

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

In the Matter of)	
)	
MINORITY TELEVISION PROJECT, INC.)	EB-00-IH-0153
)	EB-01-IH-0652
)	NAL/Account No. 200232080020
Licensee of Noncommercial Educational)	Facility #43095
Television Station KMTP-TV, San Francisco,)	FRN #0005704366
California)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 7, 2002

Released: August 9, 2002

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Minority Television Project, Inc. ("Minority"), licensee of noncommercial educational television station KMTP-TV, San Francisco, California, apparently violated Section 399B of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 399b, and Section 73.621 of the Commission's rules, 47 C.F.R. § 73.621, by willfully and repeatedly broadcasting advertisements. Based on our review of the facts and circumstances of this case, we conclude that Minority is apparently liable for a monetary forfeiture in the amount of Ten Thousand Dollars (\$10,000.00).

II. Background

2. This case arises from allegations raised in a pending Media Bureau ("MB") proceeding, and referred to the Enforcement Bureau for resolution. In the MB proceeding, Minority submitted a Petition for Declaratory Ruling, on June 13, 2000, which sought Commission approval of numerous underwriting announcements the station has broadcast, arguing that the announcements comply with the pertinent statutory and Commission rule provisions that prohibit the broadcast of commercial messages on noncommercial educational stations. In response, AT&T Broadband, LLC ("AT&T"), operator of cable systems in the San Francisco market, and Lincoln Broadcasting Company ("Lincoln"), licensee of commercial television station KTSF(TV), Brisbane, California, opposed Minority's request, and complained that KMTP-TV has continuously broadcast prohibited underwriting announcements since June 1999. By letters dated November 9, 2001, and February 25, 2002, we inquired of the licensee.

3. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities. 47 U.S.C. § 399b(a). As noted above, noncommercial educational stations may not broadcast advertisements. Although contributors of funds to noncommercial stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or business.

4. 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* (1986), republished, 7 FCC Rcd 827 (1992) (“*Public Notice*”). At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area. See *Xavier University*, 5 FCC Rcd 4920 (1990).

III. Discussion

5. *Preliminary Matters.* At issue are approximately twenty underwriting announcements from eighteen entities admittedly broadcast by the station approximately 1,900 times since June 1999, that appear to have been in exchange for consideration, and on behalf of for-profit sponsors.¹ Minority argues that the foregoing announcements comply with Section 399B of the Act, the pertinent Commission policies and rules, and are consistent with its “good faith” discretion under *Xavier*. Minority contends that, as a foreign-language programmer, it faces a daunting challenge in attempting to fashion underwriting acknowledgments that identify but do not promote the messages’ sponsors. Minority notes that many of the announcements at issue are broadcast in Asian languages, Vietnamese, Mandarin, Filipino, or Korean, and argues that those languages do not always yield precise cross-cultural verbal equivalencies in English.²

6. Minority contends that other federal agencies, consistent with U.S. policies supporting multiculturalism, have, in federal legal settings, accepted “dynamic equivalencies” in lieu of word-for-word renditions.³ Minority explains that “dynamic equivalencies” emphasize the speaker’s intent over translation errors and misused words, and argues that its own in-house interpreters have correctly followed this approach in fashioning the station’s underwriting announcements, consistent with the aims of the federal Court Interpreters’ Act, 28 U.S.C. § 1827(b); 28 U.S.C. § 604(a).⁴ The licensee contends also that certain phrases it utilizes are harmless adjective-noun combinations that do not promote, but instead denote, without value, discrete categories of products or services like the “fine dining” example the Commission found permissible in *Xavier*. AT&T and Lincoln disagree, arguing that Minority’s interpretation of the *Xavier* case’s “good faith” discretion standard is overbroad by elevating the broadcaster’s subjective intent over the commonly understood meaning that listeners ascribe to everyday phrases. The complainants argue that accepting Minority’s theory would essentially nullify the statutory proscription of Section 399B of the Act and thus that theory is invalid.

¹ In its April 17, 2002, reply, Lincoln submitted a new videotape citing three additional underwriting announcements allegedly broadcast by KMTP-TV during the period January 2002 through March 2002. We will review those allegations separately.

² Minority cites Gonzalez, *Fundamentals of Court Interpretation: Theory, Policy and Practice*, Carolina Press (1991); Gerson and Gerson, *Technical Writing: Process and Product*, pp. 60-73, Prentice Hall (1997).

³ See *id.*

⁴ See Exhibit C to Minority’s Reply to Opposition to Complaint for Carriage, June 26, 2000, Declaration and Memorandum of Arlene Stevens.

7. The Commission has long warned that foreign-language programmers must take care to ensure that their programming material is consistent with the pertinent statutes and Commission rules and policies concerning underwriting. *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, 90 FCC 2d 895 (1982), *recon.*, 97 FCC 2d 255 (1984) (“*Policy Statement*”); *Public Notice, supra*. Minority argues that its translations are acceptable and that the announcements comply with Commission underwriting policy and precedent,⁵ even though its translations may be at odds with those provided by the complainants. Minority argues that we should accept its translations as accurate because they were prepared by trained linguists with superior qualifications, and with due regard for overall federal policy concerning multiculturalism and the special demands of foreign-language translation.⁶ Minority further asserts that we should accept its translations as evidence that the announcements comply with Section 399B of the Act because the translations were prepared in the exercise of the licensee’s good faith discretion under *Xavier*.

8. We note that the linguists presented by both sides appear to be highly qualified. Although we do not accept all of Minority’s arguments, a key factor warrants crediting its translations over those of the complainants. That is, consistent with *Xavier*, licensees have good faith discretion in preparing their underwriting announcements. In the case of foreign-language announcements, we believe a licensee’s use of translations of underwriting announcements prepared by linguists who are sensitive to the native speaker’s intent, as Minority has done, supports their reliability.⁷

9. While we recognize that foreign languages may pose special translation difficulties, we find that the foregoing announcements, based on Minority’s own translations, nevertheless appear

⁵ The translations actually provided by Minority do not coincide with every announcement under consideration. In certain cases, Minority declined to provide its own versions, instead criticizing the translations offered by the complainants. In other instances, we did not inquire about announcements for which Minority provided translations. The specifics of the textual evidence will be discussed *infra*.

⁶ *See* Attachments B, J, K, L, N and O, Minority’s Response, March 25, 2002, and captioned Statements of Margaret Lacson, Arlene Stevens, Sohyoun Kim, Candy Chan, Lorraine Mallore, and Joung-Mi Nam, respectively, which array their educational and linguistic backgrounds. Lincoln’s versions were provided by a professional translator and native speakers who appear to possess training, background and expertise comparable to the licensee’s expert witnesses. *See* Attachment D to Lincoln’s Reply, April 17, 2002, and Declaration of Yan Fen Liu Madjd-Sadjadi; Attachment A to Lincoln’s Complaint, November 9, 2001, and Supporting Declarations of Kevin Ho, David Shin-Ho Kim, Art Gubisch, and Frances Chan Lee.

⁷ Minority suggests that the Court Interpreters’ Act expresses a substantive policy for foreign-language translations that we should consider when evaluating its efforts to comply with Section 399B of the Act. We reject any implication that the provisions of the Court Interpreters’ Act govern proceedings under Title III of the Communications Act, and note that the Court Interpreters’ Act sets forth guidelines the Administrative Office of the U.S. Courts shall employ in appointing certified interpreters in court cases.

Specifically, the applicability of the Court Interpreters’ Act has been narrowly construed to apply to U.S. District Court judicial proceedings only. *See* 28 U.S.C. § 1827 (j); *U.S. v. Lira-Arredondo*, 38 F.3d 531 (Tenth Cir. 1994) (where the Tenth Circuit held that the Court Interpreters’ Act did not apply to non-judicial proceedings; that it applied only to testimony and communications that took place before the court); *In re Morrison*, 22 B. R. 969, *recon. den.*, 26 B. R. 57 (Bankr. N.D. Ohio 1982) (where the bankruptcy court determined the Court Interpreters’ Act did not require the provision of interpreting services at a meeting of creditors and discharge hearing). Thus, the cited provisions of the Court Interpreters’ Act do not appear to bear on this case.

to exceed the bounds of what is permissible under Section 399B of the Act, and the Commission's pertinent rules and policies, taking into account the "good-faith" discretion afforded licensees under *Xavier, supra*. We find they do not appear to be reasonably intended to connote value-neutral meanings concerning the underwriters' products or services. In this regard, we note that the announcements at issue contain not only textual but visual elements that need no translation. The combined text and images must be evaluated, in the full context presented, in order to ascertain the messages' overall meaning and reasonable objective intent. See *In re Window to the World Communications, Inc. (WTTW(TV))*, DA 97-2535 (MMB December 3, 1997), *forfeiture reduced*, 15 FCC Rcd 10025 (EB 2000). We find that the subject underwriting messages, viewed in their totality, appear promotional in nature and thus appear to constitute prohibited advertisements.

10. *English-Language Announcements.* We will first address the several announcements that were broadcast aurally in English or contained English-language video messages; namely, those on behalf of State Farm, U-tron Computers, and Caliber Dual Monitor Computers. The State Farm announcement visually depicts the aftermath of a home ruined by fire. The narrator intones: "[f]ortunately, they have a State Farm agent, and the help of the world's largest claims network. And no one has more experts handling more claims quickly and more fairly. That's our 'Good Neighbor' promise." The visual element concludes with the image of happy family members apparently restored to their repaired home. Similarly, the U-tron Computers' announcement verbally describes its sponsor as "offering distinctive computer products" while visually depicting its product, a computer set, through flashing graphics containing the terms "high-end" and "heavyweight."

11. Minority acknowledges that the State Farm and U-tron announcements should not have been aired because they contain promotional language. Minority argues, however, that we should find mitigating the fact that their broadcast was inadvertent,⁸ and in the case of the State Farm announcement, find that the broadcast did not violate Section 399B of the Act because it was mere program "filler," and not specifically supported by *quid pro quo* consideration. Taking into account the licensee's discretion under *Xavier, supra*, we find that Minority's broadcast of both the State Farm and U-tron announcements appears to exceed the bounds of what is permissible under the Act, and appears to violate our underwriting rules.

12. In addition, Minority's further arguments have been specifically rejected in previous cases. "Consideration," for purposes of Section 399B of the Act, may consist of the program material itself. See *Policy Statement, supra*, 90 FCC 2d at 911; *Window to the World Communications, Inc., supra*. Thus, even if the program material were un-sponsored "filler," that fact has no bearing on the question of its compliance with Section 399B of the Act. Moreover, even if Minority's airing of the State Farm and U-tron announcements were through inadvertence, and not intention, that does not excuse Minority's rule violation. See *In re Rego, Inc. (WGEZ(AM))*, 16 FCC Rcd 16795 (EB 2001), citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970).

13. The underwriting announcement for Caliber is also broadcast in English and visually depicts costumed characters dancing across its product's dual computer screens. The accompanying narrative describes the computer as featuring "revolutionary dual display functions" and advises viewers that they will "see more, get more" with it, while the graphic message urges them not to "miss a thing" and presumably make a purchase. Minority contends

⁸ The licensee admits that it failed to edit properly the U-tron announcement from the version that had been aired on commercial stations.

that the message merely identifies the sponsor and describes the product. While announcements may identify underwriters and their products, they may not promote. In this case, the message makes descriptive, qualitative references that appear impermissibly to promote the underwriter's product and otherwise invites patronage of the sponsor's business. *See Public Notice, supra; Kosciusko Educational Broadcasting Foundation (WJTA(FM))*, 5 FCC Rcd 7106 (MMB 1990).

14. *Foreign-Language Announcements.* The underwriting announcements made on behalf of Gingko-Biloba Tea, Call-One Global Air Cellular Telephone, Chevy Venture, Chevy Impala, Cadillac Escalade, Ford Windstar, Ford Explorer and Expedition, Ford Motor Company, Korean Airlines, and Asiana Airlines were broadcast in Asian languages and appear similar in many salient respects. Generally speaking, they depict the underwriters' products or services being used and enjoyed by customers or heavily dwell on their particular features and qualities. Minority argues that the messages are merely value-neutral "image announcements" broadcast in good faith, consistent with Commission policy and precedent, and that they do not promote.

15. We disagree, and find that the foregoing announcements, with the exception of the Call One Global Cellular Telephone and generic Ford Motor Company messages,⁹ viewed in their entirety, are promotional in nature. First, the announcements heavily dwell on their underwriters' products or services at length, both visually and textually, focusing on their salutary qualities, and feature their customers' approving responses. *See Board of Education of New York (WNYE-TV)*, 7 FCC Rcd 6864 (MMB 1992) (where announcement emphasized in imagery, the demonstration, use, consumption, and customers' apparent satisfaction with the underwriter's products, the message was found to be qualitative and promotional).

16. Minority contends further that the Cadillac Escalade and Asiana Airlines announcements, although utilizing seemingly qualitative or price-referent phrases such as "highly regarded product," "quality SUV," "best level," and "free travel," respectively, do not, in their native tongue, convey promotional meanings, but, instead denote categorical and value-neutral expressions. We reject these arguments. While we acknowledge that categorical identifiers are not necessarily promotional, the Cadillac Escalade announcement, in its full context, belies Minority's claim that mere product-identification is taking place. In this regard, the announcement dwells on images of the SUV automobile in use, focusing on its special navigation and entertainment features.

17. Furthermore, contrary to Minority's contention, its own Korean-English translation describes the Cadillac Escalade's navigation feature in a comparative manner. Thus, although Minority argues that the adjective-noun combination "quality SUV," standing alone, denotes a categorical and value-neutral designation, the actual phrase at issue is not expressed so narrowly. In this case, by distinguishing the automobile as "the only quality SUV with On Star," the announcement goes beyond categorization, by focusing on the vehicle's select and favorable standing among competing vehicles by virtue of its unique equipment.¹⁰ Where the term "only"

⁹ The visual aspects of the Call One Global Cellular Telephone and generic Ford Motor Company announcements dwell heavily on the products in use and thus appear to be inconsistent with the Commission's underwriting policies. However, because we are unable to correlate the English language translated text of these two specific announcements with their corresponding video, we do not have a complete context on which to evaluate them. Accordingly, we decline to rule on them at this time.

¹⁰ Minority concedes that one version of this announcement, broadcast seven times during the period February 25, through March 9, 2000, contained the following calls to action "drive Escalade"; "buy or lease Escalade now!"; "a folding viewfinder and cassette player [are included] now until March 31, 2000"; and should not have been aired.

has been used to suggest a product's unique quality or attribute, it has been found to be promotional. *See Agape Broadcasting Foundation (KNON-FM)*, 13 FCC Rcd 13154 (MMB 1998).

18. Similarly, we reject Minority's argument that the Asiana Airlines announcement makes value-neutral references to the underwriter's bonus mileage plan. The visual aspect of the announcement depicts two characters discussing their airline tickets. Minority provides the following translation¹¹:

Female Character: "Did you get the surprising news Asiana Airlines sent to you? Now you can get American Airline [sic] free tickets using Asiana mileage."

Male Character: "Asiana Air now combines mileage with American Airlines."

Female Character: "Now you can travel free to America, Central or South America and even Europe—to 270 cities around [sic] world earning mileage with Asiana Airlines. Although you travel with Asiana Airlines or with American Airlines."

Male Character: "Now where do you want to go?"

Female Character: "Well (laughter)."

Male Character: "Mileage benefits with the best airline in the world. Asiana Airlines."

19. Minority contends that, in this announcement, the characters neutrally discuss the airline's bonus mileage plan and how viewers may qualify for "the opportunity for free travel." Minority argues that Asiana's reference to its mileage plan is not promotional, and that the Commission's proscription on the use of pricing information is not applicable because it does not extend to terms used, as here, to convey "free," "zero," or "value-less" information, only price-specific information. Minority also likens the context of this announcement to that of the mention of toll-free "800" telephone numbers, and argues that "value is not attached to [such] calls."

20. These arguments are without merit. First, the Commission has specifically found references to "free" products or services to be prohibited language of inducement. *See Public Notice, supra*.¹² Secondly, we do not agree that the reference to Asiana's bonus mileage plan is, in this instance, value-neutral. The announcement dwells singularly on a discussion of the underwriter's business marketing program that offers purchase enhancements to potential customers, and also refers to it as the "best airline in the world." As such, the presentation attempts to induce business patronage, and to present the underwriter in comparative and qualitative terms. It is thus prohibited. *See id.* Also, we note that Minority's argument concerning broadcast invitations to utilize underwriter's toll-free telephone numbers is inapposite.

¹¹ *See* Attachment A, Minority's Reply to AT&T Broadband LLC Comments, July 27, 2000; Announcement #11.

¹² In describing the prohibition against language that contains inducements to buy, sell, rent or lease, the Commission specifically identified the following example: "six months' *free* service." (Italics added.)

Moreover, Minority cites no authority supporting its proposition that the noncommercial broadcast encouragement to contact an underwriter through the use of toll-free telephone numbers is, in fact, categorically non-promotional.

21. Elsewhere, Minority makes arguments particular to specific announcements. It argues that the Gingko Biloba Tea announcement, which depicts a grandson enjoying tea that his encouraging grandfather explains will make him smarter, should be deemed value-neutral because it is “farical.” Minority offers no support for this assertion and we reject it. Similarly, we reject Minority’s argument that the Korean Airlines announcement is a harmless “image announcement” consistent with Commission underwriting policy. The announcement features an airliner being prepared for flight by a busy crew that labors happily, singing the lyrics “fill sky with love, love. Spread smile over face--smile, smile, smile, smile. Fill sky with love, love, love, love. Fill sky with love. Between you and the sky is Korean Air.”¹³ The message exceeds the identification-only purpose of underwriting announcements by presenting Korean Airlines to the viewing audience as a competent, harmoniously-run carrier and an inviting host to potential travelers. The overall message seeks to induce patronage and is therefore promotional and prohibited.

22. Minority argues that the Ford Windstar announcement’s reference¹⁴ to the vehicle’s “five-star safety rating in government crash tests four years in a row” is factually verifiable and therefore non-promotional. The factual veracity of a claim made in an underwriting announcement is irrelevant to the issue of whether it is promotional. *See Tri-State Inspirational Broadcasting Corporation*, 16 FCC Rcd 16800 (EB 2001).¹⁵ In this case, the announcement’s reference to the vehicle’s superior safety characteristics is impermissibly comparative and descriptive in nature. Moreover, Minority’s announcement on behalf of the Ford Explorer and Expedition SUVs is similarly indistinguishable from commercial advertising in that it dwells singularly on the products being vigorously used, featuring them as being able to overcome obstacles to which lesser vehicles might impliedly succumb: “the ditch is deep; but no problem, the minute you show your power [sound of racing motor]”; and “with Ford Explorer and Expedition, [you] can handle any road, anywhere.”¹⁶ *See WNYE-TV*, 7 FCC Rcd at 6865. Similarly, the Chevy Venture and Impala announcements make improper reference to the products’ favorable visual and mechanical features and appeal—“that should be pretty to catch my fancy” and “be strong; be sharp; beautiful safety design . . . detailed lines, gorgeous power acceleration.”¹⁷

23. On February 25, 2002, we inquired further concerning seven additional announcements submitted by Lincoln on behalf of station underwriters Yip’s Auto World, Ulfert’s Furniture, Met-Life (Retirement and Insurance--Great Wall of China), Scandinavian

¹³ See Attachment A to Minority’s Reply to AT&T Broadband LLC Comments, dated July 27, 2000; Announcement #52.

¹⁴ See *id.*; Announcement #23.

¹⁵ This analysis is also consistent with past unpublished letter rulings. See, e.g., *Letter of the Chief, Investigations and Hearings Division, Enforcement Bureau, to Station KOUZ(FM)* (EB July 12, 2000).

¹⁶ See *id.*; Announcement #24.

¹⁷ See *id.*; Announcements #44 and #47.

Concepts, Sincere Plumbing, and East West Bank. In its March 25, 2002, response, Minority did not provide its own translations for any of the announcements other than those for Yip's Auto World and Ulfert's Furniture,¹⁸ but commented on Lincoln's translations as to all.¹⁹ In its response, Minority argues that the foregoing announcements are acceptable because they are similar to material aired by other leading public television stations, and claims that they were fashioned in good-faith reliance on several of the guidelines set forth by the Public Broadcasting System for its own member stations.

24. We reject Minority's contentions. Noncommercial licensees are responsible for complying with Section 399B of the Act. As to the substance of the announcements, we note that their visual aspects, viewed in the context of their accompanying text, appear to be promotional. To the extent that Minority may have relied upon external advice in determining whether to air questionable program material, such factor has been found mitigating only in cases where the advice is sought from the Commission itself, and is then strictly followed. *See, e.g., Pine-Aire Broadcasting Corp.*, 4 FCC Rcd 1553 (1989) (seeking and following Commission advice may, in appropriate instances, constitute a mitigating factor in the event of a rule violation).²⁰

25. Minority's translation for the Yip's Auto announcement states that "Yip's Auto cannot guarantee that you're lucky all the time. But Yip's assures its repairs for as long as you have your car. Yip's stands behind this protection." The mention of a product or service guarantee is promotional because it seeks to induce patronage.²¹ In addition, both Met-Life announcements contain promotional elements, characterizing the company as "offer[ing] excellent products and services" in discussing the financial product as a solution to a customer's problem, and by favorably describing the strength of its insurance product, in both image and text, as "a good protector as the Great Wall of China was against the enemy."

26. Minority insists that no analogy was intended and that the Great Wall was being compared only to itself, not to the product. That interpretation, however, is inconsistent with the message's image and text. Contrary to Minority's contention, it appears that more than value-neutral "image identification" is taking place. The announcement for Sincere Plumbing makes a prohibited call to action when it invites viewers to "come to visit our showroom." Similarly, the announcement for Scandinavian Furniture describes the showroom's atmosphere and products as so "romantic, soft[] and gentl[e]. . . you don't want to leave." Thus, it improperly characterizes the underwriter's furniture products and business setting in a comparative, qualitative manner. Additionally, the announcement for Ulfert's Furniture calls listeners to action by urging "[i]f you're shopping for furniture, please come to Ulfert's." In addition, the announcement for East

¹⁸ See Attachment P, Minority's Response dated March 25, 2002.

¹⁹ Minority cavils with certain grammatical aspects of Lincoln's translations but does not challenge their overall meaning. Moreover, in those instances where Minority failed to provide its own translations we must presume that it concedes the basic accuracy of Lincoln's interpretations.

²⁰ Although Minority does not pursue this point, it bears noting that the licensee first sought a declaratory ruling on the acceptability of several of the announcements in question. However, Minority did not refrain from broadcasting them in advance of receiving Commission advice, so mitigation under the basis articulated in *Pine-Aire* would not apply.

²¹ This analysis is consistent with past unpublished letter rulings. *See, e.g., Letter of the Chief, Complaints & Political Programming Branch, Enforcement Division, to Evansville-Vanderburgh School Corporation (WPSR(FM))*, (MMB March 23, 1999).

West Bank depicts characters describing the services of the bank in prohibited comparative and qualitative terms: “it’s so easy and fast to be approved for a house loan at East West Bank.”

27. Lincoln argues that the placement, duration and frequency of broadcast of the foregoing announcements constituted substantial interruptions of regularly scheduled programming in further violation of Section 399A(b) of the Act. Lincoln further asserts that the announcements failed to identify their specific underwriters, and that this fact underscores their commercial nature and demonstrates a violation of the Commission’s underwriting rules. With regard to Section 399A(b), the Commission has construed this restriction as one not limiting the number of underwriting acknowledgments that may be aired, but instead as one channeling their placement such that the flow of regular programming is not “unduly disrupted.” *See Policy Statement*, 90 FCC 2d 895 at 902-03. We note that the announcements in question uniformly appear to be thirty seconds or less. Minority contends that it broadcasts no more than three to four such announcements per half-hour segment, and our review supports that claim.²²

28. The Commission has not adopted quantitative guidelines on the length of announcements or the number of repetitions except to note that the longer announcements are, the more likely they are to be promotional, and that licensees should avoid placing them with such frequency so as to constitute “commercial clutter.” *See WNYE-TV*, 7 FCC Rcd at 6865; *Policy Statement, supra*. First, even if a noncommercial licensee takes several breaks per half-hour segment to run underwriting announcements, this does not, by itself, demonstrate a violation of Section 399A(b).²³ Having reviewed the evidence in this case, we find neither the overall number, frequency of broadcast announcements, nor length of the individual messages at issue to be inconsistent with the Commission’s noncommercial rules or underwriting policy. Based on the overall evidence submitted, we find that they appear to occur at natural program breaks and that they do not recur with undue frequency.

29. However, we find also that the videotaped evidence depicts announcements that do not contain specific acknowledgments identifying their sponsors as station underwriters. As the purpose of underwriting acknowledgments is to identify those station donors who have sponsored specific programming, Minority’s omission of this identifying information is improper. Thus, to the extent that the station’s underwriting acknowledgments have been lacking in this respect, we will caution Minority to make appropriate underwriter identifications in the future.

30. *Sanction.* In view of the foregoing, we find that Minority has apparently violated Section 399B of the Communications Act, 47 U.S.C. § 399b, and Section 73.621(e) of the Commission’s rules, 47 C.F.R. § 73.621(e), by airing impermissible donor and underwriting announcements on its noncommercial educational television station. In this case, the violations were numerous and continued for an extended period of time. In this regard, from the information supplied by the licensee, it appears that the foregoing announcements were broadcast in excess of 1,911 times during the January 2000 through March 2002 period.²⁴ Lincoln urges

²² See Minority’s Response to Letter of Inquiry, December 20, 2001, pp. 6-7.

²³ This analysis is also consistent with past unpublished letter rulings. *See, e.g., Letter of the Chief, Investigations and Hearings Division, to Hispanic Broadcast System, Inc. (WLAZ(FM))* (EB Feb. 11, 2002).

²⁴ The number of repetitions of the announcements in question cannot be precisely determined on the record. In Attachment A to its December 20, 2001, response to our initial inquiry, and Attachment Q to its March 25, 2002, response to our second inquiry, Minority provided information pertaining to eighteen of

that we impose a substantial forfeiture in addition to other extraordinary relief, including enjoining the licensee from broadcasting further non-compliant announcements and requiring it to submit to monitoring under the threat of license revocation, although it cites no precedent in support of our taking these measures.

31. Considering the entire record, including the complaints, the pleadings responsive to our inquiries, and the applicable law, we conclude that a proposed forfeiture of Ten Thousand Dollars (\$10,000.00) is appropriate in this case. In this regard, we note that the apparent duration, gravity, egregiousness, and continuing nature of the violations is more serious than what is contemplated by the base amount of \$2,000 per underwriting rule violation. Moreover, the facts of this case are more troubling than those present in proceedings involving other noncommercial stations. *See J.C. Maxwell Broadcasting Group, Inc. (WMPR(FM))*, 8 FCC Rcd 784 (MMB 1993) (\$7,500 forfeiture imposed for repeated underwriting violations on fourteen dates during a two-year period that persisted even after several complaints were received and two letters of inquiry issued); *Window to the World Communications, Inc., supra* (where \$5,000 forfeiture was originally imposed for numerous noncompliant television underwriting announcements repeated over one-year period).²⁵ This case is more serious, as it involves the broadcast of a larger number of advertisements on many occasions over a lengthy period of time. These factors warrant substantial compounding of the base forfeiture amount. *See* 47 C.F.R. § 1.80(b)(4). However, we do not find any other type of sanction to be necessary or justified at this time.

32. Finally, Lincoln asserts that we should sanction Minority for filing frivolous pleadings that have abused the Commission's processes. We decline to do so. Minority's pleadings filed relative to our underwriting investigation were not unauthorized from a procedural standpoint. *See, e.g.*, 47 C.F.R. § 1.41 and § 1.45. From a substantive standpoint, while we do not accept most of Minority's contentions, we do not find that the licensee has presented facts or legal arguments in a manner lacking good-faith or inconsistent with its right to advocate its views.

IV. Ordering Clauses

33. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,²⁷ that Minority Television Project, Inc., licensee of noncommercial educational television station KMTP-TV, San Francisco, California, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of Ten Thousand Dollars (\$10,000.00) for willfully and repeatedly broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399b, and Section 73.621 of the Commission's rules, 47 C.F.R. § 73.621.

the announcements under consideration, contending that they were broadcast 1,911 times during the years 2000 through 2002. *See also* Table A to this decision.

²⁵ The original forfeiture amount in *Window to the World Communications, Inc.* was based on a finding that the station had broadcast numerous impermissible underwriting announcements over an extended period of time. It was later reduced to \$2,000 based on the staff's later conclusion that only one of the announcements at issue violated Section 399B of the Act.

²⁶ *See* 47 U.S.C. § 503(b).

²⁷ *See* 47 C.F.R. §§ 0.111, 0.311, and 1.80.

34. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Minority SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

35. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and also should note the NAL/Acct. No. referenced above.

36. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

37. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

38. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁸

39. IT IS ALSO ORDERED that the complaints filed by AT&T Broadband LLC and Lincoln Broadcasting Company ARE GRANTED to the extent indicated herein and ARE OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.²⁹

²⁸ See 47 C.F.R. § 1.1914.

²⁹For purposes of the forfeiture proceeding initiated by this NAL, Minority Television Project, Inc. shall be the only party to this proceeding.

40. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Counsel for Minority Television Project, Inc., James L. Winston, Esq. and Paul M. Breakman, Esq., Rubin, Winston, Diercks, Harris & Cooke, LLP, 1155 Connecticut Avenue, NW, Suite 600, Washington, DC 20036, and by first-class mail to Michael D. Berg, Esq., Shook, Hardy & Bacon, LLP, 600 14th Street, NW, Suite 800, Washington, DC 20005-2004, Steven J. Horvitz, Esq. and Frederick W. Giroux, Esq., Cole, Raywid & Braverman, LLP, 1919 Pennsylvania Avenue, NW, Suite 200, Washington, DC 20006-3458.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Table A

Based on information supplied by the licensee, set forth below is a list of the announcements cited in the foregoing NAL indicating their broadcast dates.³⁰

<u>Underwriter's Name</u>	<u>Date(s)</u>
State Farm Insurance	[Year 2000]: 9/25
U-tron Computers	[Year 2000]: 7/1; 7/4; 7/7; 7/12; 7/17; 7/20; 7/25; 7/26; 8/2; 8/11; 8/14; 8/17; 8/22; 8/25; 9/1; 9/4; 9/6; 9/13; 9/15; 10/2; 10/5; 10/9; 10/11; 10/16; 10/19; 10/24
Caliber Dual Monitors Computers	[Year 2000]: 7/12; 7/13; 7/18; 7/20
Gingko-Biloba Tea	[Year 2000]: 9/15; 9/19; 9/21; 9/26; 9/29; 10/3; 10/6; 10/9; 10/12; 10/18; 10/25; 10/27; 11/2; 11/4; 11/8; 11/9; 11/14; 11/17
Chevy Venture	[Year 2000]: 4/6; 4/7; 4/13; 4/14; 4/20; 4/21; 5/8; 5/9; 5/10; 5/11; 5/16; 5/17; 5/18; 5/22; 5/23; 5/24; 5/25; 6/7; 6/9; 6/14; 6/16; 6/20; 6/23; 7/5; 7/7; 7/12; 7/14; 8/9; 8/11; 8/16; 8/18; 8/23; 8/25; 9/7; 9/8; 9/14; 9/15; 9/21; 9/22; 10/10; 10/11; 10/12; 10/13; 10/17; 10/18; 10/19; 10/20; 11/14; 11/15; 11/16; 11/17; 11/21; 11/22; 11/23; 11/24; 12/19; 12/20; 12/21 [Year 2001]: 1/22; 1/23; 1/25; 1/29; 1/30
Chevy Impala	[Year 2000]: 3/13; 3/14; 3/15; 3/16; 3/17; 3/22; 3/23; 3/24; 4/6; 4/7; 4/13; 4/14; 4/20; 4/21; 5/8; 5/9; 5/10; 5/11; 5/15; 5/17; 5/18; 5/19; 5/22; 5/23; 5/24; 5/25 [Year 2001]: 1/19; 1/24; 1/29; 1/31; 2/22; 2/23; 2/26; 2/27; 2/28; 4/30; 5/1; 5/2; 5/3; 5/4

³⁰ Bold-face type indicates dates on which two broadcasts took place.

Asiana Airlines	[Year 2000]: 2/25; 2/29; 3/2; 3/3; 3/6; 3/7; 4/5; 4/6; 4/7; 5/9; 5/10; 5/16; 9/25; 9/26; 9/27; 10/16; 10/17; 10/18 [Year 2001]: 2/23; 2/25; 3/13; 3/14; 3/15; 4/3; 4/4; 4/5; 4/6; 4/7; 4/10; 4/13; 4/14; 4/17; 4/18; 4/19; 4/20; 4/21; 4/24; 4/25; 4/26
Cadillac Escalade	[Year 2000]: 2/25; 3/2; 3/3; 3/6; 3/7; 3/8; 3/9; 3/10; 3/13; 3/14; 3/15; 3/16; 3/17; 3/20; 3/21; 3/22; 3/23; 3/24; 4/13; 4/14; 5/9; 5/11; 6/6; 6/8; 7/5; 7/6; 7/7; 7/12; 7/13; 7/14 [Year 2001]: 6/11; 6/12; 6/13; 6/14; 6/15; 6/16; 6/17; 6/18; 6/19; 6/20; 6/21; 6/22; 6/26; 6/27; 10/1; 10/2; 10/3; 10/4; 10/5
Ford Windstar	[Year 2000]: 2/10; 2/11; 2/14; 2/15; 2/16; 2/18; 2/21; 2/22; 2/25; 2/28; 2/29; 3/1; 3/2; 3/3; 3/6; 3/7; 3/8; 3/9; 3/10; 3/14; 3/16; 3/17; 3/20; 3/21; 3/23; 3/28; 3/30; 4/3; 4/4; 4/5; 4/6; 4/7; 4/10; 4/11; 4/12; 4/13; 4/14; 4/17; 4/18; 4/19; 4/20; 4/21; 4/24; 4/25; 4/26; 4/28; 5/1; 5/2; 5/3; 5/4; 5/5; 5/8; 5/10; 5/11; 5/15; 5/16; 5/18; 5/19; 5/22; 5/23; 5/26
Ford Explorer and Expedition	[Year 2000]: 2/23; 2/24; 3/13; 3/15; 3/22; 3/23; 3/24; 3/27; 3/29; 4/11; 4/17; 4/19; 4/21; 4/26; 4/27; 5/9; 5/12; 5/17; 5/24; 5/25; 5/29; 5/30; 5/31; 6/1; 6/2; 6/5; 6/6; 6/7; 6/8; 6/9; 6/12; 6/13; 6/14; 6/15; 6/16; 6/19; 6/20; 6/21; 6/22; 6/23; 6/26; 6/27
Korean Airlines	[Year 2000]: 7/25; 7/26; 7/27; 7/28; 7/31; 8/1; 8/2; 8/3; 8/4; 8/9; 8/11; 8/14; 8/15; 8/16; 8/17; 8/18; 8/19; 8/21; 8/22; 8/23; 8/24; 8/25 [Year 2001]: Each weekday January through November except 9/24 to 10/14
Yip's Auto World	[Year 2000]: 7/3; 7/4; 7/5; 7/6; 7/7; 7/8; 9/25; 10/17 [Year 2001]: 2/1; 2/2; 2/3; 2/4; 2/5; 2/6; 2/7; 2/8; 2/9; 2/10; 2/12; 2/13; 2/15; 2/17; 2/18; 2/20;

2/21; 2/23; 5/23; **6/2**; 9/4; 9/20; and once daily from October through December

[Year 2002]: 1/2; 1/3; 1/4; **1/5**; 1/7; 1/8; 1/9; 1/10; 1/11; **1/12**; 1/14; 1/15; 1/16; 1/17; 1/21; 1/22; 1/23; 1/24; 1/25; 1/26; 1/28; 1/29; 1/30; 1/31; 2/1; **2/2**; 2/4; 2/5; 2/6; 2/7; 2/8; **2/9**; 2/11; 2/12; 2/13; 2/14; 2/15; **2/16**; 2/17; **2/18**; 2/19; 2/20; 2/22; **2/23**; 2/25; 2/26; 2/27; 2/28; 3/1; **3/2**; 3/3; 3/4; 3/5; 3/6; 3/8 **3/9**; 3/10; 3/11; 3/12; 3/13; 3/14; 3/15

Ulfert's Furniture

[Year 2000]: Once daily during August through December; twice daily on 21 days

[Year 2001]: Once daily; twice daily on 21 days

[Year 2002]: Once daily

Met Life: Retirement

[Year 2001]: 6/2

Met Life: Great Wall

[Year 2001]: 6/2

Scandinavian Concepts

[Year 2000]: 2/25; 7/18; 7/20; 7/25; 7/27; 8/1; 8/3; 8/8; 8/10; 8/15; 8/17; 8/22; 8/24; 8/29; 8/31; 9/5; 9/7; 9/12; 9/17; 9/26; 9/28; 10/3; 10/5; 10/10; 10/12; 10/17; 10/19; 10/24; 10/26; 10/31; 11/2; 11/7; 11/9; 11/14; 11/16; 11/21; 11/23; 11/28; 11/30; 12/5; 12/7; 12/12; 12/14; 12/19; 12/21; 12/26; 12/28

[Year 2001]: 1/2; 1/3; 1/5; 1/7; 1/8; 1/9; 1/10; 1/12; 1/14; 1/15; 1/16; 1/17; 1/21; 1/22; 1/23; 1/24; 1/26; 1/28; 1/29; 1/30; 1/31; 2/1; 2/2; 2/6; 2/8; 2/13; 2/15; 2/20; 2/22; 2/27; 3/1; 3/6; 3/8; 3/13; 3/15; 3/20; 3/22; 3/27; 3/29; 4/3; 4/5; 4/10; 4/12; 4/17; 4/19; 4/24; 4/26; 5/23; 5/31; 6/2; 11/15; 11/17; 11/19; 11/20; 11/21; 11/22; 11/27; 11/28; 11/29; 12/1; 12/3; 12/4; 12/5; 12/6; 12/8; 12/10; 12/11; 12/12; 12/14; 12/15; 12/17; 12/18; 12/19; 12/20; 12/21; 12/22; 12/24; 12/26; 12/27; 12/29; 12/30

[Year 2002]: Once daily

Sincere Plumbing

[Year 2000]: 7/3; 7/5; 7/7; 7/8; 7/10; 7/12; 7/14;
7/15; 7/16; 7/17; 7/19; 7/21; 7/22; 7/24; 7/26;
7/28; 7/29; 7/31; 8/2; 8/4; 8/5; 8/7; 8/9; 8/11;
8/12; 8/14; 8/15; 8/17; 8/19; 8/21; 8/23; 8/25;
8/26; 8/28; 8/30; 9/1; 9/2; 9/4; 9/6; 9/7; 9/8; 9/9;
9/11; 9/13; 9/15; 9/16; 9/18; 9/20; 9/22; 9/23;
9/25; 9/27; 9/29; 9/30; 10/2; 10/4; 10/6; 10/7;
10/9; 10/11; 10/13; 10/15; 10/16; 10/18; 10/20;
10/21; 10/23; 10/25; 10/27; 10/28; 10/30; 11/1;
11/3; 11/4; 11/6; 11/8; 11/10; 11/11; 11/13;
11/15; 11/17; 11/18; 11/20; 11/22; 11/24; 11/25;
11/27; 11/29; 12/1; 12/2; 12/4; 12/6; 12/9;
12/11; 12/13; 12/15; 12/16; 12/18; 12/20; 12/22;
12/23; 12/25; 12/27; 12/29; 12/30

[Year 2001]: 2/1; 2/6; 2/8; 2/13; 2/15; 2/20;
2/22; 2/25; 2/27; 4/3; 4/5; 4/10; 4/12; 4/17; 4/19;
4/24; 4/26; 6/2; 12/1; 12/2; 12/3; **12/4; 12/5;**
12/6; 12/8; 12/9; **12/10; 12/11;** 12/12; **12/15;**
12/16; 12/17; 12/18; 12/19; 12/20; 12/21; 12/22;
12/23; 12/24; 12/25; **12/26; 12/27; 12/28; 12/29;**
12/30

[Year 2002]: Once daily

East West Bank

[Year 2001]: 7/14; 7/21; 7/28; 8/4; 8/11; 8/18;
8/25; 9/1; 9/8; 9/15; 9/22; 9/29; 10/6; 10/13;
10/20; 10/27; 11/3; 11/10; 11/17; 11/24