

F.C.C. 70-487

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of  
AMENDMENT OF THOSE PROVISIONS OF PART 73  
OF THE COMMISSION'S RULES WHICH DE-  
SCRIBE AND DELIMIT THE NATURE OF NON-  
COMMERCIAL, EDUCATIONAL FM AND TELE-  
VISION BROADCAST SERVICE, AND RELATED  
MATTERS. (SECS. 73.503 AND 73.621)

MEMORANDUM OPINION AND ORDER

(Adopted May 6, 1970)

BY THE COMMISSION: COMMISSIONER BARTLEY DISSENTING AND ISSUING  
A STATEMENT; COMMISSIONER ROBERT E. LEE ABSENT; COMMISS-  
IONER JOHNSON CONCURRING IN THE RESULT.

1. Because the rules relating to financial support of noncommercial educational FM and television stations were adopted at different times and in different language, licensees have experienced difficulties in interpreting them. Moreover, a certain lack of specificity has made it difficult for many educational licensees to know just what types of financial support they could accept, what broadcast acknowledgment of support is permissible and, finally, what identification announcements are required under our sponsorship identification rules.

2. These interpretations of Commission policy and rules present issues of importance, since on the one hand they affect the financial support of educational broadcast stations, and on the other hand they pertain to the public's right to know by whom it is being persuaded. At the same time they affect the essential noncommercial character of these services which permits them to fulfill the unique and important role in our society which they do.

3. Confusion has resulted from differing language in section 73.503 (c), which describes noncommercial educational FM service, and section 73.621(e) which describes noncommercial educational television service. Although the language of the FM section is more sweeping, it makes no reference to a station's responsibilities for sponsorship identification. At the same time the FM rule is more permissive with regard to the furnishing of program material and the payment of line charges than is the television rule (which permits payment of line charges only by another station or network).

4. There was never any intent to exempt noncommercial educational FM broadcast stations from the provisions of section 317 of the Communications Act to the extent that they would be applicable to a non-commercial service, such as with regard to the furnishing of program

materials or the payment of line charges. At the same time, for the sake of clarity and efficient administration, the noncommercial educational character of the two services should be described in the same way in both rules; and there is no reason why the payment of line charges should not be permitted in the case of noncommercial educational television stations to the same extent permitted in the case of noncommercial FM broadcast stations.

5. In addition, experience has demonstrated the need for interpretative language which will give guidance to noncommercial educational licensees in their determination of the types of language permitted as acknowledgment of a donation of programing materials or costs, and, conversely, what language is required for the proper identification of one who has made such a donation. Similar guidance is needed in the matter of the frequency of such announcements. Finally, we believe that we are called upon to clarify and interpret the provisions which permit the furnishing of programs or programs costs. The question has been raised as to whether such costs should include not only those involved in the actual production of a program, but in addition a proportionate share of the operating expenses of the station which are required in order to make the program available to the public on their receiving sets. We believe that they should, and that the rule should be amended to make this clear.

6. We are amending the provisions of section 73.503, which describe and delimit the nature of the noncommercial educational FM broadcast service, to conform to the like provisions of section 73.621 relating to noncommercial educational television stations. At the same time we are amending both sections so as to clarify the requirements of sponsorship identification, acknowledgment of donations and the frequency of such announcements, and so as to provide for the inclusion of station operating costs within the permissible underwriting program costs which may be donated to a noncommercial educational station.

7. Authority for the adoption of the amendments herein adopted is contained in sections 4(i), 303 (a), (b), and (r), and 317 of the Communications Act of 1934 as amended.

8. The changes in the rules adopted herein are largely clarifying, editorial, and interpretive in nature; the effect, insofar as the substance of the rule is changed, is chiefly to relax existing restrictions on the acceptance of contributions and (in television) payment of line charges. Insofar as the new rule concerning educational FM stations may appear to impose a new requirement of announcements as to the furnishing of programs by others, it represents what the intent of the Commission's rules has been, and simply imposes on these stations the same requirements which have long been applicable to commercial stations. Accordingly, we find that the public proceedings normally required by the Administrative Procedure Act (5 U.S.C. 553 (a) and (b)) are unnecessary.

9. In view of the foregoing, *It is ordered*. That effective June 17, 1970, sections 73.503 and 73.621 of the Commission's rules and regulations *Are amended*, as set forth in the attached appendix.

FEDERAL COMMUNICATIONS COMMISSION,  
BEN F. WAPLE, *Secretary*.

## APPENDIX

1. In section 73.503, paragraph (c) is amended and paragraph (d) is added to read as follows:

§ 73.503 Licensing requirements and service.

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“(c) A noncommercial educational FM broadcast station may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station, network, or someone other than the licensee of a noncommercial educational FM broadcast station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.

“(d) Each station shall furnish a nonprofit and noncommercial broadcast service. Noncommercial educational FM broadcast stations are subject to the provisions of § 73.289 to the extent that they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others; however, no announcements promoting the sale of a product or service shall be broadcast in connection with any program.”

NOTE 1.—Announcements of the producing or furnishing of programs or the provision of funds for their production may be made no more than twice, at the opening and at the close of any program. The person or organization furnishing or producing the program shall be identified by name only, and no mention shall be made of any product or service with which it may have a connection.

NOTE 2.—Announcements of general contributions of a substantial nature which make possible the broadcast of programs for part, or all, of the day's schedule may be made no more than three times during the broadcast day.

2. In section 73.621, paragraphs (d) and (e) are amended to read as follows:

“§ 73.621 Noncommercial educational stations.

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“(d) A noncommercial educational television station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station, network, or someone other than the licensee of a noncommercial educational television station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.

“(e) Each station shall furnish a nonprofit and noncommercial broadcast service. However, noncommercial educational television stations shall be subject to the provisions of § 73.654 to the extent that they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others, except that no announcements (visual or aural) promoting the sale of a product or service shall be broadcast in connection with any program: *Provided, however*, That where a sponsor's name or product appears on the visual image during the course of a simultaneous or rebroadcast program either on the backdrop or in similar form, the portions of the program showing such information need not be deleted.

NOTE 1.—Announcements of the furnishing or producing of programs may be made no more than twice, at the opening and at the close of any program. The person or organization furnishing or producing the program shall be identified by name only, and no mention shall be made of any product or service with which it may have a connection.

NOTE 2.—Announcements of general contributions of a substantial nature which make possible the broadcast of programs for part, or all, of the day's schedule may be made no more than three times during the broadcast day.

## DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I dissent.

In my opinion, the provisions for: (a) Carriage of television programs without deletion of backdrop video advertising, and for (b) recovery of station operating costs from program suppliers, may result improperly in commercialization and exploitation of noncommercial educational broadcast stations.

Also, I believe that the amendments should not have been adopted without a rulemaking proceeding.

22 F.C.C. 2d

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