a program-length commercial if the licensee complies with the usual program-length criteria set forth elsewhere in this Notice.

18. (Q) The furniture retailer buys one half-hour of time. No commercial spots are presented. The program is presented live from the sponsor's showroom each week and features an employee of the station discussing the sponsor's new furniture line and displaying the sponsor's furniture arranged in different suites. Each week some aspects of furniture care and repair are discussed. Periodic statements are made identifying the furniture as available for sale at the sponsor's showrooms, and, in addition to the necessary sponsorship identification announcement at the program's beginning, references are made to the fact that the program is originating live from the sponsor's showroom

where the furniture can be viewed. How much of this program is commercial?

(A) Although no commercial spots are presented, it appears that the program's format, the use of only the sponsor's furniture, and the repeated references to the sponsor and to the fact that the furniture is available at the sponsor's showrooms make this broadcast a program-length commercial.

19. (Q) A television station broadcasts a weekly fifteen-minute remote program from a hobby shop whose owner discusses all aspects of various hobbies and crafts. Three commercials are broadcast during the program by a station announcer. The commercials advertise the goods for sale at the hobby shop. The commercials are separate and distinct from the program content and do not refer to the items discussed during the program. How much of the program is commercial?

(A) On the facts stated, only the commercial messages need be considered commercial, since there appears to be no cross-referencing between the commercials and the instructional content of the program.

20. (Q) An entity producing a county fair and composed of ten of the main exhibitors at the fair purchase six hours from a local television station so that the station will broadcast two hours of the event live each day for three days. During the broadcasts, the audience is frequently urged to attend the fair in order to see the booths of the ten exhibitors. Most of each day's program is devoted to coverage of the exhibits of the ten sponsors. Each of the sponsors is given an opportunity to demonstrate his new lines of equipment. The remainder of the time each day is spent in general coverage of the fair and random interviews with attendees. No separate commercial spots are presented. What portion, if any, of the program is commercial?

(A) This program constitutes a program-length commercial. The broadcasts appear primarily to be advertisements designed to promote the exhibitors' products. See also prior examples regarding remote broadcasts.

21. (Q) A committee formed to promote a fair buys spot announcements to be broadcast during a station's coverage of the fair. The spots urge the public to attend the fair, but the station chooses the events and exhibits to be covered and the manner of covering them. The licensee believes that coverage of the new farm equipment would be of considerable interest to the community and each day devotes some time to covering one or more of the farm equipment companies demonstrating and displaying equipment at the fair. The farm equipment companies do not pay for the coverage. How much time of the fair coverage is considered commercial?

(A) Only the duration of the spot announcements for the fair itself must be logged as commercial. Although the program's "non-commercial" segment shows various types of farm equipment, the makers of the equipment do not pay for the broadcast coverage of it. The spot announcements urging attendance at the fair are separate from and unrelated to the coverage of events at the fair.

22. (Q) A non-profit charitable organization is engaged in theoretical and applied cancer research. This organization purchases thirty minutes from a local television station to present a film produced and directed by the organization. The broadcast includes a final ten-minute

segment which presents the chairperson of the organization, who discusses the organization's need for additional financial support and makes an appeal for private contributions. Does this program constitute a program-length commercial?

(A) No. Programs sponsored by non-profit organizations for the purpose of soliciting funds through the presentation and discussion of such organizations' non-profit activities do not come within the purview of the Commission's policies regarding program-length commercials. The Commission's program-length commercial policies pertain only to programs which promote the sale of commercial goods and services and, therefore, do not apply to programs sponsored by non-profit organizations to raise funds for their non-profit activities. Licensees broadcasting such programs are nevertheless required to make the standard sponsorship identification announcement and must log the program as sponsored by the particular non-profit organization as required by the Act and the Commission's Rules.

23. (Q) A religious organization sponsors a religious program during which no commercial products are advertised, but which includes solicitation of contributions to assist in continuing the religious activities of the organization. Is the program wholly commercial?

(A) No. In adopting the report and order amending the logging requirements for TV broadcasting stations (Now Sec. 73.670 of the Commission's Rules), the Commission stated:

In connection with the logging of commercial continuity, a special problem is raised by certain sponsored programs wherein it is difficult to measure the exact length of what would be considered as commercial matter, e.g., some sponsored religious and political programs. For such programs we will not require licensees to compute the amount of commercial matter, but merely to log and announce the program as sponsored. This exception does not, of course, apply to any program advertising commercial products or services. Nor is the exception applicable to any commercial announcements. *Television Program Logging Rules*, 5 FCC 2d 185, 186 (1966).

This exception for sponsored religious and political programs, with the same proviso, was extended to the logging requirements for AM and FM broadcast stations (now Sections 73.112(AM) and 73.282(FM)). *Program Log Rules*, 11 FCC 2d 992, 993 (1968).

24. (Q) A number of radio stations broadcast a weekly one-hour religious program featuring a well-known minister. Each radio station is paid by the minister for presenting the program. Thirty-five minutes of the program consists of a sermon delivered by the minister and/or a discussion of the merits of the particular religion. During the remaining twenty-five minutes, the minister plays recordings of gospel songs which the minister has composed or in which the minister has some other financial interest. The records are commercially marketed, and following the playing of each of the recordings, the minister announces that the selection played are available for purchase in record stores or by direct mail orders. How much of this program should be considered commercial?

(A) The first thirty-five minute segment of the program presents religious material covered by the exception cited in Answer 23 above, and therefore need only be logged and announced as sponsored by the minister. However, the second twenty-five minute segment is in substance an advertisement for the commercial sale of the records. The

exception is therefore inapplicable to this segment of the program, and all of the last twenty-five minutes must be considered commercial matter.

25. (Q) A radio station broadcasts a weekly thirty-minute program sponsored by a minister. The program consists of excerpts of recorded sermons delivered by the minister and is introduced, interrupted twice, and closed by one-minute announcements informing listeners that the sermons broadcast have been recorded by a commercial recording company and are available for purchase at selected record stores. In addition, each excerpt is introduced by a statement indicating that the sermon is for sale. How much of this program should be considered commercial?

(A) Although the sermons relate to religious matters, the accompanying announcements which cross-reference and promote the commercial sale of the recorded sermons make the entire program a program-length commercial. The logging exception for religious and political programming is inapplicable to a program "advertising commercial products and services," and, therefore, on the facts given here, the entire thirty minutes must be logged as commercial matter.

26. (Q) A national political party purchases two hours from a television network to present a program designed to solicit funds for the party's activities. The program features interviews with the party's major political figures and various forms of entertainment. Every five minutes a telephone number and street address is superimposed on the screen to indicate to viewers where a monetary pledge may be made. Throughout the program, references are made to the amounts being pledged, and from time to time a plea is made for private contributions to sustain the party's work. Will the Commission consider this program a three-hour program-length commercial?

(A) No. Since the program is sponsored by a political organization and does not in any manner involve the salability of commercial products or services, the logging exception for political broadcasts is therefore applicable, and stations carrying this program must merely announce and log it as sponsored by the particular party.

27. (Q) A realtor purchases fifteen minutes of broadcast time from a radio station to present a program advertising the realtor's listings. Although no commercial spots, as such, are presented, the program is clearly a program-length commercial, and the station logs the entire fifteen minutes as commercial, enters the realtor on its logs as the sponsor, and makes the appropriate sponsorship announcement before and after the fifteen minute program. The rest of the hour, approximately forty-five minutes, consists of uninterrupted programming unrelated to the fifteen minute presentation. No other commercials are presented during the remainder of the hour. The station has represented to the Commission that it will present no more than sixteen minutes of commercial matter in any given hour. May a station broadcast a program-length commercial if the total commercial time broadcast during the hour does not exceed the station's commercial representations?

(A) The broadcast of 15-minute program-length commercials, even though the time consumed by the program does not exceed the com-

mercial representations, has been held by the Commission to be inconsistent with the public interest. In *Letter to KCOP-TV, Inc.*, 24 FCC 2d 149 (1970), we stated:

As we have made clear, a pattern of presenting program-length commercials or programs with respect to which other factors indicate that the licensee is disregarding the interest of the public in its programming, will be considered as raising questions as to whether the licensee is operating in the public interest.

28. (Q) A realtor purchases one-half to present pictorial and narrative descriptions of houses which are stated to be for sale through the sponsoring realtor's agency. The program is uninterrupted. Is any portion of the program commercial?

(A) Under the Commission's policies and in accordance with its ruling in *WUAB, Inc.*, 37 FCC 2d 748 (1972), this entire program is commercial since the sole thrust of the program is the commercial promotion of the sponsor's products and services.

29. A number of questions have been received regarding the presentation of "classified ads" or "swap shop" programs and whether they fall under the Commission's program-length commercial policies. The following three hypothetical examples and ensuing interpretations will clarify the Commission's program-length commercial policies in this area.

(i) (Q) The station presents a one-half hour program advertising for sale or offering for trade the property of individuals other than commercial enterprises. No charge is made by the station for the individual announcements. Do the Commission's program-length commercial policies apply to this situation?

(A) Where *no* charge is made for the broadcast of any matter, the Commission's commercial policies do *not* apply and none of this time need be logged as commercial matter. But see, example 29 (iii) (Q), below.

(ii) (Q) A local commercial enterprise purchases an hour from the station and receives a schedule of 15 one-minute advertisements which promote the sponsor's products or services. The remainder of the program consists of announcements advertising for sale or trade the property of individuals, who make no payment to the station for the broadcast of those announcements within that sponsored hour. Is this program entirely commercial and what portion should be logged as commercial matter?

(A) The program is not a program-length commercial and only the 15 one-minute commercial spot announcements for the overall sponsor must be entered on the station's logs as commercial matter. Because no charge is made to the individual, non-commercial advertisers, and because the commercial announcements for the program sponsor are separate and distinct from and do not cross-reference the items being advertised in the remainder of the program, no program-length commercial questions are raised.

(iii) (Q) Individual, non-commercial advertisers are charged a fee by the station to offer for sale or trade their property. The station presents a daily 15-minute program featuring the individuals' announcements. Is this a program-length commercial and what are the Commission's policies on this type of program?

(A) This program is a program-length commercial, but the Commission believes that special circumstances warrant a limited exemption from its program-length commercial policies, since these programs may present the only broadcast vehicle where an individual may advertise property at a reasonable cost. To that end, the Commission will not consider to be contrary to the public interest the broadcast of programs consisting of paid announcements which advertise for sale or trade the property of private individuals, as contrasted with commercial business enterprises. Such programs are to be limited to no more than 15 minutes per day and must be computed and logged as commercial matter. Thus, for example, if a radio station has represented to the Commission that it will present no more than 18 minutes of commercial matter per hour and the station devotes a 15-minute segment to broadcasting classified advertisements paid for by private parties, the station would be required to log that 15 minutes as part of the 18 minutes it has represented to be its commercial maximum per hour. The exemption here granted contrasts with the Commission's program-length commercial policies articulated in Letter to *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970) and example 27, *supra*, because of the special considerations set forth above with respect to advertisements for private individuals as contrasted with commercial enterprises. If the mere format of a classified advertisement program were the determining factor in granting an exemption, the program-length commercial policy might well become meaningless, since a commercial enterprise such as a department store could, by phrasing its sales messages in the form of "classified ads" for different products sold by the store, gain an exemption from our program-length commercial policies for a wholly commercial program.

30. (Q) A leading professional tennis player delivers a commercial extolling the virtues of the sponsor's tennis racquet during coverage of a championship match during which the player uses the sponsor's racquet. Is all or part of the coverage commercial?

(A) The fact that the player in a televised match advertises the product being used in the match does not in and of itself make the entire program commercial. Manufacturers of sports equipment obviously would be interested in sponsoring sports events or events in which their products are used. A problem would arise if the coverage of the event were to be influenced because of the sponsor's interest in promoting its product. Thus, if during coverage of the match the licensee repeatedly showed close-ups of the tennis racquet made by the sponsor so that the viewer would clearly see the name of the manufacturer and if the player were instructed to make references to the racquet in interviews before or after the match, the entire program might become commercial. Similarly, if the announcer made references to the use of the racquet in describing the play, the program might become commercial.

31. (Q) An auto race track purchases three hours of time. Fifty per cent of the time is devoted to music, 10 per cent to news, 15 per cent to interviews with racing drivers in which references are made to upcoming races held only at the sponsor's track and the final 25 per cent is devoted to direct promotion of attendance at the races. Is all or part of the three-hour program commercial?

(A) That portion of time devoted to music and news would not be considered commercial. If interviews conducted with the racing drivers are confined almost entirely to matters pertaining to the sponsor's track, and constant reference is made to the track, the races, the admission price, etc., that portion of the program would be considered commercial. The final 25 per cent of the program is commercial in nature since it is devoted entirely to promoting attendance at the races. Urging attendance at a sports event by the sponsor of the event would not make the entire sports event commercial. If, however, as in the example given, a specific period of time is devoted entirely to promotion of the event, that time would be considered commercial and the licensee must log that time as commercial.

Action by the Commission January 23, 1974. Commissioners Burch (Chairman), Lee, Reid and Wiley, with Commissioner Hooks concurring.