

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

In the Matter of)	
)	
GREAT LAKES COMMUNITY)	EB-01-IH-0493
BROADCASTING, INC.)	Facility #93742
)	Facility #94015
Licensee of Noncommercial Educational Station)	
WAAQ(FM), Onsted, Michigan)	
And Translator Station W214BH,)	
Mount Pleasant, Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 2003

Released: December 4, 2003

By the Deputy Chief, Investigations and Hearings Division, Enforcement Bureau:

I. Introduction

1. By this *Order*, we admonish Great Lakes Community Broadcasting, Inc. ("Great Lakes"), licensee of noncommercial educational Station WAAQ(FM), Onsted, Michigan, and translator Station W214BH, Mount Pleasant, Michigan, for broadcasting impermissible donor and underwriting advertisements in violation of section 399B of the Communications Act of 1934, as amended ("the Act"),¹ and section 73.503 of the Commission's rules,² and for airing originations concerning financial support on its translator station in excess of the limitations set forth in section 74.1231(g) of the Commission's rules.³ Based upon our review of the facts and circumstances of this case, we conclude that Great Lakes has violated these statutory and Commission underwriting and translator rule provisions. Although we believe that no monetary sanction is warranted at this time in light of the licensee's unblemished enforcement record and other facts and circumstances relating to this area of the law, we find that an admonishment is necessary to redress these statutory and rule violations.

II. The Commission's Rules Regarding Underwriting Announcements

2. Noncommercial educational stations may not broadcast advertisements. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.⁴ Although contributors of funds to noncommercial stations may receive on-air acknowledgements,

¹ 47 U.S.C. § 399b.

² 47 C.F.R. § 73.503.

³ 47 C.F.R. § 74.1231(g).

⁴ 47 U.S.C. §399b(a).

the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.⁵

3. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.⁶ The Commission has nevertheless acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, it expects only that licensees exercise reasonable, good faith judgment in this area.⁷

4. Section 74.1231 of the Commission's rules imposes restrictions on the content, length, and frequency of licensee-originated program material broadcast over translator stations. Specifically, the rule provides that such originations shall be limited to emergency warnings of imminent danger and to seeking or acknowledging of support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of thirty seconds per hour. Acknowledgments of support may identify the contributors, what they have donated, and may contain their advertising messages.⁸ However, the same restrictions that apply to solicitations by, and donations to, noncommercial FM stations are also applicable to noncommercial FM translators.⁹

III. The Facts

5. In August 2001, we received a confidential complaint, including the text of numerous announcements allegedly broadcast over Station WAAQ(FM) and translator Station W214BH from June 18 through July 13, 2001. These announcements appeared to promote the products or services of presumably for-profit entities, and are alleged to contravene the statute, as implemented and interpreted by applicable Commission rules, precedent and policy. By inquiry letters dated August 30, 2001,¹⁰ and May 7, 2002,¹¹ we requested that Great Lakes comment on these allegations.

6. In its September 13, 2001¹² and May 23, 2002,¹³ responses to the *2001 LOI and 2002 LOI*, respectively, Great Lakes admits that it aired all of the identified underwriting

⁵ See *In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) ("Public Notice").

⁶ *Id.*

⁷ See *Xavier University*, 5 FCC Rcd 4920 (1990).

⁸ See 47 C.F.R. § 74.1231(g).

⁹ See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7217 (1990).

¹⁰ *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to Great Lakes Broadcasting, Inc.*, dated August 30, 2001 ("2001 LOI").

¹¹ *Letter from the Chief, Investigations and Hearings Division, Enforcement Bureau, to Great Lakes Broadcasting, Inc.*, dated May 7, 2002 ("2002 LOI").

¹² *Letter from Dr. James J. McCluskey, President, Great Lakes Broadcasting, Inc. to the Chief,*

announcements on its translator station, W214BH, but claims that it did not broadcast any over its primary station, WAAQ(FM), other than those made on behalf of Mount Pleasant Tire Service. Great Lakes argues that all of its underwriting announcements comply with the pertinent Commission underwriting guidelines and were aired consistent with its good-faith discretion under the *Xavier* case.¹⁴ However, Great Lakes also represents that, since July 2001, it has begun to “carefully monitor all of our underwriting messages and to make those advertising messages which are broadcast once per hour on [translator station W214BH] to more closely conform with the underwriting messages and donor announcements broadcast on our primary station, WAAQ in Onsted.”¹⁵ Great Lakes further claims that it has made efforts to limit the length of advertising messages broadcast on its translator station to thirty seconds or less per hour. It argues that, although the rule in question, 47 C.F.R. § 74.1231(g), limits the length of and frequency by which underwriting messages may be aired, it specifically allows translator facilities such as Station W214BH to air “advertising messages” that promote their for-profit sponsors.

7. After reviewing the record and pertinent precedent, we find that all of the subject underwriting announcements exceed the bounds of what is permissible under section 399B of the Act, and the Commission’s applicable rules and policies, even in light of the “good faith” discretion afforded licensees under *Xavier*.¹⁶ The announcements encourage or invite business patronage, make prohibited price references, or depict the underwriters in a comparative and qualitative manner. For example, the announcements made by Great Lakes on behalf of Turner’s Appliances, Wincell Cellular, NPI Wireless, Top Dog Audio Center, and Terry’s Motorless Motion provide price or other information concerning product discounts, rebates or warranties that encourage business patronage, and are thus specifically prohibited.¹⁷ In addition, the announcements made by Great Lakes on behalf of Turner’s Appliances, Mount Pleasant Tire Service, and Heritage Chrysler of Mount Pleasant each make prohibited qualitative statements concerning each underwriter’s products.¹⁸ Therefore, we find that Great Lakes violated section 399B of the Act and section 73.503 of the Commission’s rules.¹⁹

8. We further reject Great Lakes’ contention that section 74.1231(g) of the Commission’s rules allows noncommercial translator stations to broadcast “advertising messages” that promote their for-profit sponsors.²⁰ The same restrictions that apply to messages aired by

Investigations and Hearings Division, Enforcement Bureau, dated September 13, 2001 (“2001 Response”).

¹³ *Letter from Dr. James J. McCluskey, President, Great Lakes Broadcasting, Inc, to the Chief, Investigations and Hearings Division, Enforcement Bureau*, dated May 23, 2002 (“2002 Response”).

¹⁴ *See 2001 Response and 2002 Response, citing Xavier*, 5 FCC Rcd 4920.

¹⁵ *See 2001 Response* at 4.

¹⁶ *See Xavier*, 5 FCC Rcd 4920.

¹⁷ *See id.*

¹⁸ *See Public Notice*, 7 FCC Rcd 827.

¹⁹ 47 U.S.C. § 399b and 47 C.F.R. § 73.503.

²⁰ *See 2001 Response*.

noncommercial FM stations are applicable to noncommercial FM translator facilities.²¹ Consequently, this argument is without merit. The evidence in this case establishes that Great Lakes aired underwriting messages in excess of the thirty-second per hour limitation set forth in 47 C.F.R. § 74.1231(g). In this regard, the complainant supplied transcripts and audiotape evidence that purport to reflect the translator station's broadcast of continuous advertising messages, each in blocks of several minutes. The complainant further claims that these message blocks were aired mid-hour. We note, that even if the message blocks were broadcast at the top-of-the-hour, straddling two separate broadcast hours, the uninterrupted airing of several minutes of continuous advertising messages over the subject translator station would, in fact, exceed the thirty-second per hour limitation set forth in 47 C.F.R. § 74.1231(g). Therefore, we find that Great Lakes violated section 74.1231 of the Commission's rules.²²

IV. Sanction

9. We conclude that a sanction is appropriate. However, in view of the licensee's unblemished enforcement record and other facts and circumstances relating to this area of the law, we do not believe a monetary forfeiture is necessary to redress the instant rule violations, and instead conclude that an admonishment is sufficient at this time.²³ We strongly urge Great Lakes to examine its practices to ensure that, in the future, its operation will comply with the rule's limitation concerning advertising message length and the frequency by which they are aired.

V. Ordering Clauses

10. Accordingly, IT IS ORDERED that Great Lakes Community Broadcasting, Inc., licensee of noncommercial educational Station WAAQ(FM), Onsted, Michigan, and translator Station W214BH, Mount Pleasant, Michigan, IS ADMONISHED for having broadcast underwriting messages in apparent violation of section 399B of the Act,²⁴ and section 73.503 of the Commission's rules,²⁵ and for airing originations concerning financial support on its translator station in excess of the limitations set forth in section 74.1231(g) of the Commission's rules.²⁶

²¹ See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212.

²² 47 C.F.R. § 74.1231(g).

²³ See Note to 47 C.F.R. § 1.80(b)(4).

²⁴ 47 U.S.C. § 399b.

²⁵ 47 C.F.R. § 73.503.

²⁶ 47 C.F.R. § 74.1231(g).

11. IT IS FURTHER ORDERED that a copy of this *Order* shall be sent, by Certified Mail/Return Receipt Requested, to Great Lakes Community Broadcasting, Inc., P.O. Box 334, Stanwood, Michigan 49346.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Attachment

ATTACHMENT A

The following text was transcribed from audio-tape recordings of underwriting announcements allegedly broadcast on noncommercial educational Station WAAQ(FM), Onsted, Michigan, and translator Station W214BH, Mt. Pleasant, Michigan, from June 18, 2001, through July 13, 2001:

Turner's Appliance. WAAQ and 90.7 thanks Turner's Appliance for its support. Turner's Appliance and Amana are putting the freeze on prices with cool rebates. Amana has a \$75 rebate on its new Easy Reach Plus 20.5 cu. Ft. capacity refrigerator. The Amana Easy Reach Plus has an easy freezer pull out drawer and spill saver adjustable glass shelves. The Side-by-side Amana refrigerators with 25.8 cu. Ft. capacity are packed with features and have a \$50 rebate. Turner's Appliance—just south of Big Rapids on Old US 131 in Roger's Heights. The phone number is 592-1522. Turner's Appliance—open daily till 5:30, Saturday 8 till 3.

Mt. Pleasant Tire Service. We offer complete and dependable car care service and of course we stock a complete line of quality B.F. Goodrich, Goodyear and Continental General tires for all vehicles. Whether you need car repairs or tire repairs or a new set of tires, Mt. Pleasant Tire Service is equipped to handle your needs in a fast, friendly manner. Mt. Pleasant Tire Service is conveniently located at 120 S. Fancher and the phone number is 773-5626. Now here's this hours AAA road report on WAAQ.

Wincell Cellular. The following is underwritten on WAAQ from Wincell Cellular of Mt. Pleasant. We've all been there. It's dark, the weather is bad, you're on an unfamiliar stretch of road, hoping to get home. It's only then you wish you had the safety and security of cellular from CenturyTel and Wincell Cellular. And you can, for less than \$10 a month. You can give your family the safety and security of cellular from CenturyTel and Wincell Cellular. With 100 anytime minutes, for life, and the phone is free. Available at Wincell Cellular, your local CenturyTel agent in Mt. Pleasant. Offer ends June 30th. Some restrictions apply.

NPI Wireless. NPI Wireless is giving away a Yamaha wave runner. How can you win? Register today at an NPI Wireless retail location. Digital handsets for only \$19.00 and Go America Plans with free long distance and roaming. Need to hear it again? NPI Wireless. Win a wave runner. Ask about free long distance, free roaming, and affordable digital phones. NPI Wireless. Go America Plans with free long distance and roaming.

Heritage Chrysler of Mt. Pleasant. For sixty years we've been serving the automotive needs for the residents of Isabella County. Sixty years is a long time in the car business. We've seen a lot of dealerships come and go in the mid-Michigan area for a variety of reasons, but we're still here. If things like stability, reliability, commitment to customers and community and reputation mean anything when it comes to your second largest lifetime purchase? We may not always have the best price or the right vehicle, but if you get it from us, you can count on us being there. Heritage Chrysler of Mt. Pleasant. Sixty years young.

Top Dog Car Audio Center. Top Dog Car Audio is pleased to underwrite WAAQ's programming and here's something to really make your tail wag. [Music.] Woof, woof, woof, woof. [Indecipherable; presumably a brand of car stereo] AM-FM CD receiver, regularly \$199.95 now just \$149.95 installed, parts extra and a free two-year warranty when installed by Top Dog Car Audio. Top Dog Car Audio of Mt. Pleasant, 2231 East Remus Road, phone 773-4705. You can enjoy 90.7 FM oldies on your new [Indecipherable; presumably a brand of car stereo] AM-FM

CD receiver from Top Dog Car Audio Center. [Music.] Woof, woof, woof, woof. Your tail waggin' dealer.

Terry's Motorless Motion. WAAQ thanks Terry's Motorless Motion for this underwriting tip. Terry's Motorless Motion sells Schwinn, Specialized and Diamondback BMX bikes. These bikes will last for years, and have extensive warranties and Terry will make free minor adjustments as long as you own the bike. Whether you want a comfort bike, mountain bike, cruiser or a hybrid, Terry at Motorless Motion has the bike for you! Motorless Motion, 121 South Main, Mt. Pleasant. Open daily at 10:00 a.m. to 6:00 p.m., till late Fridays, and until five Saturdays. Motorless Motion's phone number is 772-2008.