

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

PUBLIC NOTICE

**IN THE MATTER OF COMMISSION
POLICY CONCERNING THE NONCOMMERCIAL
NATURE OF EDUCATIONAL BROADCASTING
STATIONS**

[Reprint excerpted from *Public Notice*,
FCC 86-161, 36590, April 11, 1986;
51 FR 21800, June 16, 1986.]

The Commission has become aware of significant uncertainty and controversy concerning various aspects of Commission and statutory policy relating to commercial underwriting on noncommercial stations. As a consequence, we have reviewed the existing policies, focusing on . . . : (1) the broadcast of announcements relating to goods and services for which consideration is received by the station; (2) enhanced underwriting and donor announcements; (3) the offering of program-related materials;

**ANNOUNCEMENTS PROMOTING THE
SALE OF GOODS AND SERVICES**

Section 399B of the Communications Act of 1934, as amended, and Sections 73.503(d) and 73.621(e) of our rules specifically proscribe the broadcast of announcements by public broadcast stations which promote the sale of goods and services of for-profit entities in return for consideration paid to the station. These rules, however, permit contributors of funds to the station to receive on-air acknowledgments. The Commission has articulated specific guidelines which emphasize the difference between permissible donor and underwriter announcements and commercial advertising. See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 97 FCC 2d 255 (1984) (hereinafter referred to as "1984 Order"); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 90 FCC 2d 895 (1982) (hereinafter referred to as "1982 Order"); *Second Report and Order*, 86 FCC 2d 141 (1981); *First Report and Order and Notice of Proposed Rule Making*, 69 FCC 2d 200 (1978).

Recent cases before the Commission indicate that some noncommercial broadcasters have aired outright commercial messages on behalf of profit making entities in violation of our rules and the statute. (Footnote omitted.) As our actions in those cases attest, we will enforce our prohibition on the broadcast of commercial messages on behalf of profit making entities for which consideration is paid to the station. Information brought to the attention of the Commission regarding such practices will be scrutinized and licensees found to have engaged in them will be sanctioned.

**ENHANCED UNDERWRITING AND
DONOR ACKNOWLEDGMENTS**

Beyond the airing of paid promotional announcements, our recent review of underwriting activities indicates that some public broadcasters may be airing donor and underwriting acknowledgments which exceed the Commission's guidelines. In light of these instances and an ongoing debate in the public broadcasting community on these issues, we believe that a brief statement concerning the obligations of public broadcasters with respect to donor and underwriting acknowledgments is appropriate. In March 1984, we relaxed our noncommercial policy to allow public broadcasters to expand or "enhance" the scope of their donor and underwriter acknowledgments to include (1) logograms or slogans which identify and *do not* promote, (2) location information, (3) value neutral descriptions of a product line or service, and (4) brand and trade names and product of service listings. *1984 Order* at 263. That action was taken as another step in our ongoing effort to strike a reasonable balance between the financial needs of public broadcast stations and their obligation to provide an essentially noncommercial service. It was our view that "enhanced underwriting" would offer significant potential benefits to public broadcasting in terms of attracting additional business support and would thereby improve the financial self-sufficiency of the service without threatening its underlying noncommercial nature. In this regard, we emphasized that such announcements could not include qualitative or comparative language and that the *Order* should not be construed as allowing advertisements as defined in Section 399B of the Communications Act. *Id.*¹

We recognized in our *1982 Order* that it may be difficult at times to distinguish between announcements that promote and those that identify. For that reason, we expressly stated that we expect public broadcast licensees to review their donor or underwriter acknowledgments and make reasonable good faith judgments as to whether they identify, rather than promote. *1982 Order* at 911. We saw no purpose at that time, or at the time we adopted our *1984 Order*, in fashioning rigid regulations or guidelines to ensure the noncommercial nature of public broadcasting, and we were concerned that such guidelines would inhibit public broadcasters' ability to seek and obtain the funds needed to present quality programming and to remain financially viable. It continues to be our view that the public broadcaster's good faith judgment must be the key element in meeting Congress' determination that the service should remain free of commercial and commercial-like matter. In response to requests for guidance, however, we will attempt to further clarify the guidelines applicable to public broadcasters' exercise of their discretion.

We reiterate that acknowledgments should be made for identification purposes only and should not promote the contributor's products, services or company. For example, logos or logograms used by corporations and businesses are permitted so long as they do not contain comparative or qualitative descriptions of the donor's products or services. Similarly, company slogans which contain general product-line descriptions are acceptable if not designed to be promotional in nature. Visual depictions of specific products are permissible. We also believe that the inclu-

sion of a telephone number in an acknowledgment announcement is within these general guidelines and, therefore, permissible.

Several examples of announcements that would clearly violate the rule may be helpful:

(A) Announcements containing price information are not permissible. This would include any announcement of interest rate information or other indication of savings or value associated with the product. An example of such an announcement is:

- "7.7% interest rate available now."

(B) Announcements containing a call to action are not permissible. Examples of such announcements are:

- "Stop by our showroom to see a model";

- "Try product X next time you buy oil."

(C) Announcements containing an inducement to buy, sell, rent or lease are not permissible. Examples of such announcements are:

- "Six months' free service";

- "A bonus available this week";

- "Special gift for the first 50 visitors."

Additionally, examples of proscribed product messages can be seen in the instances where the Commission has assessed forfeitures or issued letters or warning for rule violations. (Footnote omitted.)

We repeat that the Commission will continue to rely on the good faith determinations of public broadcasters in interpreting our noncommercialization guidelines. We emphasize, however, that we will review complaints and, in the event of clear abuses of discretion, will implement appropriate sanctions, including monetary forfeitures.

PROGRAM RELATED MATERIALS

We have reviewed the Commission's policies regarding the offering of program-related materials. We have looked carefully at this area because it has come to our attention that such offerings have been used by noncommercial licensees to raise funds for program acquisition purposes, a novel fund raising device.

Our 1982 Order dealt with the sale of program-related materials. It concluded that because Congress had approved direct promotional fundraising announcements sponsored by nonprofit organizations, public broadcasters could air announcements promoting program-related materials sold by nonprofit organizations, including the station itself. 1982 Order at 907. It is our belief that in order for the audience to be informed about the sponsor of these offerings, the nonprofit organization sponsoring the offering should be clearly identified in the announcement.

a requirement in keeping with the mandate of Section 317 of the Communications Act and Section 73.1212 of our rules.

Guidelines covering announcements for the sale of program-related materials by for-profit entities were not changed by our 1982 Order. Thus, such announcements are permitted so long as the licensee (1) receives no consideration for the announcement; and (2) the materials are offered on the basis of public interest considerations and not the private economic interests of the offeror; or (3) the price of the materials offered is only nominal. *Second Report and Order*, 86 FCC 2d at 152. As noted above, the nominal price requirement does not apply to offerings sponsored by nonprofit entities.

Action by the Commission April 10, 1986 (corrected April 24, 1986). Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

¹ Section 399B provides, in pertinent part:

(a) For purposes of this section, the term "advertisement" means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended--

(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;

(2) to express the views of any person with respect to any matter of public importance or interest; or

(3) to support or oppose any candidate for public office.