

LEGAL MEMORANDUM

UNDERWRITING ANNOUNCEMENT GUIDELINES FOR NONCOMMERCIAL STATIONS

The FCC and the Communications Act prohibits noncommercial broadcast stations, (“NCE stations”) including Low Power FM (“LPFM”) stations, from broadcasting “advertising.” Thus, NCE stations are not permitted to air “any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit; (2) to express the views of any person with respect to any matter of public importance or interest; or (3) to support or oppose any candidate for political office.”

The FCC has established general guidelines and has left it to licensees initially to make reasonable good faith determinations with respect to credits based on the law and FCC interpretive rulings. Stations need to apply the guidelines to avoid impermissible commercialization and promotional announcements.

BASIC UNDERWRITING PRINCIPLES

A. Donor Identification is Okay; Promotion of For-Profits is Prohibited

1. A noncommercial station may not air announcements promoting for-profit entities in exchange for consideration to the licensee or its principals or employees.

2. Stations must identify every donor that has paid consideration to support the production or broadcast of a particular program. Where the donors are too numerous to mention on air, you may name the largest and inform viewers as to where the complete list may be obtained. Each station must maintain a list in its public file of program funders from the past two years. It is not legal to afford anonymity to a program underwriter. On-air identification of donors whose contributions support general station operations, rather than specific programs, is at the licensee's discretion.

3. Underwriting announcements may only identify and describe underwriters and **may not promote the products, services, or facilities of for-profit entities.**

B. Underwriting Content

1. Content Restrictions

The following is not permitted:

- (a) No comparative, qualitative, or otherwise overtly promotional descriptions of products or services, such as highlighting desirable features of the underwriter's offerings, or mentioning specific features of products and services;
- (b) No mention of price information, such as sales or savings, interest rates, discounts, or claims of value;
- (c) No calls to action, such as "stop by" or "call" or "try"; and
- (d) No inducements to buy, sell, or lease; no bonuses or free gifts or services.

Examples of these restrictions are discussed below.

2. Permissible Content

- (a) An underwriter's corporate slogan may be used. An underwriter's slogan may contain otherwise impermissible descriptive language if it is included in a credit for identification rather than purely for promotional purposes (more on this below);
- (b) Products and services may be listed, within reason (see below) and brand and trade names can be mentioned;
- (c) Value neutral descriptions of a company and its products or services may be broadcast; and
- (d) Telephone numbers and location information and Web addresses that do not themselves constitute impermissible product claims or calls to action, and can be broadcast.

Language focusing on positive or distinguishing attributes or desirable features, or that suggests the superiority of the underwriter's products or services or the underwriter itself, is prohibited. Adverbs and adjectives "describing" a product therefore must be carefully scrutinized.

3. Illustrative Impermissible Terms and Phrases

These illustrative phrases go beyond “value-neutral” phrases descriptions of services:

- Refreshing
- Specialized
- Exclusive
- Luxurious
- One-Stop Shop
- Tastefully decorative
- Beautiful
- Accommodating
- Unique
- Dependable
- Efficient
- Economical
- Excellent
- Leading provider of ...
- Number One
- Prompt
- Reliable
- Statements that a service providers “aim is excellence” or “perfection”
- Mentioning membership in or certification by organizations or associations that act as professional sanctioning or certifying bodies

4. Illustrative Permissible Terms and Phrases

These are illustrative of value-neutral phrases that are *permitted*:

- A generalized statement, such as “Surgery never has to be unpleasant”
- A *general* description of services or products, such as “Pies Baked Daily”, “Home Style Foods”, “Creative” to describe advertising, and “Fresh and Original” to describe health food (as long as it does not include a comparison to other businesses)
- A statement of how long an underwriter has been in business (as long as it does not compare that length to other businesses)
- General description of inventory, such as "Timeless traditional truths" to describe an art gallery's works
- Slogans, such as “AT&T -- the right choice”, or “Movado Museum Watch, another famous Swiss-made product”

5. Listing of Products and Services

Excessively detailed menus of multiple product/service offerings by underwriters are not permissible, such as the following:

- “Birch Sheet Metal and Building Supplies . . . featuring custom metal roofing, siding, hardware, trim, insulation, trusses, and perma felt paper.”
- “Fedders Feed and Seed and Pet Supplies, featuring bulk and bag mulch, peat moss, potting soil, bulk top soil and decorative borders.”

A listing of more than six goods or services offered by an underwriter should not be permitted.

6. Slogans Are Generally Permissible

As seen above, the use of corporate slogans is permissible when used in good faith for identification value rather than promotion.

7. Long Credits and Verbosity Should be Avoided

While there are no set limits on the length of credits, “the longer the announcements, the more likely they are to contain material ... that is inconsistent with the ‘identification only’ purpose of such announcements.” You should be careful when an underwriting announcement exceeds 30 seconds.

8. Special Effects and Music are Permitted

Non-promotional sound effects or audio enhancements are permissible, as is background music that is not overtly promotional. Music that is strongly connected to a donor's commercial advertising, such as jingles (*e.g.*, the McDonald's, Coke, or United Airlines jingles), should be scrutinized carefully, especially if lyrics are involved.

9. Historical Information, Donor Background are Permitted

As seen above, non-promotional background information, such as the length of time the underwriter has been in business, is permissible. Thus, "in recognition of 125 years in business" would be okay, as long as it does compare the business to other similar businesses.

10. Donor Homilies and Unrelated Messages are Permitted

General public service announcements or proverbs and sayings are permissible as long as they do not promote the donor. You may also identify underwriters with non-controversial public service messages (*e.g.*, "Buckle up for safety," or "Don't Drink and Drive) or let the underwriter encourage support of public broadcasting.

11. Presentation of Price Information is Prohibited

Underwriting announcements may not include price information or references to manner of payment, affordability, availability of financing, discounts, or other price incentives. So, for example, the following phraseology and content has been ruled not to be permissible:

- Flexible Financing
- ...offers you easy credit
- ...save more in gas per mileage
- . offering a discount
- ... if a client does not recover damages, the attorney does not collect a fee.
- ... every Thursday night is ladies' night... (suggesting drink specials or discounts)
- No down payment on approved credit...up to \$3,000 in cash rebates
- All-you-can-eat catfish on Sundays
- On sale for a limited time only
- Mention the station and receive a 10% discount
- Home of the Wednesday lunch special

12. "Calls to Action" And Inducements to Buy are Prohibited

Calls to action and inducements to buy in connection with an underwriting announcement are prohibited. For example, the following phrases are not appropriate:

- So do yourself a favor and come out
- Stop in
- Give them a call
- Treat yourself to a night of total entertainment
- Get more information by calling
- Get your tickets now

This Memorandum contains a broad overview of the topic. Violations of these guidelines may result in the imposition of significant forfeitures by the FCC.

If you have specific questions and would like specific underwriting announcements reviewed, please contact this office.