

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

In the Matter of)	
)	
ENID PUBLIC RADIO ASSOCIATION)	EB-02-IH-0607
)	Facility # 124554
Licensee of Low Power Noncommercial Station)	
KUAL-LP, Enid, Oklahoma)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 2004

Released: August 23, 2004

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

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we admonish Enid Public Radio Association (“Enid”), licensee of low power noncommercial educational FM Station KUAL-LP, Enid, Oklahoma, for broadcasting advertisements in violation of section 399B of the Communications Act of 1934, as amended (the “Act”),¹ and section 73.503(d)² of the Commission's rules. We have carefully reviewed the record, including Enid’s response, and conclude that the licensee has violated the pertinent statutory and Commission underwriting rule provisions. While we believe that no monetary sanction is warranted at this time, based on the entire circumstances of this case, we find that an admonishment is necessary to redress the statutory and rule violations. Moreover, we believe that it is appropriate to specifically advise Enid of our concerns so that rule compliance may be fully achieved.

II. BACKGROUND

2. In response to a complaint received by our Dallas Field Office, we inquired of the licensee concerning its underwriting announcements. Enid responded to our December 10, 2003, inquiry³ by its submission dated January 2, 2004.⁴ In its response, Enid acknowledges that it broadcast the inquired of underwriting announcements during the period June 5, 2002, through

¹ 47 U.S.C. § 399b.

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

³ See Letter of William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Enid Public Radio Association, dated December 10, 2003 (“*LOP*”).

⁴ See Letter of Ron Anderson, Director, Enid Public Radio Association, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated January 2, 2004 (“*Response*”).

June 19, 2002, on Station KUAL-LP.⁵ Enid indicates that since receiving our LOI, it has initiated procedures to ensure that underwriting announcements will undergo more stringent staff review prior to broadcast.⁶

III. DISCUSSION

3. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.⁷ As the Commission has long held, noncommercial educational stations may not broadcast advertisements.⁸ 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.⁹

4. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.¹⁰ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between announcements that promote versus those which merely identify the underwriter. Consequently, it expects only that licensees exercise reasonable, good-faith judgment in this area.¹¹

5. The key facts in this case are not in dispute. Enid admits that Station KUAL-LP broadcast the announcements described in our letter of inquiry and set forth in the attached transcript; that the sponsors are for-profit entities; and that, with the exception of the announcement made on behalf of Remax Premier Realty, that it received consideration for airing the messages. Enid claims that it broadcast the Remax announcement only once, due to confusion during the staff's script approval process, and that the other announcements aired only during a two-week period in June, 2002.¹² Enid asserts that it has since taken steps to ensure underwriting rule compliance by revising the station's donor acknowledgment policy and practice.¹³

⁵ *Response* at 1.

⁶ *Id.*

⁷ 47 U.S.C. §399b(a).

⁸ *See In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations* (1986), Public Notice, *republished*, 7 FCC Rcd 827 (1992) ("Public Notice").

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

¹² *See Response* at 1.

¹³ *Id.*

6. With the exception of the Remax announcement, whose broadcast was not made in exchange for consideration, we find that the other subject underwriting announcements exceed the bounds of what is permissible under section 399B of the Act, and the Commission's pertinent rules and policies, in light of the "good-faith" discretion afforded licensees under *Xavier, supra*. In this regard, the announcements seek to promote their underwriters through comparative and qualitative descriptions and references that one could not reasonably believe would be permitted under section 399B of the Act and the Commission's pertinent rules, and are thus prohibited. Notwithstanding this finding, however, we believe that a monetary forfeiture is not necessary to redress the statutory and rule violations at issue. Enid has previously enjoyed a blemish-free enforcement record.

IV. ORDERING CLAUSES

7. In view of the foregoing, we conclude that a sanction is appropriate. Accordingly, IT IS ORDERED that Enid Public Radio Association, licensee of low power noncommercial station KUAL-LP, Enid, Oklahoma, IS ADMONISHED for broadcasting advertisements in violation of section 399B of the Act, 47 U.S.C. § 399b, and section 73.503(d) of the Commission's rules, 47 C.F.R. § 73.503(d).

8. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent, by Certified Mail -- Return Receipt Requested, to Enid Public Radio Association, 2122 West Maine, Enid, Oklahoma 73703.

FEDERAL COMMUNICATIONS COMMISSION

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

ATTACHMENT

Transcript of Underwriting Announcements Aired on LPFM Station KUAL-LP, Enid, Oklahoma, from June 5 through June 19, 2002:

Bradford Automotive Repair (30 seconds)

This portion of the news is brought to you by Bradford Automotive Repair. Steve Bradford, he's been around for 22 years, and that's a long time; a lot of repairs he's been doing here in Enid at 410 South Grant. And he's open from 8-5 Monday through Friday. His phone number is 234-6635. That's 234-6635. And he's a very experienced repairman. And he's a proud sponsor of 104.7, "The Rocket."

Bradford Automotive Repair (30 seconds)

MV: Bradford Automotive Repair's at 410 South Grant is open from 8-5 Monday through Friday. Steve Bradford—a really nice guy—too. You know him, don't you, Jenny?

FV1: I believe my Dad knows him actually.

MV: Norman?

FV1: Yes.

MV: Well, Steve Bradford has offered general automotive repair for 22 years. And you know what, Anita?

FV2: What?

MV: That's a lot of repairs and a lot of satisfied customers, too.

FV2: Yes!

MV: Bradford Automotive Repairs can be reached at 234-6635. Bradford Automotive Repairs, a proud sponsor of our programming today on 104.7, "The Rocket."

Beds Unlimited (30 seconds)

Beds Unlimited is located just south of Northcutt Toyota on Overland Trail. They feature 90-day layaway on everything—bedroom sets, adjustable beds, sofas, futons, and more. They're an authorized Orthopedic Mattress dealer, and remember their slogan, "if you haven't shopped Beds Unlimited, you're not saving money." Beds Unlimited, a fine sponsor of programming on 104.7, "The Rocket."