

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

In the Matter of
TECHNOLOGY INFORMATION
FOUNDATION, LTD.
Licensee of Low Power Noncommercial
Educational Station WLFK-LP, Eau Claire,
Wisconsin
EB-03-IH-0705
Facility ID No. 131898

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 2004

Released: November 9, 2004

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we admonish Technology Information Foundation, Ltd. ("Technology"), licensee of low power noncommercial educational FM Station WLFK-LP, Eau Claire, Wisconsin, for broadcasting advertisements in violation of section 399B of the Communications Act of 1934, as amended (the "Act"), and section 73.503(d) of the Commission's rules. We have carefully reviewed the record, including Technology's response, and conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions, in addition to having failed to submit required information in response to a Commission inquiry. While we believe that no monetary sanction is warranted at this time, based upon the entire circumstances of this case, we find that an admonishment is necessary to redress these statutory and rule violations. Moreover, we believe that it is appropriate to advise Technology of our specific concerns so that it may avoid future violations.

II. BACKGROUND

2. In response to a confidential complaint, we inquired of the licensee concerning its underwriting announcements. Technology responded to our August 24, 2004, inquiry by its submission dated September 7, 2004. In its response, Technology acknowledges that it

1 47 U.S.C. § 399b.

2 47 C.F.R. § 73.503(d) is a noncommercial broadcast rule applicable to LPFM licensees through incorporation by § 73.801. 47 C.F.R. § 73.503(d) allows noncommercial stations to air announcements acknowledging underwriter or sponsor donations, but prohibits the broadcast of paid announcements that promote for-profit underwriters or sponsors.

3 See Letter of William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Technology Information Foundation, dated August 24, 2004 ("LOF").

4 See Letter of Wolf Snider, President, Technology Information Foundation, Ltd., to Kenneth M. Scheibel, Jr., Investigations and Hearings Division, Enforcement Bureau, dated September 7, 2004 ("Response").

broadcast the inquired of underwriting announcements during the period November 11 through 18, 2003, over Station WLFK-LP.⁵ Technology represents, however, that three of the five announcements at issue, those on behalf of The Barstow Café, Advanced Audio Systems, and Union Records/Tru Trax, were broadcast “without remuneration or promise of future remuneration,” and should therefore be deemed compliant with section 399B of the Act.⁶ Technology represents that, since becoming aware of the complaint, it has “pulled all current sponsorship announcements for extensive review,”⁷ in an attempt to better conform its station operation to the Commission rules and policies regarding underwriting announcements.

III. DISCUSSION

3. 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.⁸ As the Commission has long held, noncommercial educational stations may not broadcast advertisements.⁹ Although the Commission has held that contributors of funds to noncommercial stations may receive on-air acknowledgements, such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.¹⁰

4. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.¹¹ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between announcements that promote versus those which merely identify the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area.¹²

5. The key facts in this case are not in dispute. Technology admits that Station WLFK-LP broadcast the announcements described in our letter of inquiry and set forth in the attached transcript; that the sponsors are for-profit entities; and that, with the exception of the Barstow Café, Advanced Audio Systems, and Union Records/Tru Trax announcements, it received consideration for airing the messages. Technology asserts that it has since taken steps to

⁵ *Response* at 3.

⁶ *Id.* at 1. A written transcript of the five announcements was attached to the *LOI* as Exhibits A-E.

⁷ *Response* at 1.

⁸ 47 U.S.C. §399b(a).

⁹ *See In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

¹⁰ *Id.*

¹¹ *Id.*

¹² *See Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

ensure underwriting rule compliance by revising the station's donor acknowledgment policy and practice.¹³

6. We find that the announcements aired by Technology on behalf of Northern Safari Army Navy Store and Westside Cycle, for which Technology received remuneration, exceed the bounds of what is permissible under section 399B of the Act, and the Commission's pertinent rules and policies, in light of the "good-faith" discretion afforded licensees under *Xavier, supra*. Specifically, the announcements seek to promote their respective underwriters through comparative and qualitative descriptions, and references that seek to induce patronage, and are thus prohibited. Notwithstanding this substantive finding, we find that a monetary forfeiture is not necessary to redress the statutory and rule violations at issue. This disposition takes into account the full circumstances of this case, including the absence of evidence undermining Technology's claim of "good-faith" efforts to comply as well as Technology's blemish-free enforcement record.

7. With regard to Technology's underwriting practices, we believe that the licensee should review its promise to air "pre-recorded sixty-second (maximum) announcements that give [its] listeners basic information [about the underwriter]." ¹⁴ Although the Commission has not imposed quantitative guidelines on the length of underwriting announcements, it has noted that the longer they are, the more promotional they tend to be.¹⁵ In light of the excessive length of the problematic announcements involved in this case, which range from 36 to 49 seconds in duration, Technology should carefully examine and then reform its current practices.

8. We further admonish Technology for its inadequate response to the Commission inquiry. First, Technology failed to respond to our specific question directing it to explain the meaning that it ascribed to the promise made to station sponsors that they would receive "favorable mention on our morning show and station breaks."¹⁶ Technology instead represented that, although its apparent promise of promotional mention made to sponsors had since been withdrawn, "the meaning of the aforementioned phrase will [not] be explained [until] a later response[.]" which the licensee never provided.¹⁷ The Commission has consistently held that a party cannot pick and choose which portions of Commission directives in a Bureau inquiry letter require response, or unilaterally determine when and how it should respond.¹⁸ Again, in light of the totality of the circumstances, we do not believe that imposition of a monetary forfeiture for Technology's actions is warranted. We caution Technology and other licensees that future violations or different circumstances may result in substantial forfeiture penalties.

¹³ *Response* at 1.

¹⁴ *Response* at Exhibit C.

¹⁵ *See Board of Education of New York (WNYE-TV)*, Letter of Caution, 7 FCC Rcd 6864 (MMB 1992).

¹⁶ *Response* at 5.

¹⁷ *Id.*

¹⁸ *See, e.g., American Family Association*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13750 (EB 2004), *citing SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304 (2002); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (EB 2004).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that Technology Information Foundation, Ltd., licensee of low power noncommercial educational FM Station WLFK-LP, Eau Claire, Wisconsin, IS ADMONISHED for 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), and for failing to submit required information in response to a Commission inquiry.

10. IT IS FURTHER ORDERED that copies of this *Memorandum Opinion and Order* shall be sent, by Certified Mail -- Return Receipt Requested, to Technology Information Foundation, Ltd., 800 Wisconsin Street, Mailbox 108, Eau Claire, Wisconsin 54703, and to counsel for the complainant, Todd M. Stansbury, Esq., Wiley, Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigation & Hearings Division
Enforcement Bureau

ATTACHMENT

Transcript of Prohibited Underwriting Announcements Aired on LPFM Station WLFK-LP, Eau Claire, Wisconsin, on November 11, 17 and 18, 2003:

Northern Safari Army Navy Store (36 seconds)

Announcer: "Hey, if you need anything for the great outdoors, our new sponsor, Northern Safari Army Navy, can help you out. They carry camping supplies, backpacks, tents, all season clothing, which is, by the way, where I buy all my clothes, military surplus, knives, and paintball; that's right, paintball. How much cooler can you get than that? Basically, it's all the cool stuff you need to have fun outside. Northern Safari is located at 1610 South Hastings Way, and if you want to see if they have something in stock, you can give them a call at 833-1942. Northern Safari is where I shop, and I think it's cool as hell."

Westside Cycle (49 seconds)

Male Voice: "Hi, this is Chad, owner of Westside Cycle. People hate being told by the bigger dealerships that their ride is too damn old to be worked on. Westside Cycle will work on any motorcycle, ATV or snowmobile, from regular scheduled maintenance to complete rebuilds, custom paint, even hand-built choppers. I've been a mechanic for over 12 years so your ride is in good hands with me. In addition to service, we sell used motorcycles, and we'll match any magazine deal on parts or accessories and order them online for next-day delivery. So if you like dealing with a small shop or you get to talk to the owner, then Westside Cycle is for you. We're located at 1620 Westgate Road, off of Cameron Street in Eau Claire, or you can reach us by phone at 832-8300."

Female Voice: "Westside Cycle: Keeping the breeze between your knees."