

Educational Noncommercial Broadcast Service
Public Broadcasting
Rules, Amendment of

Fundraising policies modified (Sections 73.503(d) and 73.621(e)) to match them more closely to the purpose, potential and appropriate limits of noncommercial broadcasting. BC Docket No. 21136

FCC 81-204

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations

BC Docket No.
21136

SECOND REPORT AND ORDER (PROCEEDING TERMINATED)

(Adopted: April 23, 1981; Released: May 19, 1981)

BY THE COMMISSION: COMMISSIONER QUELLO ISSUING A STATEMENT IN WHICH COMMISSIONER FOGARTY JOINS; COMMISSIONER WASHBURN ISSUING A SEPARATE STATEMENT.

1. In the *First Report and Notice of Proposed Rule Making* in this proceeding (hereinafter "*First Report*," 69 FCC 2d 200 (1978)), we sought comment, through rule making, on 22 specific questions regarding the noncommercial nature of public broadcasting.¹ These questions had been distilled from the inquiry stage of the same proceeding,² and related to a single theme: We stated that our proposed answers were intended to place limits upon some types of fundraising activities, with an eye toward striking a reasonable balance between the financial needs of such stations and their obligation to provide an essentially noncommercial broadcast service. These proposals received extensive comments from a wide range of individuals, associations, and licensees, see Appendix A. We now believe, based upon the record in this proceeding, that the overall approach embodied in the 22 specific questions warrants re-examination, and that the record does not support many of the specific rules that were proposed.

¹ The term "public broadcasting" is used here to refer to all stations licensed by the Commission as noncommercial educational broadcast stations.

² *Notice of Inquiry* (Inquiry), FCC 77-162, March 15, 1977, 42 Fed. Reg. 15927 (March 24, 1977).

2. The *First Report* alluded to a pattern of complaints from the public and from commercial broadcasters regarding the practices of public broadcasting stations (para. 2). However, the record now available to us provides scant support for the contention that there has been a pattern of significant abuse. We agree with several commenting parties who urged that a few isolated complaints should not form the basis for general proscriptive rules that affect all public broadcasting stations. The basic thrust of both the *Inquiry* and the *First Report* was highly proscriptive. The proposals would have created a highly specific set of rules codifying a host of major commercial announcement and fundraising questions raised by public broadcasters. Many comments urged us to adopt less restrictive rules which would be consistent with our present purposes and would be consistent with other recent policy decisions.³

3. The Commission's interest in creating a "noncommercial" service has been to remove the programming decisions of public broadcasters from the normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate. The policy underlying this *Report and Order* is designed to serve that end and to eliminate rules which are not required for that goal. At the same time, the Commission recognizes that substantial funding for public broadcaster programming is derived from business establishments in the form of grants or gifts and that acknowledgement of those funds is proper and possibly necessary to assure the continuation of such funding. Consequently, this *Report and Order* provides greater flexibility for public broadcasters in this area, relying partially upon good faith efforts of licensees to prevent abuses and to maintain the essential character of the noncommercial service.

4. The result of this major re-examination is our decision to eliminate the existing proscription against *all* promotion of products and services and to institute a more appropriate "consideration received" rule. Consideration is a term used to denote anything of value given in exchange for something else of value. Although the Commission has felt in the past that no promotion of goods and services should be allowed on noncommercial stations, we now think that the promotion of goods and services without consideration can in some instances further the public interest. We feel we need to amend

³ Some parties cited our *Inquiry and Notice of Proposed Rule Making in Deregulation of Radio*, 44 Fed. Reg. 57636, pub. Oct. 5, 1979, as standing in contrast to the present proceeding. See also, *Deregulation of Radio*, 46 Fed. Reg. 13888, pub. Feb. 24, 1981. However, that action was premised in part upon the idea that market forces would impel the licensees to deliver programming consistent with the public interest, even in the absence of regulation. The present proceeding is designed to assure that the programming of public broadcasting is not primarily in response to the market's commands. However, in many other respects, the parallel is properly noted and here, as there, we are attempting to minimize the oversight and reporting burdens that licensees will face, relaxing these burdens where there is no strong reason not to do so.

our rules to allow broadcasters to promote the programs and events of organizations when they determine that it would be in the public interest to do so. However, we are continuing to maintain the noncommercial nature of public broadcasting by not allowing a broadcaster to promote the goods or services of an entity or person in return for consideration. In addition, we reject proposals to regulate tightly the airing of contributor acknowledgements and proposals to restrict other fundraising activities on behalf of the stations. The effect of these changes will be to broaden the permissible areas of licensee discretion in making their public interest judgments and likely will broaden the sources of private support for public broadcasting. The contributor rules should encourage more private donations and increase the total amounts of contributions. This broadened public funding should reduce the ability of any single private or public entity to affect program decisions and thus should help insure that the programming decisions of public stations are consistent with the intended status of public broadcasting.

5. A secondary aspect of the new regulatory scheme is that it is consistent with traditional First Amendment analysis. The new rules: (1) are within the power of the Commission, (2) further the substantial and important interest of preserving the public broadcast service, (3) can be implemented without affecting First Amendment freedom, (4) are no broader than necessary to achieve their aims, and (5) are as specific as possible. As such, the new system withstands even the most strict constitutional scrutiny applied by the U.S. Supreme Court in related cases.

6. Perhaps the most important finding to emerge from this proceeding is that the Commission does not now have available to it a comprehensive statement of the goals and purposes of public broadcasting and of the means by which these should be pursued. Absent consensus on the nature of the essential differences attendant to the noncommercial services, we are likely to resolve the particular policy questions in *ad hoc* ways that may not be consistent and orderly. The problem has become more acute recently, as the types of broadcast and nonbroadcast service have expanded and diversified. Public broadcasting has pioneered in the development of satellite program delivery for television and radio, in captioning for the deaf, and in other technical areas. Public stations currently are attempting to re-examine their traditional funding approaches. In this volatile situation, we do not believe it is appropriate for the Commission to endorse or forbid particular practices through *ad hoc* actions until we have performed a basic review of the public broadcast service. Such a review now is underway in the Policy and Rules Division of the Broadcast Bureau. We expect the staff to present recommendations to us on an expedited schedule for possible future rule making activities in the area. For present purposes we have sought to pursue rule making only so far as it is clearly justified by the record in this proceeding. We have deferred

to a later inquiry or rule making the basic questions concerning public broadcasting's central purpose, the government's responsibility, the impact of new sources of financing, and of the impacts of new technologies. For now, it is sufficient to state that we seek to maintain an essentially noncommercial character for public broadcasting and are here adopting what seems for the present to be the minimum regulatory structure that preserves a reasonable distinction between commercial and noncommercial broadcasting.

The Basic Programming Rule: A Summary of Relevant Comments

7. The most significant fact to emerge from the comments was a need to re-examine the basic noncommercial programming rule and in so doing we have determined that a "consideration received" standard will be more appropriate for determining permissible broadcast matter for public stations. The position of the commenting parties provided much support for this change. For example, many parties argued that the Commission's rule proscribing "announcements promoting sale of products and services" raised serious questions under the First Amendment because it: (1) failed to further a substantial or compelling government interest where the licensee received no consideration for broadcast matter, and (2) was based solely on the content of the proscribed speech. Regardless of the merits of this argument the Commission believes that the regulatory approach announced here removes the ambiguity of the present rules by eliminating the vexing problem of determining what language "promotes" the sale of products or services and establishes an objective standard by which to judge certain broadcast matter. Moreover, the new criterion is not based upon the "content" of the broadcast matter. Further the Commission believes that the rule is related to and furthers the government's interest in creating a public broadcast service.

8. Sections 73.503(d) and 73.621(e) of the Commission's present rules state that, subject to limited exceptions, "no announcements promoting the sale of product or service shall be broadcast in connection with any program." The Commission has applied this proscription to: (1) announcements made on behalf of commercial entities promoting their products and services, (2) announcements made on behalf of nonprofit organizations, either at their request or by the licensee's own choice, promoting activities where the sale of goods or services was involved, and (3) announcements promoting the licensee's own activities where the sale of goods and services was involved. Many commenting parties were concerned with the proscription as applied to the latter two types of announcements.

9. The Commission has invoked the proscription to disallow announcements urging attendance at, or "promoting" in other ways, nonprofit organizational activities and transitory events, such as plays, concerts and fundraising efforts, where an entry fee was required or where goods and services were sold. For example, prohibited announce-

ments would include: "The First Avenue Church is having its annual garage sale this Sunday. There are many useful items on sale so be sure to attend," or "The Red Cross is sponsoring a dance this Sunday featuring the latest in disco sounds. Admission is only \$2.00 so be sure to stop by and join the fun and help a worthy cause in the process." The *First Report* proposed no change in this general prohibition.

10. Commission authority to create special rules for commercial-like practices of public broadcasters is found in Sections 303(a) and (b) of the Communications Act of 1934, as amended (Act), which authorizes the Commission to classify radio stations and to prescribe the nature of the services to be rendered by each class of licensed station and each station within any class. The parties acknowledge the Commission's authority to prohibit commercial or commercial-like activity in particular broadcast services but they point out that any regulatory scheme adopted by the Commission to achieve this end must be consistent with First Amendment freedom of speech guarantees and Fifth Amendment equal protection principles. The Commission's proposed rules are said by the parties to conflict with requirements of both of these constitutional principles.

11. The parties repeatedly cite *U.S. v. O'Brien*, 391 U.S. 367 (1968), which held that a government regulation affecting First Amendment freedoms is justified only:

If it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the government interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than essential to the furtherance of that interest. *Id.* at 377.⁴

The parties also frequently cite *Community Service Broadcasting of Mid-America, Inc. v. F.C.C.*, 593 F. 2d 1102 (C.A.D.C. 1978), in which the Court of Appeals stated:

The First Amendment requires the strictest form of scrutiny be applied where the purpose of a statute is related to suppression of free expression of ideas or information. Applying such strict scrutiny, the Supreme Court has held that the statute or regulation *must* be found unconstitutional unless either the speech in question is not fully protected by the first amendment or its suppression is essential to a compelling government interest. (citations omitted). *Id.* at 1111.

The parties' basic argument is that the Commission's blanket proscription of announcements promoting the sale of a product or service is unrelated to, and fails to further, any important, substantial, or compelling government interest.

12. The parties generally claim that the purpose and objective in creating a public broadcast service was to classify and distinguish one

⁴ The last component of this test is similar to the "less drastic means" principle. *Shelton v. Tucker*, 364 U.S. 479 (1960), cited by some parties. It requires that a government limitation upon free expression be imposed only when there is lacking an alternative method of achieving the government's aim that would be less restrictive of these fundamental rights.

broadcast service which separated programming decisions from commercial marketplace pressures and which did not depend on advertising revenue to support it.⁵ The parties argue that the Commission's rules proscribing all announcements that merely promote the sale of products or services, regardless of whether they are broadcast in return for consideration, are unrelated to commercial marketplace concerns and fail to further the purpose for which public frequencies were reserved. The parties maintain that many such announcements are broadcast simply because the licensee believes them to be in the public interest. Thus, it was argued that the rules fail to further the intended governmental interest or are broader than required to achieve the desired result. The parties state that the Commission may not suppress all commercial or commercial-like speech merely because it desires to preserve some particular "tone," "taste," or "style" for public broadcasting. Such suppression is said to be forbidden because it is based solely on the *content* of the speech. In short, the parties believe that, unless the licensee receives payment or some type of consideration in return for broadcasting program matter, the licensee's discretion should govern what is broadcast. Such a functional, content-neutral approach, according to the parties would avoid the constitutional problems they attribute to the approach put out for consideration in the *First Report*.

13. Other constitutional arguments are advanced. It is asserted that the proposals are unconstitutionally vague, and that insofar as waivers are required for "old time commercials,"⁶ the rules constitute an unconstitutional prior restraint. Additionally, some parties argue that the proposals contravene the equal protection clause of the Fifth Amendment. The parties cite *Community Service Broadcasting of Mid-America v. F.C.C.*, *supra*, and *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972), for the general proposition that there must be a substantial government interest furthered by the different treatment accorded public broadcasters and commercial broadcasters, and that the rules must be narrowly tailored to serve that interest. It is argued

⁵ See e.g., *Sixth Report and Order*, 41 FCC 148, 165-166 (1952). For purposes of this proceeding, we are relying upon the purposes of public broadcasting enumerated in the *Sixth Report and Order*. We have not discovered a sufficient nexus between any valid government purpose and the discouragement of free expression complained of here to justify continuation of the current standard, where a less restrictive alternative is available. As a general matter, however, we continue to adhere to our position in the *First Report* that restrictions on commercial programming matter by public broadcasting stations are appropriate and consistent with the First Amendment. See, *First Report*, paras. 8-14. Our review of the legislative history surrounding this area assures us that the actions we are taking today are both within the scope of the law and are consistent with the thrust of that history.

⁶ "Old time commercial" waivers have been issued to permit the rebroadcast of formerly popular programs such as Groucho Marx, "The Lucky Strike Hit Parade," and mystery theatre programs, without deleting advertising matter contained in those programs.

that the Commission has failed to identify a "substantial government interest" warranting the virtual total proscription of its present and proposed rules is desirable. We agree that our rules must further the government's legitimate interests and, so far as possible, should not be based solely upon the content of particular broadcast matter.

15. The current dual system of broadcasting consisting of commercial and noncommercial stations is dependent upon differences in the purpose, support, and operation of the two classes of stations. Although these differences have not been completely enumerated, the present distinction has had an important relation to the source of operating revenues for the two types of stations. Public stations have relied primarily on government and private contributions; private commercial stations have relied primarily upon revenue paid in consideration for the airing of advertising to promote goods and services. So long as the commercial/noncommercial distinction is maintained and not modified, we agree with the parties' assertions that programming broadcast in return for receipt of consideration and used to promote the sale of goods and services is not appropriate for noncommercial broadcasting. Thus, proscriptions based on these criteria both narrowly define and specifically further the important government interest in preserving the character of noncommercial broadcasting, and do so in a way that is highly protective of First Amendment rights.

16. We also agree with the parties that announcements promoting the sale of products and services that are broadcast because the licensee believes them to be of public interest do not always denigrate the purposes and objectives of public broadcasting. Adoption of a "consideration for broadcast" rule will provide an objective method for determining certain permissible broadcast matter. In view of these conclusions, we are amending our rules today to make clear that, subject to the exception set out at paragraph 18 below and the Commission's rules generally, only announcements or programs broadcast in exchange for consideration are proscribed on public broadcast stations. Further, because of the delicate First Amendment implications, we are asserting our intention to respect the good faith judgments of broadcasters in interpreting this rule and our intention to review those judgments only where it appears necessary in order to protect the noncommercial nature of public broadcasting.

17. This new rule addresses the compelling government interest in separating public broadcasting station programming decisions from commercial considerations as much as possible. It does not address the compelling government interest in insuring that reserved educational frequencies be used for educational, instructional, and cultural programming. This latter interest is the basis for rules restricting certain broadcast matter and is discussed in paragraphs 42 & 43 below.

18. In adopting a rule proscribing announcements broadcast in

return for consideration, the question arises of how contributions of money, goods and services to licensees fit within the proscription.⁷ Such contributions are made, at least in part, in return for or with the expectation of broadcast acknowledgments. Contributions to public licensees constitute a principle source of financing broadcast operations. This source, through the federal "matching" system, has received Congressional endorsement as sound public policy. Moreover, it should be recognized that announcements acknowledging entities contributing money for particular program purposes *must* be made in many situations pursuant to Section 317 of the Communications Act and Section 73.1212 of the Commission's Rules. The regulatory system adopted today does not change the requirements of Section 317 and Section 73.1212. The Commission believes that donor identification announcements are informational and appropriate.⁸

19. Accordingly, we are amending Sections 73.503 and 73.621 to delete language proscribing announcements which promote the sale of products and services and are replacing it with language stating that

⁷ Throughout the comments, the parties repeatedly assert that as more restrictions are placed upon broadcast identification of donors, the more reluctant donors will be to donate and that if present restrictions were loosened, more entities would be willing to contribute. We agree and note that severe restrictions upon a station's ability to foster contributions from the general public may have the unintended result of enhancing the dependency of these stations upon large commercial underwriters and upon government funds.

⁸ Section 317(a)(1) of the Communications Act of 1934, as amended, states:

Sec. 317(a)(1). All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person; *Provided, that "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.* (Emphasis added).

The gist of Section 317 is as follows: All program matter broadcast for consideration must be so identified at the time of the broadcast. However, goods or services provided at little or no cost and used on a broadcast are exempted, unless provided in consideration for overt commercial promotion.

The exception, underlined above, is commonly referred to as the *proviso* clause. In commercial broadcast operation, this language permits licensees to omit the otherwise required sponsor identification announcements when using on-the-air an item given to them when used for its usual purpose, for example, a car given by Ford Motor Company used by a detective in a detective program or a refrigerator given by General Electric Company used on the set of a program requiring a kitchen. In the public broadcasting context, we believe identification of donors and descriptions of goods and services are generally appropriate and this is consistent with Section 317(a)(1). For discussion of the *proviso* clause and examples of its application, see *Applicability of the Sponsorship Identification Rules*, 40 FCC 141 (1963), updated and revised, 40 Fed. Reg. 41936, RR Current Service Volume, paras., 10:1110 and 53.2051 (1975).

"no announcement shall be broadcast in exchange for the receipt of consideration to the licensee, its principals, or employees. However, acknowledgments of contributions can be made."

20. We turn now to the specific policies and proposed rules discussed in the *First Report*. The actual questions proposed in the *Inquiry* are attached as Appendix C.

Fundraising that Suspends Programming

21. The Commission proposals which perhaps received the most publicity, as well as the most objection, were the ones placing limits on the amount of time permissible for auction fundraising and nonauction fundraising (such as marathons and pledge weeks) during periods of suspended programming.⁹ We recognized in the *First Report* that fundraising during on-the-air solicitations was important to licensee funding requirements and that Congress envisioned that at least some of this activity would occur. However, we also noted that time devoted to this activity detracted from the presentation of programming which the system was established to broadcast, that time devoted to fundraising was increasing, and that, with respect to auctions, the activity often seemed overtly commercial.

22. The Commission proposed a rule limiting the broadcast of auctions to ten days per calendar year with an additional restriction that no one day's auction activity consume more than 50% of that day's broadcast time. The comments on these proposed rules can be summarized as follows: (a) some had no objection to a limit and felt that ten days or slightly more was an adequate amount of time to devote to auctions; (b) most felt that the 50% limitation impinged upon flexibility particularly on weekends when substantially more than 50% of the day may be devoted to auction activity; (c) many felt that while a limit of ten to fourteen days was sufficient time for auctions, the amount of auction time should be left to the licensee's discretion; and (d) time devoted to auctions was self-limiting by viewer and listener resistance. In addition, the Commission proposed rules to specifically define underwriters and to limit the number of underwriter acknowledgments that would be allowed during auctions. Commenters said these restrictions would preclude announcements crediting most entities underwriting auctions and would be difficult to administer in view of the different ways licensees compute expenses.

23. Further, a limit of ninety hours per calendar year was proposed for nonauction fundraising activity. Also, the Commission proposed that broadcast acknowledgments of underwriters, as permitted during auction periods, would not be allowed.

24. Several objections were raised with these fundraising proposals. The ninety-hour limit was criticized by public radio licensees as

⁹ The Commission stated that fundraising programming of sixty seconds or less would be unlimited. Nothing in this record indicates that this position should be altered.

discriminatory because it would permit television stations more time for overall fundraising. The ninety-hour limit also was criticized as being too restrictive for stations that rely heavily upon viewer donations.¹⁰ Many commenters said that the activity was self-limiting, and thus no such Commission imposed regulation was necessary. Others said that if a limit were adopted, it would be more appropriate to tie it to each station's average weekly hours-on-the-air. Some parties suggested no fundraising time limit be adopted, but rather, that time devoted to fundraising should be reviewed at license renewal time as part of the public interest determination.

25. The Commission has reconsidered its proposals to limit the amount of time licensees may devote to fundraising during periods of suspended programming. We no longer consider there to be a significant difference between the auction and non-auction contexts. The proposal to impose time limits on all such activity now seems unnecessary and we will not adopt such limits. Time devoted to fundraising, as the parties state, is limited by audience resistance, that is, it may be expected that, as fundraising increases, audience support will decrease. Indeed, licensees state that audience dissatisfaction is taken into consideration when planning fundraising events making such activity self-limiting.¹¹ Adopting the proposed time limits may also have had the effect of encouraging licensees presently below the limit to increase fundraising. Additionally, we note that present levels have not generated significant complaint nor have we found significant licensee abuses. Finally, although the proposals for fundraising time limits received considerable public exposure in the media as well as through the Commission's public notices and its Actions Alert publication, public support virtually was non-existent. For all of these reasons, no general limiting rule will be adopted.

26. Although we have decided not to place limits on time devoted to fundraising, we wish to emphasize that this activity could be one of concern. We note that Congress, in enacting the Public Telecommunications Financing Act of 1978, recognized the "increased focus of the [public] stations' resources and energies on fundraising at the expense of programming" and acted to lower the federal matching ratio in an effort to "help reduce the fundraising activities of the system." *H. Rep. No. 95-1178*, 95th Cong., 2d Sess. 19 (1978). Thus, it is possible that circumstances could so change as to warrant our revisiting this area in the future. We conclude that current fundraising practices have disclosed no pattern of abuse warranting rule making.

¹⁰ For example, Pacifica Foundation states that its six radio stations each devote an average of approximately 430 hours annually to nonauction fundraising. Other licensees stated that they broadcast well over one hundred hours annually of such programming.

¹¹ There is evidence that many people avoid public broadcasting entirely to avoid fund requests (PBS Comments, Appendix E, p. 8) and that those who do contribute money are becoming irritated with appeals (PBS Comments, Exhibit E, p. 3).

27. Regarding a more specific matter, the purpose of the proposed rule, which defined an auction underwriter as a contributor of 30% or more of one day's legitimate auction expense, was to address the auction practice of extensively crediting in-kind contributions of nominal value, e.g., coffee for auction volunteers. We have also reevaluated this proposal. With the benefit of the record now available, we no longer perceive any harm to the public that necessarily flows from this practice. In addition, the Commission is persuaded that varying methods of computing expenses could lead to such a rule being virtually unenforceable. We also are sympathetic to arguments that auctions contain many facets and that small contributions to various facets represent a large amount in the aggregate which may be lost if rules restricting acknowledgment of small and medium size contributions are adopted.

28. Also, in the *First Report* we discussed the apparent discrepancy in our past practice of allowing underwriter credits for auctions but not for nonauction fundraising methods. Although the *First Report* suggested that the distinction had some factual basis, the record here suggests that a uniform policy is now possible and appropriate. Accordingly, we will not adopt a rule change regarding identification of auction underwriters during auction periods and will apply the same policy in both the auction and nonauction fundraising contexts. The remaining questions raised in the *First Report* now will be addressed largely in the order in which they appear in the document.

Question 1: Promotion of Transitory Events

29. Question one essentially concerned the promotional aspects of announcements describing transitory events occurring in licensee service areas such as concerts, plays, activities of nonprofit organizations, and other events where admission charges were required or goods or services offered for sale. Under the rule being adopted today, so long as these announcements are not made in return for consideration, licensees may describe these events whether conducted by nonprofit or profit-making organizations in any manner they choose, including mentioning price and urging attendance.

Questions 2 and 3: Promotion of Courses, Government Documents, etc.

30. Questions two and three concerned the promotional aspects of announcements of educational courses, government documents, and credit cards, and the availability of program-related goods and services. The question of credit cards is dealt with at paragraph 41 below. With respect to announcements for educational courses and the availability of government documents, when such announcements are not made in return for consideration, they no longer fall under our rules.

31. With respect to announcements promoting the sale of program-

related goods or services (for example, transcripts of public affairs programs), the Commission stated in the *First Report* that it believed such announcements to be overtly commercial where the cost of the goods or services was more than nominal or where the licensee, program producer, program supplier, or on-air personality had a financial interest in the sale. Accordingly, the *First Report* included a proposed rule prohibiting such announcements with some exceptions. Under the rule adopted today, so long as the licensee receives no consideration for an announcement promoting the sale of particular program-related goods or services or the price of the item is only nominal, such announcements may be broadcast. A different issue is posed where the promotion involves a nonbroadcast interest of the licensee or other broadcast personnel. The Commission has long maintained that licensees have an obligation to prevent the use of their facilities to promote unfairly their own nonbroadcast business interests, *WFLI, Inc.*, 13 F.C.C. 2d 846 (1968), and to take extraordinary measures to insure that no program matter is presented as a result of employee outside business interests which may conflict with their station responsibilities, *Crowell-Collier Broadcasting Corporation*, 14 F.C.C. 2d 358 (1966). These principles are applicable to programming broadcast by public licensees and apply to offerings of program-related goods and services by program producers, program suppliers, and on-air personalities, *Fordham University*, 18 F.C.C. 2d 209 (1969). Accordingly, we expect licensees to carefully scrutinize goods and services offered in connection with various programs to insure that these program-related materials are offered on the basis of public interest considerations and not the private economic interests of the offeror.¹²

¹² See, *Letter to Washingtonian Magazine*, 84 F.C.C. 2d 130, FCC 80-727, adopted December 9, 1980. There the Commission considered questions posed by *Dial Magazine*, an expanded program guide developed by four major public television stations intended to produce revenue through the sale of advertising in the magazine and to encourage subscription membership in the station. Since *Dial* was provided without additional charge to members making donations in connection with fundraising activities, the Commission indicated that it was best analyzed as a premium to encourage station contributions and thus was consistent with established policy and the proposals of the *First Report*. The Commission found that the policy barring unfair promotion of licensee business interests was apparently inapplicable to the situation under both established policy and the proposals considered in the *First Report* affirmed here. The analysis used there is also applicable to the new scheme adopted today: "We believe that the policy stated in the *First Report* . . . barring promotion of licensee-related interests when related to program matter, is not pertinent to references to premiums available to station contributors. The Commission's concern in the area of program-related material was that programming might be selected because of its value in exposing related products or services for commercial gain. The Commission's proposed precautions to assure that noncommercial motives are at work in licensee's program selection are not necessary for premiums made in conjunction with membership solicitations." *Id.*, at 13.

Questions 4 and 5: Remote Broadcasts

32. Questions four and five concern public broadcasting station practices when originating programming from a commercial place of business for fundraising or any other purposes. The questions principally were whether such programming (commonly referred to as remote broadcasting) was appropriate and, if so, to what extent the name and location of the commercial enterprise should be broadcast and listeners urged to attend.

33. In the *First Report*, the Commission suggested that use of a commercial place of business for fundraising would be inappropriate but that such programming for non-fundraising purposes might well be in the public interest. The latter type of programming often consists of live broadcasts from theaters, nightclubs, athletic stadia, and auditoria. The consideration rule announced here today should simplify analysis of these questions. While the free or discounted use of commercial premises may be consideration to the licensee, the contexts of each use is controlling under the new rule. The Commission will not view the mere permission of an establishment to broadcast an event as consideration. Where broadcast of this programming is based upon the licensee's public interest judgments rather than an exchange of consideration, identification of the origination point would raise no question. However, obvious promotion of an event and/or establishment could raise factual questions as to the agreement between the establishment and the licensee. Making an establishment available in exchange for on-air promotion beyond that reasonably related to the production of the program would constitute consideration, and would be prohibited. We stress that it is the announcement for consideration that invokes the rule, not the event itself.

Question 6: Prizes and Premiums

34. Question six concerned use of prizes or premiums to promote listenership and listener donations. In the *First Report*, the Commission asked for comment on the following specific areas regarding the use of premiums and prizes: (1) the inherent commercialism accompanying the use and depiction of particular authors, artists, and product brand names in describing premiums, and (2) the extent to which products and services from other companies are excluded from use as premiums (or auction items) as a result of licensee procedures employed to determine what goods and services are featured during fundraising activities. The comments indicated that licensees choose premiums, prizes, and auction items primarily based upon the items' association with particular programming and/or the degree to which the items are discounted or donated. Several commenters argued that a

The case did not raise the question of the propriety of announcements urging advertisers to purchase space in a program guide, but we believe that such announcements would violate past policy and the "consideration received" rule.

meaningful description of a product had to include at least a brand name and the product's qualities. Likewise, it was argued that a book or painting could not be adequately described without naming the author or artist. To the extent these practices contain "commercialism" the parties believe they are necessary. The Commission sees no abuse in the criteria employed to choose premiums, prizes, or auction items. We also believe that the mention of brand names, authors and artists constitutes meaningful information in describing the value of a premium, prize or auction item.¹³

35. We also recognized in the *First Report* that, under past interpretation of our rules, licensees could not mention the names of parties donating such items and that descriptions were limited to attributes reasonably related to their value as prizes. Mention of the donor's name was prohibited unless material to a description of the item's value as a prize. Some parties objected to the proscription proposed in the *First Report* against mentioning donors of prizes. It was stated that such a proscription: (1) discriminates against businesses which cannot be recognized by the mention of their products, (2) curbs a practice which results in very little real commercialism, and (3) discourages businesses from donating items to be used as prizes. We are persuaded by these objections, and will therefore allow identification of donors of such prizes when the prizes are described. Such identification appears consistent with Section 317(a)(1) and our decision today to allow acknowledgments for in-kind contributions as well as for cash.

Question 7: "Name Only" Limitation

36. Question seven in the *First Report* concerned the Commission rules limiting underwriting and credit announcements to the donor's "name only" but permitting, in certain instances, mention of a company division or subsidiary. The question asked what guidelines should be employed in determining what constituted a *bona fide* division or subsidiary in lieu of continuing to make this determination on a case-by-case basis. The *First Report* indicated that the case-by-case approach still appeared appropriate. In addition, the *First Report* rejected the requests of numerous parties to expand the "name only" requirement to permit, for the sake of clarity and full identification where necessary, mention of the donor's product, location, logo, or generic name.¹⁴ Parties argued that such expansion would significantly increase donations.

37. Few parties commented again in the proceeding on the

¹³ Obviously, for a prize or premium to be effective, it must and will be disclosed. While it is conceivable that this type of promotion could be abused, resulting in overt commercialism, we have no evidence of such abuses.

¹⁴ The Commission has authorized fuller identification to avoid confusion between similarly named entities but only after specific approval.

meaning of what constitutes a *bona fide* operating division, but many parties again, for the same reasons as stated in the *First Report*,¹⁵ requested liberalization of the "name only" requirement. We are sympathetic with this request to the extent that the acknowledgments are basically informational and provide clarity and full identification of donors. We no longer believe that restricting acknowledgments to name only is necessary to protect the noncommercial nature of public broadcasting. By allowing greater flexibility in determining the content of noncommercial acknowledgments, we now act on our belief that public broadcast licensees are fully capable of setting their own standards of acceptability in the area. With this greater latitude and flexibility licensees will be able to develop new policies for such acknowledgments that while consistent with their noncommercial status will stimulate new and broader sources of financial support for programming and general operation.¹⁶ Therefore, the name only requirement for donor acknowledgments will be deleted to allow the use of a corporate logo and other nonpromotional information about the donor, including location and identification of product lines.¹⁷ It should be noted that the acknowledgments permitted here are not to be confused with the announcements considered in previous sections of this document that may promote goods and services absent consideration when the licensee considers them in the public interest. Acknowledgments are strictly for identification of donors and should not promote the company, products or services of the donor. Announcements which contain comparative or qualitative description of a product or company go beyond permissible limits. For example, while an announcement identifying Exxon Corporation, producer of petroleum products would be permissible, announcements identifying Exxon as the producer of "fine" or the "best" petroleum products would be prohibited. In addition, stations should be very careful to avoid factual circumstances which lead to the appearance that announcements may have been made for consideration.¹⁸

¹⁵ Reasons such as: (1) a business' legal name may not be familiar to the community, but its product, trade, or generic name is; (2) a business may not be known in some parts of the station's service area, particularly where a station covers a number of communities; and (3) the donor's name may fail to disclose the relationship, if one exists, between the donor's business and the program it is underwriting.

¹⁶ Along these lines, licensees may wish to adopt written standards for underwriter announcement acceptability.

¹⁷ The record in this proceeding amply supports this conclusion. We are dismissing a recent request for declaratory ruling, that again raises the issue, as moot, *Public Broadcasting Service, Request for Declaratory Ruling Concerning Underwriting Announcements by Noncommercial Educational Broadcast Stations*, January 5, 1981.

¹⁸ Agreements where donations are related to promotions of the donor's company, products, or services are prohibited. In addition, the Commission is concerned about situations where announcements promoting the goods or services of a commercial entity are either preceded or followed by a donation. This circumstance could be perceived as consideration for such a promotional announcement. We decline to

Question 8: Limits on Acknowledgments

38. Question eight concerned proposed rule amendments to decrease the permissible number of underwriting and credit announcements in programs of less than one-half hour from two such announcements to one. The Commission proposed in the *First Report* to impose such a limitation in programs lasting twelve minutes or less and expressed the belief that the impact of the change, if any, would fall on radio rather than television stations. The Commission received little comment on this proposed change from public radio stations and the associations which represent them. On the other hand, we believe that the licensees audience resistance is a deterrent to excessive announcements. Therefore, we are deleting the note that limits the timing and frequency of announcements and are leaving these determinations to licensees applying their reasonable judgments in good faith.

Question 9: Acknowledgments of Non-cash Contributions

39. Question nine primarily concerned a proposal for broadcast recognition of donors who contribute goods and services to licensee operations, such as studio equipment or costumes (in-kind contributions),¹⁹ rather than programs or funds for their production. In-kind contributions, just as money, are of two types; either for general station purposes, such as a carpet or a transmitter, or for specific programs, such as costumes for a specific production or furniture for a specific set. The Commission proposed a rule to permit identification of these in-kind donors for general station purposes in the same manner as cash donors for general station purposes, i.e., beginning and end of day, one contributor once an hour, and in two newly proposed two-minute breaks each day. The proposed rule did not require that an in-kind donation be "substantial" to warrant identification of the donor, and eliminated the "substantial" requirement presently in the rules for cash donors for general station purposes. To limit the number of acknowledgments, the proposal would have required that all in-kind donations to specific programs be acknowledged only on the proposed two-minute breaks. The comments expressed little negative reaction to treating in-kind contributors to "general" station operation in this manner but many objected to this treatment for "specific" in-kind donations because it proscribed announcements identifying in-kind

adopt specific proscriptions in this area, such as a minimum time period between promotional announcements and consideration received. However, we view the proximity between "donations" and such promotional announcements as a significant factor in evaluating the good faith determinations of licensees, and we expect licensees to avoid circumstances that would raise such questions.

¹⁹ Although some licensees currently acknowledge in-kind contributions through special thanks announcements such as "production assistance provided by _____," these announcements were not provided for in the Commission's Rules.

contributors when the program was aired. Many parties objected to the proposal, saying that: (1) it will decrease in-kind donations, (2) it will induce contributors to give cash (in order to get the contemporaneous announcement) thereby requiring stations to obtain goods and services at market prices, and (3) it will adversely affect network programs in that: (a) the originating station will be burdened with the task of having to inform other stations who the in-kind contributors are, (b) other stations may not wish to credit the in-kind contributor to the originating station, and (c) in-kind contributors probably will not get credited when programs are repeated. Most parties argued that the in-kind contributor to a particular program should be identified in connection with that program.

40. The Commission is persuaded that identification of in-kind contributors contemporaneously with the programs to which they identification of such donors is allowed under the general rule adopted today. Because the Commission's new rule permits contemporaneous identification of in-kind contributors to specific programs, much of the basis for proposing the two-minute breaks is no longer present. Also, we believe the identification resulting from the rule changes adopted today can be handled adequately under present practices for identifying general cash contributors, and general in-kind contributors. Accordingly, we will not now adopt the proposed rule creating additional "two-minute breaks" for acknowledging contributors.

41. Related to the principle underlying the above in-kind contributions is that part of question 2 pertaining to credit cards. Announcements that specific credit cards may be used to "charge" a contribution or purchase of an auction item create a more difficult situation under the "consideration received" rule. Credit card announcements are used during fundraising activities for informational purposes. The comments indicate that a major factor in the decision of many licensees to use a particular credit card is whether the credit card company will waive or reduce its fee. The waiver or reduction in the credit card fee arguably represents consideration, but, as such, it represents an in-kind contribution to the licensee and acknowledgments would be allowed. Additionally, credit card use tends to increase both the size of contributions and the number of people contributing (*First Report*, at paragraph 23). Accordingly, in view of the limited purpose for which credit cards are identified we shall permit the practice both aurally and visually, for this fundraising purpose. These identifications shall be considered both acknowledgments of contributions and informational announcements.

Questions 14, 15 and 16: Fundraising for Others

42. These questions concerned the practice of public stations conducting auctions to raise money for entities other than themselves. The Commission stated in the *First Report* that this activity was inappropriate in public broadcasting and proposed a rule requiring that

proceeds from all auction activity be retained by licensees for use in conjunction with their licensed facilities. Most parties either agreed with, or had no objection to, the proposal. We will here adhere to our policy statement in the *First Report*: "We continue to believe that [public] broadcasting is the wrong vehicle for general fundraising by auctions and the only reason an exception is made on behalf of licensees is to aid in their efforts to provide the programming which they were licensed to broadcast." *First Report* at paragraph 52.

43. The *First Report* also discussed nonauction fundraising activities for other entities and suggested that many such activities might be appropriate. Our decision today to allow stations to promote the activities of nonprofit entities with announcements so long as no consideration is received gives considerable latitude to stations in that regard. Also, this should greatly lessen the need for stations to engage in major fundraising efforts for such entities. Therefore, station fundraising activities which significantly alter a station's normal programming, including auctions, marathons, membership drives, etc., should be carried on for the benefit of the station only; and not for other organizations. This is consistent not only with our *Ohio State* ruling for auctions but also with our interest in preserving the primarily educational, instructional, and cultural character of public broadcast programming. Although we will adopt no further rule here, we reaffirm our general policy of restricting station promotions of non-station interests of the licensees, see para. 31, *supra*, and extend our specific policy of proscribing auctions by public stations on behalf of non-station interests to all such fundraising activities that disrupt normal programming. See, *The Ohio State University*, FCC 76-701, 62 FCC 2d 449, 38 R.R. 2d 122 (1976).

Other Matters

44. Another proposal in the *First Report* was to move the present Notes to Section 73.503 and 73.621 of the rules into the body of the rules. Because these notes contain substantive interpretations of the "promotion of products and services" and other rules, they were thought to be more appropriately placed in the main text. The proposal received little comment from the parties and was apparently well received. However, our use of a new basic test has rendered these notes unnecessary and we are deleting them from the Commission's rules.

45. Finally, the National Association of Educational Broadcasters (NAEB) and several other parties have proposed for Commission consideration a fundraising experiment called "Institutional-Oriented Underwriting (IOU)." NAEB suggests that during authorized IOU periods:

Public broadcast stations would be permitted to air messages from selected commercial institutional underwriters. The production values and content of these messages from these institutional underwriters would be carefully scrutinized by the public broadcasters to assure that they are creative, imaginative, informative

and suitable for presentation upon public broadcast facilities. Such institutional-oriented underwriting would permit businesses to present material enhancing their public image or, perhaps, expressing a point of view on public issues. At least in initial stages of development, it would not normally include messages predominantly oriented toward specific products or services. These messages would not be interspersed with normal programming fare but would instead be placed in discrete segments or blocks of time at the end of particular program periods in a magazine format entirely divorced from the preceding or subsequent program content.

The idea is, in effect, a proposal to permit public stations to sell broadcast time to help support their operations.

46. Proposals for partial commercial operation by public licensees have been considered previously by the Commission. In rejecting this idea in 1952, the Commission stated, in part:

[P]artial commercial operation by educational institutions would tend to vitiate the differences between commercial operation and noncommercial educational operation . . . in our view achievement of the objective for which special educational reservations have been established—i.e., the establishment of a genuinely educational type of service—would not be furthered by permitting educational stations to operate in substantially the same manner as commercial applicants . . . [*Sixth Report and Order*, 41 F.C.C. 148, 166].

For the purposes of this rule making we will adhere to our policy that the outright sale of time to commercial entities for commercial purposes is inappropriate for public broadcasting licensees. In addition to the reasons stated in the *Sixth Report and Order*, *supra*, we do not believe we have a sufficient record at this time to grant such an important exception to our rules. However, the Broadcast Bureau has underway a broad study of public broadcasting, examining the basic questions concerning the fundamental purpose of public broadcasting and the types of financial support that are appropriate to serve that purpose. This study will consider the efficient use of the noncommercial reservation and the relationship between broadcast and nonbroadcast activities of public broadcast licensees. NAEB's requests would appropriately be taken up again when some of these fundamental questions are addressed through future inquiry or rule making notices.

47. The NAEB also has requested that the Commission grant authority for the conduct of oral arguments or panel presentations for the airing of licensee concerns with respect to the vital matters addressed in this proceeding. NAEB states that the presentation of evidence respecting the realities of funding and operating public broadcast stations would aid the Commission in arriving at fair and principled conclusions in this matter. The Commission will reject this request. Extensive comments have been filed in response to the *First Report* and in response to the *Inquiry* initiating this proceeding. These comments include statements from many licensees and organizations which represent them, and discuss in detail underwriting, fundraising and operating activities and their financial impact. We have made substantial changes in both the general direction and in the specifics of our policies and rules in light of these comments. We are not persuaded

that further presentation of this information through oral argument is necessary.

Summary of Actions Taken

48. After extensive review of the comments in this proceeding, the Commission takes the following actions:

(a) A new rule prohibiting the broadcast of materials in return for consideration replaces the former rule prohibiting all promotion of products and services. The new rule does not prohibit acknowledgments of contributions.

(b) No time limits on fundraising activities in support of station activities are adopted. These activities are largely self-limiting and, therefore, are most appropriately left to the discretion of individual licensees.

(c) No rules prohibiting promotions of specific matters or items, or prohibiting "remote" broadcasting are adopted. Stations are expected to make reasonable, good faith judgments in keeping with the new "consideration received" rule.

(d) The "name only" restriction on acknowledgments is eliminated. Licensees are expected to responsibly exercise their discretion in developing their own policies to determine what constitutes a noncommercial acknowledgment. Likewise, the Commission does not limit the number of such acknowledgments.

(e) Acknowledgments of contributions in the forms of prizes, premiums, auction items, and in-kind goods and services are not specifically regulated but will be analyzed under the "consideration received" rule.

(f) Fundraising which disrupts normal programming and is beyond an "announcement" shall be for station purposes only.

49. The Commission cautions each licensee to act responsibly in carrying out the substantial changes it has permitted here so that the licensee's actions remain consistent with the noncommercial nature of its station. The Commission will be particularly concerned that its "consideration" and "good faith judgment" standards developed in this docket are not abused. We believe that the policies, procedures and rule amendments set forth herein will clarify the obligations of public broadcasting licensees and contribute to the development of public broadcasting in the manner envisioned by the Commission and the Congress. We believe, therefore, that adoption of these policies, procedures and rules is in the public interest.

50. Authority for adoption of the rules herein is contained in Sections 2, 4(i) and 303, of the Communications Act of 1934, as amended.

51. Accordingly, IT IS ORDERED, That Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix B, effective June 25, 1981.

52. IT IS FURTHER ORDERED, That the request for declaratory

ruling by Public Broadcasting Service, cited in paragraph 37, fn. 17, *supra*, IS DISMISSED as moot.

53. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

54. For further information concerning this proceeding, contact John Kamp, Broadcast Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary*.

* Appendix A - may be seen in the FCC Dockets Branch.

Appendix B

- I. Section 73.503 of the Commission's Rules is amended to delete Notes 1 through 5 following paragraph (d); and to revise paragraph (d) as follows:

Section 73.503 Licensing requirements and service

(d) Each station shall furnish a nonprofit and noncommercial broadcast service. Noncommercial educational FM broadcast stations are subject to the provisions of §73.1212 to the extent they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others. No announcement shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees. However, acknowledgments of contributions can be made.

NOTE: Commission interpretation of this rule, including the acceptable form of acknowledgments, may be found in the *Second Report and Order*, adopted April 23, 1981, entitled "Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations." (BC Docket No. 21136, 86 FCC 2d, 46 Fed. Reg. 27944, May 22, 1981).

- II. Section 73.621 of the Commission's Rules is amended to delete Notes 1 through 5 following paragraph (e) and to revise paragraph (e) as follows:

Section 73.621 Noncommercial educational stations

(e) Each station shall furnish a nonprofit and noncommercial broadcast service. Noncommercial educational television stations shall be subject to the provisions of §73.1212 to the extent that they are applicable to the broadcast of programs produced by, or at the expense of, or furnished by others. No announcements shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees. However, acknowledgments of contributions can be made.

NOTE: Commission interpretation of this rule, including the acceptable form of acknowledgments, may be found in the *Second Report and Order*, adopted April 23, 1981, entitled "Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations." (BC Docket No. 21136, 86 FCC 2d, 46 Fed. Reg. 27944, May 22, 1981).

Appendix C

- (1) Should the prohibition against "announcement promoting the sale of a product or service" be limited to those announcements that directly promote such sales?
- (2) Notwithstanding the matters raised in "(1)", above, should a different standard be applied to:
 - a. course offerings of vocational schools, colleges or universities?
 - b. the sale of government documents?
 - c. the sale of material related to the content of the program?
 - d. the over-the-air mention of credit cards in connection with fundraising activities?
- (3) If so, what standard should apply?
- (4) If a licensee originates programming temporarily at a commercial enterprise, would it be able to urge listeners or viewers to visit the store, or to mention the location of the origination point?
- (5) If so, should such announcements be limited to fund raising drives or subject to other conditions?
- (6) If identified prizes are to be offered over the air, what guidelines or conditions, if any, should be adopted?
- (7) What guidelines should be used in determining what constitutes a *bona fide* operating division or subsidiary?
- (8) What impact might result in limiting underwriting announcements to one during any program of less than one-half hour duration?
- (9) What guidelines should be adopted with respect to announcements identifying those who provide goods or services to educational broadcast licensees instead of programs or funds for their production?
- (10) How many times per year are auctions held on individual stations? How many days did each auction last?
- (11) During auction periods, how much of the broadcast day is devoted to auction purposes?
- (12) What percentage of the money raised during auctions comes from underwriters of the auctions?
- (13) What standard should be used in defining what constitutes an underwriter?
- (14) Should educational stations be permitted to conduct auctions for the benefit of other entities?
- (15) If so, what guidelines should be applied, especially as to number or duration of the auctions?
- (16) Should different guidelines be used if a portion of the proceeds is retained by the station? If so, what guidelines?
- (17) How many times per year are fundraising drives conducted on individual stations? How many days did each drive last?
- (18) During fundraising drives, what percent of the broadcast day is devoted to fundraising purposes? (Estimates would be welcome if precise information is not available.)

- (19) What guidelines, if any, should be applicable to such fund raising activities?
- (20) Should the *Ohio State* ruling be applied to fundraising drives for entities other than the licensee? If so, what guidelines, if any, should be adopted?

STATEMENT OF FCC COMMISSIONER JAMES H. QUELLO IN WHICH
COMMISSIONER JOSEPH R. FOGARTY JOINS

IN RE: SECOND REPORT AND ORDER ESTABLISHING COMMISSION
POLICY CONCERNING THE NON-COMMERCIAL NATURE OF PUBLIC
BROADCASTING STATIONS.

It is my hope and belief that the Commission's relaxation of certain funding restrictions on Public Broadcasting stations will go a long way toward preserving and enhancing our non-commercial broadcasting system. It seems clear that the trend toward less federal funding will continue and that alternative means of financing must be explored. Certainly, it is in the public interest to acknowledge the contributions made by Public Broadcasting in the past and to encourage even greater efforts in the future through these alternative funding methods.

While I recognize the necessity to allow more latitude to Public Broadcasting stations to encourage funding, I also am aware that some will be tempted to stray into the preserves of commercial broadcasting. I would caution those who are so tempted to renew their awareness of the charter that brought non-commercial broadcasting into being in the first instance. I would also commend to them a careful reading of Paragraph 49 of the Second Report and Order.

I have long been supportive of Public Broadcasting and I fully intend to continue that support. As an important part of that concern it will be necessary to ensure that Public Broadcasting maintains its special character as delineated by both the Congress and this Commission.

ADDITIONAL STATEMENT OF COMMISSIONER ABBOTT WASHBURN

RE: SECOND REPORT AND ORDER ESTABLISHING COMMISSION POLICY
CONCERNING THE NONCOMMERCIAL NATURE OF PUBLIC
BROADCASTING STATIONS

Today the Commission has taken a major step in deregulating noncommercial radio and noncommercial television licensees. Our action addressed only the Commission's fundraising rules. Nevertheless, the simplifications and clarifications to those rules signal a new era for public broadcasting stations, their audiences, and their underwriters.

Specifically, our new rules give public broadcasters greater discretion and flexibility in the fundraising area while preserving the essential character of a noncommercial broadcasting service. Simply

stated; *our new rules provide that no program or announcement can be made in return for consideration.* This "consideration received" rule will insure that public broadcasters continue to make their programming decisions apart from commercial marketplace pressures and insulated from dependence on advertising revenues. We continue our policy of allowing acknowledgements of contributions. In addition, the Commission has given individual public broadcasters wide discretion in identifying contributors and the concomitant responsibility to insure that the acknowledgements do not become advertisements.

The permission to use logos as part of the noncommercial television station's acknowledgements is one important aspect of the new rules. We have eliminated former policies that prohibited the use of logos, and I expect their use will increase the number of private companies that underwrite programs and general station operations. While our rulemaking on these matters was pending, PBS requested that we issue a declaratory ruling to allow logos, noting that careful use would not compromise the noncommercial nature of public television. Based on the record in this proceeding, I am convinced that permitting logos will not undermine the basic, noncommercial character of this service.

One of the likely effects of the new rules will be to increase the total contributions and the number of individual contributors to public stations. The increased breadth of private support should reduce the ability of any single, private or public entity to affect programming decisions and thus should help ensure that public stations provide an alternative programming service to the commercial broadcasting service. In addition, public broadcasting may become less dependent upon federal support for their operations and programming. In today's climate of reduced federal funding for public broadcasting, it is to the Commission's credit that we have been mindful of the Congressional policy that a significant portion of public broadcasting's financial support should come from the private sector. In view of the necessity for vigorous fundraising, especially now, the Commission has granted public broadcasters more latitude.

While we have attempted to address the financial needs of noncommercial stations, we have at the same time balanced that need against their obligation to provide a noncommercial broadcasting service. To a large degree, preserving this balance now becomes the responsibility of each noncommercial licensee. The changes permitted here must be implemented in such a fashion that licensees' actions remain consistent with their noncommercial character. Often, there will be a fine line to draw between acknowledging donors and their goods or services versus announcements which promote the sale of a product or service. I am confident that the public broadcasting licensees will not abuse the deregulatory measures adopted and that we can rely on their judgment, their independence, and their good faith to preserve the essential character of the noncommercial broadcasting service.