

Federal Communications Commission  
Washington, D.C. 20554

In reply refer to:  
1800C1-CMW  
93110551

August 13, 1997

Released: August 15, 1997

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Penfold Communications, Inc., Licensee  
Station KRTM(FM), Temecula, CA  
27645 Jefferson Avenue, #104A  
Temecula, CA 92590

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), for violations of Section 399B of the Act. It is issued under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

Section 399B of the Act, as implemented by Section 73.503 of the Commission's Rules, prohibits public broadcast stations from broadcasting 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. 47 U.S.C. § 399B. Although contributors of funds may receive on-air acknowledgements, the Commission has unequivocally stated that such acknowledgements may be made for identification purposes only and should not promote the contributor's products, services, or company. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. See Public Notice, "In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations," 7 FCC Rcd 827 (1986).

On December 31, 1992, the Commission released a \$5,000 Notice of Apparent Liability to Penfold Communications ("Penfold") for violation of Section 399B of Act. Penfold Communications, Inc., 8 FCC Rcd 78 (MMB 1992). The forfeiture amount was subsequently reduced to \$3,500 because of your claim of financial hardship and your past history of compliance with our rules. Memorandum Opinion and Order, 8 FCC Rcd 5242 (MMB 1993) ("MO&O"). In our MO&O, we indicated that we were continuing to receive complaints and cautioned you that we would "not hesitate to impose a more substantial forfeiture in the future for additional or subsequent similar violations."

Following the release of the MO&O, we received information indicating that Station KRTM(FM) has continued to air announcements in violation of Section 399B of the Act. On January 28, 1994, we issued a letter of inquiry seeking information regarding some allegedly impermissible announcements broadcast on October 27 and 28, 1993. Attached hereto is a transcript of those announcements. In your response of February 8, 1994, you stated that you did not receive consideration for three of the announcements (#s

1, 2, and 6) and that one of the announcements (#7) was aired on behalf of a noncommercial entity.<sup>1</sup> With respect to the remaining three announcements (#s 3, 4, and 5), you admitted receiving consideration, but claimed that the language contained therein is in compliance with Section 399B of the Act.<sup>2</sup>

With respect to announcements 1, 2, and 6, we received correspondence from a number of individuals challenging your claim that you received no consideration for airing those announcements. You stated in your written response that announcements 1 and 2 were broadcast to "attract listeners" to Adobe Plaza, the shopping center where Station KRTM has "storefront studios." The information we received following your response indicated that announcements for Adobe Plaza were made in exchange for partial payment of rent and that Gently Used Furniture, located in Adobe Plaza, paid separate consideration to Station KRTM for the broadcast of announcement 2. You also stated in your response that "the station from time to time promotes new businesses in town without consideration," in order to "promote the community's growth," and that announcement 6 for Baja's was an example of such an announcement. Following your response, however, we received evidence indicating that Baja's was a contributor to the station and did pay consideration to have announcement 6 aired.

On August 2, 1994, we issued another letter of inquiry, requesting clarification of the conflicting information we received. On July 31, 1995, you filed your response to that letter.<sup>3</sup> You stated that after receipt of our second letter, you searched your files again and found that, under your original lease at Adobe Plaza, which was no longer in effect at the time of your response to our first letter of inquiry, you did receive reduced rent in exchange for "equivalent" radio time. You still contend, however, that although announcement 1 was aired during the term of the original lease, it was not one of the announcements broadcast as part of the lease arrangement. You did not, however, provide us with any documentation or evidence to verify that announcement 1 was not part of the lease arrangement. Thus, given the lack of any evidence, and because of your lease arrangement with Adobe Plaza, it appears that consideration was, at least indirectly, received in return for airing of that announcement.

With respect to announcement 2, you acknowledge that Gently Used Furniture did make contributions to the station. However, you indicate that because station files with respect to the announcements at issue are missing, you do not know whether consideration was paid by Gently Used Furniture for this particular announcement or whether it was aired as part of your lease arrangement with Adobe Plaza. Either way, however, consideration was received by the station in exchange for, or as a result of, the broadcast of the spot.

Finally, regarding announcement 6, you state that although Baja's was a station contributor, no consideration was received for the broadcast of this particular announcement. Again, however, you do not provide us with any documentation or evidence to support your claim. In these circumstances, the tenor of the announcement, together with the financial support you received from Baja's, leads us to conclude that you did receive consideration in connection with the airing of the announcement extolling the "delicious" and "terrific" offerings of that restaurant.

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<sup>1</sup> Section 399B of the Act and Section 73.503 of the Commission's Rules do not prohibit the promotion of noncommercial entities. Accordingly, the broadcast of announcement 7 does not violate the Act or our rules.

<sup>2</sup> Specifically, with respect to announcement 5, you indicate that the station received a "contribution" for the remote broadcast and that the amount of the contribution exceeded the operating costs incurred as a result of the broadcast.

<sup>3</sup> Your Freedom of Information Act ("FOIA") request filed on October 5, 1994, was denied by letter dated June 15, 1995. Your response thus became due shortly thereafter.

We are concerned that much of what you wrote in response to our first letter of inquiry is, by your own admission, inaccurate. You attribute this to lapse of memory and a failure to fully search station files. You also contend that your ability to respond to Commission inquiries, and any errors that occurred, were caused, in part, by the disappearance of station files regarding the announcements at issue. Although we recognize that you may not have all the requested information because some station records are missing, somehow you were able to respond to most of our questions upon receipt of our second letter of inquiry. Thus, it appears that had you taken the time to search your records and other sources to respond fully and accurately to our first inquiry, you would have been able to do so at that point.

Having determined that consideration was given for the broadcast of announcements 1-6, we now turn to the question of whether or not the language in those announcements violates Section 399B of the Act and Section 73.503 of the Commission's Rules. Considering the full text of these announcements (see attached), we find that all six contain impermissible promotional language. For example, many of the announcements contain prohibited comparative and qualitative language:

1. . . . Adobe Plaza right here in Temecula. It's not too big, not too small, but just right.  
....
2. [Gently Used Furniture] . . . I've got some exciting news. What's up? I just found a furniture store located right here in Temecula with furniture that's been used . . . gently. Ah, what do you mean gently used? I mean like almost new. . . .
3. Temecula Valley's our location . . . Nissan of Temecula. Yeah, we've got cause for celebration. Nissan cars and trucks . . . Nissan of Temecula. . . . Nissan of Temecula. There's friendly faces all around . . . the only Nissan dealer in town. . . .
4. Rancho Transmission, the oldest transmission center in Temecula . . . Rebuilt transmission work carries a one-year warranty or 24,000 miles. . . .
6. . . . I find it rather discouraging unable to come up with a dining establishment which would offer both diversity and delicious delicacies all in one eating experience. Baja's, dude, in the Target Center. . . . Mondays are mad, Tuesdays are terrific . . . Wednesdays, dude, are wild! . . .

Although you contend that reference to "friendly faces" in the Nissan of Temecula announcement (# 3) does not describe the underwriter's personnel, but rather people throughout the community, we believe that a listener, given the way the announcement is worded, would relate "friendly faces" to the auto dealer's staff. Similarly, we reject your argument that the references to Rancho Transmission (#4) as Temecula's "oldest transmission service" and its "warranty" are simply facts and should, therefore, be permissible. "Oldest" is a comparative term. "Warranty" constitutes prohibited price information and an inducement to buy. Both references, fact or not, clearly exceed the identification-only limitations on underwriting announcements. We also note that the Nissan of Temecula announcement (#3) contains the type of non-identifying verbosity pointed out to you in the 1992 Notice of Apparent Liability. Specifically, the underwriter's name, "Nissan of Temecula," is repeated continuously throughout the spot.

Finally, with respect to announcement 5, it appears that the primary purpose of the announcement and the remote broadcast was to promote the Costain Classics, not the station itself:

5. This weekend the sound track of the Valley 8.9 FM The Mix will broadcast live from the grand opening of the all new furnished Plan 1 Model Home at Costain Classics, at Silverhawk right off Winchester in Temecula. Costain Classics has three furnished models to view with up

to five bedrooms. The live remote broadcast begins at 11 a.m. and continues until 3 in the afternoon, with best costume prizes, pumpkins and giveaways. . . .

The announcement goes beyond the mere identification of the location of the remote -- it informs listeners of the products offered at that location ("all new furnished Plan 1 Model Home at Costain Classic," "three furnished models to view"). Under such circumstances, it is a violation of the Act and our Rules. The Commission has long held that if programming is based on the licensee's public interest judgment rather than an exchange of consideration, identification of the origination point of a remote is permissible. However, promotion of a non-station event and/or establishment beyond identification of its location is not. See Letter from Chief, Complaints and Investigations Branch, Enforcement Division, Mass Media Bureau, FCC, to James L. Zix, General Manager, Station WLAB(FM) (July 8, 1992), citing Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 86 FCC 2d 141, 153 (1981).

Based on the evidence before us, it appears that you repeatedly violated Section 399B of the Act on October 27 and 28, 1993. You are hereby advised of your apparent liability for a total forfeiture of Six Thousand Dollars (\$6,000) for your apparent violations. In determining a forfeiture amount, we take into account the nature, circumstances, extent, and gravity of the violation, as well as the degree of culpability and the Station's prior history of violations. Section 503(b)(2)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(D).

Our prior forfeiture to you for similar violations was issued with a caution that continued failure to comply with our Rules and the Act would result in a more substantial forfeiture. Despite this, you have continued to air promotional announcements similar to those we found impermissible in 1992. Further, we note that we continue to receive complaints alleging that Station KRTM is still broadcasting impermissible promotional announcements. Your violations are aggravated by the inaccuracy of your response to our first letter of inquiry. Taking into account the repeated nature of your violation, the carelessness with which you responded to our first letter of inquiry, and your history of past rule violations, we believe that a \$6,000 forfeiture is appropriate.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

Sincerely,

Roy J. Stewart  
Chief, Mass Media Bureau

Enclosure

cc: Peter Tannenwald, Esq.  
Complainant

KRTM(FM), Temecula, CA

October 27, 1993

1. Hi, Goldie here. After those three bears ran me off I found a cottage in the Adobe Plaza right here in Temecula. It's not too big, not too small, but just right. It's surrounded by over 15 businesses that make up the Adobe Plaza. Not too many, not too few, but just right. There's also space for more businesses. Information is available from Osbourn Properties at 694-9320. The Adobe Plaza, located on Jefferson Avenue, is the home of Peacock Uniforms, Gently Used Furniture, Adobe Chiropractic, National Communications, and the KRTM business office . . . just to name a few. Not too few, but just right.

2. (Ring sound effect.) Hello? Hey, Mark, this is Loxie. I've got some exciting news. What's up? I just found a furniture store located right here in Temecula with furniture that's been used . . . gently. Ah, what do you mean gently used? I mean like almost new. The store has filled up 8 times in 48 days with sofas, dinettes, chairs, tables, recliners, rockers, curios, beds, desks, china cabinets and more. Owners Rick and Jeannie Kearn take in all types of furniture on consignment. Consignment, huh? Where is this place? In the Adobe Plaza on Jefferson Avenue next to Tony's Spunky Steer and that local radio station KRTM or something. Oh, yeah, the programming of that station is underwritten by this announcement. Gently Used Furniture, 27625 Jefferson Avenue, 699-5044.

October 28, 1993

3. Temecula Valley's our location . . . Nissan of Temecula. Yeah, we've got cause for celebration. Nissan cars and trucks, we've got 'em all. Nissan of Temecula. In the Temecula Auto Mall . . . Nissan of Temecula. There's friendly faces all around . . . the only Nissan dealer in town. It's Nissan of Temecula. Nissan of Temecula is an underwriter of programming on KRTM.

4. Rancho Transmission, the oldest transmission center in Temecula, is an underwriter of programming on KRTM. Automatic transmission preventative maintenance schedule is every 20,000 miles . . . . Family owned and operated in the Temecula Valley. Rebuilt transmission work carries a one-year warranty or 24,000 miles. Rancho Transmission located on Via Montezuma in Temecula. The phone number is 676-6569.

5. This weekend the sound track of the Valley 88.9 FM The Mix will broadcast live from the grand opening of the all new furnished Plan 1 Model Home at Costain Classics, at Silverhawk right off Winchester in Temecula. Costain Classics has three furnished models to view with up to five bedrooms. The live remote broadcast begins at 11 a.m. and continues until 3 in the afternoon, with best costume prizes, pumpkins and giveaways. For directions, the phone number is 698-4100. This Halloween eve, Saturday, October 30th, from 11 to 3. A live remote broadcast from Costain Classics at Silverhawk, from the station that loves it live, 88.9 FM The Mix.

6. Bah, humbug. Hey, dude, why the downer Scrooge-like attitude? Que pasa? Ba, ha, humbug. I find it rather discouraging unable to come up with a dining establishment which would offer both diversity and delicious delicacies all in one eating experience. Baja's, dude, in the Target Center. With fish tacos, burritos, tostados, combo plates and shrimp tacos and burritos. It's like Mondays are mad, Tuesdays are terrific, and Wednesday--Wednesdays, dude, are wild! Hmm ... Baja's. Why does that sound familiar? In the Target Center. Baja's is an underwriter of KRTM programming. The phone number is 699-6311.

7. (Cricket sound effects.) Latelow. Dear, dear, wake up. What? There's someone on our front lawn. Oh, no, it's him! Him? My boss. Wake up Latelow! What does he want? What do you want!?! Quiet down out there. It's decision time, Latelow . . . you've got to pick a doctor for your health plan. But we don't know a doctor. Keep it down out there. Latelow, I'm not leaving this lawn until you choose a doctor! Dear, turn on the sprinklers. Yeah, good idea. (Sound effect.) If you're worried about finding the right doctor in your health plan, just call Sharp Health Care at 1-800-82-SHARP. Our doctors are located throughout San Diego. So you get a Sharp doctor who's not only near your home or work, but who also has access to Sharp Hospitals. Latelow, you're just wasting water. Dear, I'm letting the dog out. Oh, no. Oh, yes. Call Sharp Health Care, 1-800-82-SHARP. Latelow, nice dog!