

The  
**NFCB**  
**Underwriting**  
**Guide**  
*for use in noncommercial radio*

*can we say that?*

*political  
candidates  
?*

*slogans  
?*



National Federation of Community Broadcasters

# The **NFCB** Underwriting Guide

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## Foreward

Many noncommercial stations rely on donations to help finance their operations. Whenever a donation is provided in exchange for the broadcast of any “matter,” including an underwriting announcement, the station is required to identify the “sponsor.” The public’s right to know who has furnished or paid for a broadcast is the policy underlying the sponsorship identification requirement.

The Communications Act and FCC policies *require* noncommercial licensees to acknowledge underwriters on the air. At the same time, they also *prohibit* those licensees from saying too much about the underwriter that is of a promotional nature. This guide is intended to assist you in identifying the line between saying enough and saying too much.

If the Commission determines that an acknowledgement violates the underwriting rules, it may either warn or fine the licensee. In the past, fines for violations of underwriting rules have ranged from \$2,000–\$10,000, depending on the frequency, number, and severity of a station’s violations.

Keep in mind that while the FCC has articulated some guidelines, it has not directly addressed *all* of the underwriting issues in detail. For example, the FCC provides little counsel as to how long an underwriting acknowledgement may be, how detailed it may be, or how many different products or services it may describe. This uncertainty obliges noncommercial licensees to exercise discretion when deciding whether to air particular acknowledgements. Noncommercial licensees are encouraged to formulate a written policy that establishes basic ground rules for underwriting announcements. An underwriting policy can spare licensees from endless internal debate (as well as external debate with underwriters) over the acceptability of particular announcements.



## Definitions

### Advertisement

Any message or other programming material which is broadcast in exchange for remuneration and is intended to:

- Promote any service, facility, or product offered by any person who is engaged in such offering for profit
- Express the views of any person with respect to any matter of public importance or interest
- Support or oppose any candidate for political office (47 U.S.C. 9399B)

### Remuneration

Money, goods, services, or anything else of value that is paid or promised to a noncommercial licensee in exchange for airing any matter (47 U.S.C. [317], 47 C.F.R. [1212]).

### Sponsor

A person or organization that provides remuneration to a noncommercial licensee for the broadcast of an underwriting announcement or other program material (47 C.F.R. g [1212]).

### Donor

A person or organization that provides money, goods, or services to a non-commercial licensee.

### Enhanced Underwriting Acknowledgements

Prior to 1981, the FCC permitted underwriting acknowledgements to include only the name of the sponsor. Today, additional information is permitted. Thus, acknowledgements are often described as “enhanced.”

### FCC Staff

In this guide, “FCC Staff” refers to the Mass Media Bureau or Enforcement Bureau of the Federal Communications Commission. The Mass Media Bureau issued underwriting rulings until November 1999, when the FCC transferred that responsibility to the Enforcement Bureau.



## Chapter 1

### Sponsorship Identification

**The Communications Act requires noncommercial licensees to identify sponsors, but limits the content and scheduling of those acknowledgements.**

*Section 317* of the Communications Act of 1934, as amended, requires both commercial and noncommercial licensees to identify program sponsors on the air. *Section 399* of the Act modifies *Section 317* by permitting noncommercial licensees to air certain types of “identifications,” but limits both the content and scheduling of those identifications to ensure that they do not constitute advertising.

The FCC has repeatedly stated that it relies heavily on the good faith judgments of noncommercial licensees to determine whether the acknowledgement of an underwriter or sponsor has “crossed the line” from permissible acknowledgement to impermissible advertisement. The FCC has occasionally accepted a station’s documented effort (such as consulting an attorney, NFCB, or other relevant organization) to make a good faith judgment, even if the FCC finds the station in violation. This good faith effort may result in an admonishment rather than a fine.

***Section 317* requires public broadcasters to acknowledge their sponsors.**

- *Section 317* of the Communications Act states that when a sponsor provides a noncommercial licensee with consideration in exchange for transmitting any program matter, the licensee must announce that such programming was paid for or furnished by funds, goods, or services provided by that sponsor.
- Because the purpose of *Section 317* is to ensure that the public knows the source of support for programming, noncommercial licensees are required to acknowledge their sponsors.

***Section 399*** prohibits noncommercial licensees from advertising, but permits licensees to “identify” sponsors, subject to certain restrictions.

***Section 399A*** permits on-air acknowledgements of contributions, but restricts the scheduling of such acknowledgements.

***Section 399A*** provides that public radio and television stations may air acknowledgements that:

- Contain a logogram, which the Act defines as any aural or visual letters or words, or any symbol or sign used for the exclusive purpose of identifying, rather than promoting, the sponsor
- Provide information relating to the type of business and its location
- Do not interrupt regular programming

***Section 399B*** prohibits licensees from advertising any for-profit entity.

***Section 399B*** defines an “advertisement” as any message or other programming material broadcast in exchange for remuneration and intended to:

- Promote any service, facility, or product offered by any person who is engaged in such offering for profit
- Express the views of any person with respect to any matter of public importance or interest
- Support or oppose any candidate for political office (47 U.S.C. [399B])

The Communications Act defines an “advertisement” as a promotional acknowledgement on behalf of a for-profit entity. Thus, FCC rules permit a station to air promotional acknowledgements on behalf of nonprofit entities if the station determines the announcement is in the public interest. (See Chapter 6 for a discussion of underwriting by nonprofits.)

## Chapter 2

### Permissible Language

Noncommercial licensees may include the following information in underwriting acknowledgements, provided that the information merely identifies, but does not promote, the for-profit sponsor or the sponsor's products or services:

- Name
- Address, telephone number, and/or website
- Brand or trade name of the sponsor's product or service
- Value-neutral descriptions of products or services
- Non-promotional slogan
- Historical information, such as the length of time the sponsor's establishment has served the area



## Chapter 3

### Restrictions

#### **Acknowledgements may not interrupt regular programming.**

*Section 399A* provides that underwriting acknowledgements may not interrupt regular programming.

A noncommercial licensee may clearly air an acknowledgement for a program sponsor at the beginning or end of the program, or at both the beginning and end of the program, without undermining the noncommercial nature of public broadcasting.

Acknowledgements made in conjunction with “longer” programs are permitted not only at the beginning and end of a program, but also between identifiable segments of the program or during “station breaks.”

The FCC has not specifically defined what constitutes a “longer” program or a “station break.”

#### **Acknowledgements may not promote a for-profit underwriter, its services, facilities, or products.**

Stations should be particularly careful when DJs or programmers read underwriting announcements live. Adding personal endorsements such as “I shop at this store and the service is great” or “They have really good burgers” are promotional statements. Even if they do not appear in the written text of the underwriting announcement, they are still considered violations of FCC regulations.

In fact, stations should be careful about promoting the services, facilities, or products of its underwriters at any time. The FCC is inclined to see such promotional statements as attempts to cultivate the underwriter’s goodwill and attract additional contributions.

**Acknowledgements may not contain comparative or qualitative language.**

To ensure that on-air acknowledgements merely identify rather than promote a contributor or its facilities, products, or services, acknowledgements may not contain comparative or qualitative language and must be value-neutral. Sponsorship acknowledgements should not include language that tends to distinguish the sponsor from its competitors.

Because “context” is critical to determining the meaning of a word, there is no exhaustive list of promotional terms. Here, however, are examples of words that, in context, have been found to be promotional:

- Efficient
- Economical
- Dependable
- Dedicated
- Prompt
- Fair price
- Reliable
- Excellent
- Leading
- Award-winning
- Board-certified

Here are examples of complete announcements that have been found to be promotional:

- “I find the people at Temecula Chrysler Center to be very accommodating, and the owners, John Harrison and Gary Anderson, to be delightfully honest.”
- “Overland Bank reaches out to the business community . . . to deliver quality financial services to your place of business.”
- “Providing quick connection and clear sound, bringing you closer to Korea, for international long distance service.”

The third acknowledgement, on behalf of AT&T, was aired in the Korean language. FCC staff found it objectionable because it implies that the AT&T long distance connections are quicker and clearer than those of the competition.

Because the FCC gives weight to a broadcaster's good faith judgment, it will sometimes excuse announcements that a broadcaster ably defends.

In January 2003, the FCC refused to impose sanctions on a noncommercial broadcaster for announcements that, on the surface, seemed promotional. The FCC approved the following copy in underwriting announcements:

1. "Daily lunch specials" was permissible where it referred to menu offerings rather than price.
2. "Professional equipment and supplies" was permissible where it referred to the general type of merchandise offered.
3. "Home style food" and "bakes its pies daily" were permissible because they identified a caterer's products in a "general, categorical manner."
4. "An intelligent four-wheel drive system" neutrally identified a tractor dealer's product.
5. "Surgery never has to be unpleasant" was permissible as a statement that "does not appear to distinguish the underwriter's medical skills from those of other oral surgeons."

The complete decision, including other acceptable examples, can be found at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-19A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-19A1.doc).

### **Acknowledgements may not contain price information.**

This prohibition applies to information about interest rates, or the savings or value associated with a product or service. Even oblique references to price are prohibited. Use of the word "free" is prohibited when it refers to cost.

For example, FCC staff found that the following acknowledgements are promotional because they include price information:

- “David A. Lander believes that if his client does not recover damages, he does not collect a fee.”
- “We provide pleasure in convenience and the wisdom of thrift.”
- “This WVXU traffic watch update brought to you by Jiffy Lube, now offering a discount on air-conditioning recharge with a Pennzoil change and 14-point lube check.”

Words and phrases that may imply price information should be closely scrutinized. Such words include “happy hour,” “ladies night,” “best buy,” “clearance,” and “special.”

**Acknowledgements may not contain a call to action.**

A call to action is a command that the listener do something that leads to a purchase.

Two examples of such acknowledgements are:

- “Stop by our showroom to see a model.”
- “Try product X next time you buy oil.”

Although noncommercial licensees may identify an underwriter’s business address as part of an acknowledgement as well as the origination point of a remote broadcast, the licensee may not urge listeners or viewers to visit the location from which it is doing the remote broadcast.

While noncommercial licensees may air an underwriter’s telephone number as part of an acknowledgement, the licensee may not encourage listeners to call that number. For example, a licensee may say “the telephone number is 555-1234,” but not “phone 555-1234” or “call 555-1234.”

In 2004, NPR aired a controversial announcement that contained the phrase “Learn more at [www.sponsorswebsite.com](http://www.sponsorswebsite.com).” Its explanation was that it is not a violation of the underwriting rules to direct people to a company’s website, where additional information is available. FCC staff informally advised NPR that its reasoning seemed valid; however, the FCC issued no formal ruling (and no FCC complaint was filed). This announcement should not be construed as a decision that “calls to action” are now permitted in underwriting acknowledgements. Informal staff opinion such as this carries no weight, other than to show that a good faith effort was made to follow regulations.

**Acknowledgements may not contain inducements to buy, sell, or lease.**

Examples of such acknowledgements are:

- “A bonus available this week.”
- “Special gift for the first 50 visitors.”

FCC staff sanctioned a radio station for airing the following acknowledgement:

- “Big O Tires Express Lane Service guarantees that four tires will be installed in 20 minutes or less.”



## Chapter 4

### Frequency and Duration

The FCC has not addressed how long an underwriting acknowledgement may be. However, the longer the underwriting acknowledgement, the more likely it is to be considered promotional by the FCC.

The “identification-only” rule is violated when an acknowledgement dwells on the usefulness, convenience, or advantages of the product or service mentioned.

For example, FCC staff fined a station for broadcasting an underwriting acknowledgement that contained “non-identifying verbosity,” that is, the unnecessary and/or excessive repetition of otherwise permissible identifying information. In the offending announcement the underwriter’s name was repeated 15 times.

In a separate decision, the FCC found that a station had failed to justify an announcement that was more than 30 seconds in duration.

Many stations and national producers limit their announcements to 10 or 15 seconds.



## Chapter 5

### Penalties

**The FCC may fine noncommercial licensees that violate the rules concerning underwriting acknowledgements.**

The FCC is made aware of possible violations through complaints. Complaints may be filed by anyone who claims to listen to the station including other commercial or noncommercial stations in the market, concerned listeners, disgruntled volunteers or staff, or competitors of station sponsors.

If a complaint indicates that the underwriting rules may have been violated, the FCC sends the station a “letter of inquiry.”

The station must respond within a specified period of time, usually 30 days. Its response must disclose whether the station aired the acknowledgement and explain why the acknowledgement was deemed permissible.

Generally, the FCC will reject the following arguments in defense of a licensee’s conduct:

- It was not the station’s fault the offending acknowledgement aired. Rather, it aired as a result of an employee’s or volunteer’s decision.
- The station was not represented by a lawyer at the time the offending acknowledgement aired.
- The station was not aware of FCC rules or regulations at the time the offending acknowledgement aired.
- The announcement was humorous or ironic, not really an attempt to promote a commercial product or service.

If the Commission determines that an acknowledgement violates the underwriting rules, it may either warn or fine the licensee. Fines usually range from \$2,000–\$10,000, depending on the frequency, number, and severity of a station’s violations.

Sometimes the FCC will reduce a fine if shown the violation was a first offense, or was inadvertent or isolated. The licensee must show that proper procedures were in place and prompt corrective measures were taken. A well-documented showing of financial hardship also may reduce a fine.

Although the FCC generally will not reduce a fine because a station has ceased broadcasting prohibited acknowledgements, it will almost certainly increase a fine if a licensee continues broadcasting such acknowledgements after a complaint has been filed.

Once a fine is imposed, it is due unless the fine is appealed within 30 days.

A finding that the licensee has violated the underwriting rules by airing an advertisement could have tax ramifications as well. “Advertisements” are treated as unrelated business income, on which taxes may be due.

## Chapter 6

### Underwriting by Nonprofit Entities

**Some, but not all, of the FCC’s restrictions on underwriting apply to nonprofit entities.**

In acknowledging donations from a nonprofit entity, a noncommercial station may promote the nonprofit’s products, services, and facilities by including price information, calls to action, and comparative and qualitative language in the announcement.

Underwriting from nonprofits may *not* express a view with respect to a matter of public interest.

**Examples of underwriting announcements expressing views with respect to matters of public interest:**

- The Nuclear Freeze, reminding you that a nuclear-free world is a safer world.
- Children’s Health Organization, supporting quality public education and an end to the voucher system.
- The Women’s Choice Clinic, an ally in the fight for safe and legal abortions.

Underwriting from nonprofits may not endorse or oppose candidates for political office.

Underwriting from nonprofits may not substantially alter or suspend regular programming. This rule permits a station to run short plugs for other nonprofits, but prevents a station from conducting an on-air fundraising event for another nonprofit without obtaining a waiver of the FCC rules.

Stations have the right to require that organizations claiming to be nonprofits provide proof of their nonprofit status.

## **The IRS**

In 2002, the IRS and the Department of the Treasury released final regulations that may affect station policies on underwriting announcements. In essence, the regulations say that the promotion of other entities—whether they are for-profit or nonprofit in nature—is not substantially related to the station’s educational function. The net income derived from such advertising is treated as “unrelated” to an exempt function and is, therefore, potentially subject to unrelated business income tax (UBIT).

The IRS definition of “advertising” closely tracks the FCC’s definition and includes messages containing qualitative or comparative information, price information, calls to action, or inducements to buy or use the product or service of the company. While the FCC excludes the promotion of nonprofits from its definition of an advertisement, the IRS does not.

The text version of the 2002 final regulations may be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=02-9930-filed](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-9930-filed).

## **Station Policies**

In spite of the relaxation of regulations around nonprofit underwriting, many stations treat them the same as for-profit underwriting. They do this for several reasons: First, to avoid explaining to their for-profit underwriters why some announcements include promotional terms and some do not; second, to give the station a more consistent air sound; and, third, to avoid segregating revenues from announcements for nonprofits and determining whether UBIT is owed.

## **Paid PSAs**

A paid public service announcement (PSA) is an announcement from a nonprofit entity, often concerning an event or activity such as a blood drive or other public service. Some stations allow more latitude in the language of a paid PSA than they do in a nonprofit underwriting announcement, and they may be scheduled differently. Only nonprofit entities can buy PSAs—if for-profits bought them, the FCC would consider them advertisements.

## Chapter 7

### A More In-Depth Look at Some Confusing Issues

There are some areas that continually baffle the smartest public radio underwriting experts.

#### **Underwriting by Political Candidates**

Underwriting by political candidates is a potentially complicated area—such underwriting triggers political broadcast rules as well as underwriting rules. There is also a variety of situations in which candidate underwriting, while technically legal, may create the appearance of inappropriate partisanship or conflict of interest.

The FCC's underwriting rules give station licensees discretion to decide from whom they will accept underwriting, and what rates they will charge. The fact that a person is a candidate for public office does not automatically disqualify him or her from being acknowledged in an underwriting announcement.

Underwriting rules do prohibit the broadcast (in exchange for remuneration) of material that supports or opposes a candidate for public office, or expresses a “view” on a topic of public interest. Underwriting by a political candidate must not advance that person's candidacy, oppose his or her opponent, or express a “view.” Allowing a candidate to voice an underwriting announcement would create additional problems. A candidate's appearance on a station may constitute a “use,” which would give opposing candidates “equal opportunities” to “use” the station.

Identifying the underwriter as “a candidate for the City Council” would be permissible. Similarly, an incumbent might be identified by his or her title. Anything else should be viewed with suspicion. For example, if the candidate's slogan is “Friend of the Environment,” that crosses the line into prohibited areas. Political “logos” are not evaluated under the more relaxed standard applicable to established logos of for-profit entities.

## **Underwriting to Support Political Issues**

*Section 399B* of the Communications Act bans “issue ads.” This ban includes programming, broadcast in exchange for remuneration that expresses “the views of any person with respect to any matter of public importance or interest.” The ban on issue ads thus includes, but is broader than, political ads. The ban applies to programming which expresses a view “with respect to any matter of public importance or interest,” and is not limited to political candidates or political campaign groups. It applies to “any person”—even other nonprofit organizations—offering to remunerate a station for expressing a “view.”

This ban applies to individuals (e.g., “day sponsors”) who want to include support for a particular issue or point of view in their announcements.

## **Logos**

The FCC permits the use of established logos and aural slogans if these are not overtly promotional in nature. For example, the slogan “XYZ Oil Corporation of New York, refiners of petroleum products” is permissible; the slogan “XYZ Corporation of New York, refiners of the cheapest petroleum products around” is not.

Logos have acquired a special (and sometimes confusing) life of their own in underwriting law. Because logos are designed to enhance a company name or image, it seems paradoxical to ask if a logo is promotional. Compounding the paradox, FCC staff rulings have found that logos, even those containing comparative or qualitative language, may become so “established” that they become part of the underwriter’s “identity.” For example, in 1989, FCC staff rendered an informal opinion that the DuPont logo, “Makers of Better Things for Better Living,” was not promotional, despite the fact that a seemingly comparative term “better” appeared twice. The staff found that use of the logo was “longstanding” and that the logo did not describe a particular product or service, or compare DuPont’s products or services with those of its competitors.

The confusion deepened when the FCC fined station WTTW-TV for airing promotional announcements that included the logo “Sun America, because it’s not just your retirement, it’s your future,” but then rescinded

the fine after finding that the station could reasonably have concluded that the logo was not promotional. The Commission has, however, subsequently admonished a station for airing announcements that included the logo “We’re Lumber One, we’re number one.”

In short, the law of logos is embarrassingly illogical. Under the Communications Act, logos are permitted if they do not contain comparative or qualitative language, but also if they *do* contain comparative or qualitative language *not* directly applicable to particular goods or services (“better things for better living”). Logos that convey a corporate philosophy or image are permissible under this standard. Established logos are less likely to be deemed promotional than new logos, but the FCC has given no guidance for determining when a logo is “established.”

Because these questions have no definite answers, broadcasters are thrown back on “good faith” judgment. That gives stations interpretive leeway, but often puts them in an awkward position when asked to explain why a logo—to which the underwriter may be passionately loyal—cannot be aired.

### **For-Profits in Nonprofit Underwriting**

Nonprofit underwriters may wish to mention their for-profit sponsors in their announcements. For example, Betty’s Café may sponsor a production of “The Vagina Monologues” by the nonprofit Starving Artists Theater Company. Starving Artists wants its announcement to read, “Betty’s Café presents the Starving Artists production of ‘The Vagina Monologues,’ date, time, location.” Although there are no FCC decisions directly on point, the consensus is that such an announcement is *not acceptable*, for several reasons. Starving Artists—not Betty’s Café—is the sponsor and must be identified as such in any underwriting announcement. Because Betty’s Café is *not* the underwriter, it is improper to provide detailed information concerning its location, services, and years of experience.

One exception to the general rule is that nonprofits may mention for-profits in an underwriting announcement if the corporate sponsor’s name appears in the title of the nonprofit event—for example, the Southwest Airlines San Jose Jazz Festival.

### **Nonprofits in For-Profit Underwriting**

For-profit underwriters may wish to mention their support for nonprofit entities in their announcements—for example, “Betty’s Café on 3rd Avenue, sponsoring the Starving Artists production of ‘The Vagina Monologues’.” Although there are no FCC rulings on the issue, the consensus is that such an announcement is acceptable, because the station could air an announcement on behalf of the nonprofit, with or without receiving consideration for doing so. The accepted practice is not to allow for-profit underwriters to thank their own supporters or customers, since such “bonding” with customers is a way of inducing patronage. Most stations, however, would permit announcements such as “Betty’s Café, in honor of The National Center for Lesbian Rights.”

### **Underwriting in Languages Other Than English**

Stations broadcasting programming in languages other than English may also broadcast sponsorship identification announcements in languages other than English. Broadcasters are responsible for knowing the content of the underwriting announcement and making sure it follows FCC regulations. The FCC will not accept “we didn’t understand what they were saying” as justification for a violation, nor will it accept the argument that promotional language in English is value-neutral in another language.

### **Underwriters and Community Calendars**

A 2001 FCC ruling may force stations to discriminate against underwriters in their community calendars and in their on-air commentary. For example, a DJ might rave about a singer—who is also an underwriter—appearing at a local club. Even if the club’s announcements do not run during the DJ’s show, the FCC may consider the DJ’s rave a violation of underwriting rules. On the other hand, there is no problem if the DJ raves about someone appearing at a club who is not an underwriter. The same holds true for announcements of upcoming events—stations may only use value-neutral language about anyone who underwrites the station, but may use promotional language about non-underwriters.

## Chapter 8

### Questions and Answers

**Q: *If a noncommercial licensee receives something of value from a person or organization, does the licensee have to acknowledge that sponsor on the air?***

A: It depends on the conditions attached to the contribution. If the contributor earmarks the money, goods, or services it provides to the licensee for use in conjunction with any material broadcast, an acknowledgement must be made. If the contribution is not earmarked for use in conjunction with any material broadcast, an acknowledgement is at the station's discretion. For example, if a restaurant provides pizzas for phone volunteers during a pledge drive and does not ask for or expect an on-air acknowledgement, it is not necessary to give one. Similarly, if a record label provides promotional copies of its CDs for use on a station's air, no acknowledgement is necessary. But if a label provides a produced program, the station must acknowledge the label as the program's sponsor.

**Q: *During our last marathon, a pizza parlor delivered free pizzas to our station. Everybody was so excited about the gesture that we talked at length about the pizza and how good it was. Did we break the underwriting rule?***

A: This scenario raises several issues. Does pizza constitute "consideration?" Yes. In-kind contributions qualify. The tougher issue is whether the pizza was given "in exchange for" a mention.

In a similar case, the Commission found that the connection between the remuneration and the announcement could be inferred because the pizza store was a regular underwriter on the station.

The FCC prohibits donor announcements that interrupt "regular programming." During fundraising periods, the FCC leaves the issues of timing and frequency of acknowledgments to the discretion of the licensee, however. So the length of the discussion is probably not an issue in these circumstances.

**Q: Does a noncommercial licensee have to accept consideration from any underwriter?**

A: Absolutely not. Licensees are free to pick and choose among those offering to underwrite programming. However, it is a good idea for the licensee to include its principles for selecting underwriters in a written underwriting policy. This is particularly important for stations licensed to state or municipal institutions—they may be susceptible to charges of censorship if a case can be made that the underwriter is being rejected on ideological grounds.

**Q: Do local public stations have to carry the underwriting acknowledgements for national programming?**

A: The station has an obligation not to air any announcement that violates the FCC's underwriting rules. Since it probably also has a contractual obligation to air underwriting announcements contained in syndicated programs, the station had best try resolving this issue with the program distributor.

**Q: Are there regulations governing the payment sponsors must provide to the noncommercial licensees whose programming they are underwriting?**

A: No. Licensees establish their own underwriting fees.

**Q: Does an employee of a station have to read the underwriting acknowledgement or can the sponsor choose who reads it?**

A: FCC rules do not specify who can read an acknowledgement. This is left to the discretion of the licensee. Before allowing an underwriter to participate in the production of his or her underwriting message, a station should consider the possibility that such participation may make the acknowledgement sound more promotional.

**Q: *Is it okay to include operating hours as part of a credit?***

A: Yes. FCC rules do not specifically allow hours of operation as part of the “identification” of an underwriter, but unless this information is presented in a promotional fashion (e.g., “Open Sunday for your convenience”), a station could make a good faith judgment that such information is “value-neutral.”

**Q: *Can we run an underwriter announcement that states “Underwritten by Curly’s Record Shop, which carries current popular records, including Prince”? Can we play a cut from the latest Prince album behind the announcement?***

A: Assuming Curly’s is a for-profit entity, the message is probably permissible as stated. The word “popular” is ambiguous, however. Does it mean “best-selling” or does it merely describe a type of music? A judgment call is required. The rules allow for product listings, which could include the name of an artist such as Prince.

Most public radio stations do not use background music because it makes the announcement sound “commercial” even if the announcement complies with FCC requirements. The FCC has never ruled that background music is inherently promotional, but it has treated music as relevant to the question of whether an announcement, considered as a whole, is promotional. Stations that allow music with lyrics behind an underwriting announcement should listen carefully to the lyrics to be sure there are no subtle (or not so subtle) inducements to buy, qualitative language about the artist or record store, or indecent language.

**Q: *Can a for-profit business say in its underwriting announcements that it offers gift certificates?***

A: The FCC has not ruled on this question, so we can only guess. One school of thought is that the products and services offered by an underwriter can include things such as bookstore gift certificates; therefore, it is legitimate to mention them. The more prudent school of thought is that a gift certificate is an inducement to buy and therefore should not be mentioned.

**Q: Can a for-profit business mention that it donates a percentage of its sales every day, or on a particular day, to the station or another nonprofit entity?**

A: No. That would be considered an inducement to buy.

**Q: Can a nightclub—the only local nightclub that does not allow smoking—put that information in its underwriting credit?**

A: No. The “no smoking” policy speaks to the ambience of the club. It does not designate a product or service, and is apparently designed to induce attendance and distinguish the club from its competitors.

**Q: Can noncommercial stations accept underwriting from tobacco and liquor companies?**

A: Yes. Station policy may say otherwise, but there are no legal restrictions on accepting underwriting from tobacco or liquor companies.

**Q: Are the rules different if the underwriter is a nonprofit organization?**

A: Yes. If the underwriter is a nonprofit organization, the nonprofit’s acknowledgement may contain promotional language. Paid promotional announcements on behalf of nonprofits may subject the station to income tax on the revenue, however. (See Chapter 6.)

**Q: When can stations air acknowledgements for their underwriters and how often must they broadcast these acknowledgements?**

A: On-air acknowledgements may be made at the beginning and/or end of programs and at “natural breaks” in the programs. They may not interrupt regular programming. Acknowledgements made in conjunction with longer programs are permitted not only at the beginning and the end of the program, but also between identifiable segments of the program or during station breaks. (See Chapter 3.)

**Q: What information is the station required to maintain regarding contributions?**

A: The station is required to maintain a Donor List in the Public File. This list must identify contributors who support or provide consideration for a particular program or programming. It is not necessary to list underwriters who do not earmark their support for specific programs.

Underwriters often want assurance that they have received appropriate on-air credit. Many stations have contracts with underwriters and donors that set out specific commitments regarding the number, timing, and content of such on-air announcements. Detailed programming records can provide documentation that underwriting announcements were made at the specified times, with the specified frequency, for a specified duration, and in conjunction with the appropriate programming. Such records should *not* be placed in the Public File.

**Q: What precautions should a station take to prevent FCC fines?**

A: There are a number of preventive measures a noncommercial licensee should take to lessen the likelihood it will be fined by the FCC for airing advertising.

First, the licensee should develop and implement a written underwriting policy that summarizes FCC restrictions the station wishes to propose.

Second, if a licensee is faced with a questionable acknowledgement, it should call either its lawyer or its appropriate membership service organization (such as NFCB) for advice about whether the acknowledgement should be aired.

Third, any steps licensee personnel take in deciding to air a questionable acknowledgement should be documented. Any documentation that demonstrates the licensee exercised its good faith judgment that the acknowledgement was permissible may help.



## Chapter 9

### Developing a Station Policy on Underwriting

It is highly advisable that every station develop written policies on underwriting and let prospective and current underwriters know what those policies are. They can be part of your underwriting kit and can also have a place on your website.

Typically, station underwriting policies include information on:

- The station's reservation of the right to write, edit, and voice the announcement
- The maximum length of underwriting announcements
- Rules for nonprofit underwriters, whether you apply the same restrictions on them as you do your for-profit underwriters or not
- Criteria concerning businesses from which the station will not accept underwriting

Stations should also develop a policy on the acceptable sound of underwriting announcements so that the announcements blend in with the tone of the station. If the general tone of the station is somewhat formal, folksy underwriting announcements might sound out of place. If the general tone of the station is hip and bold, the underwriting announcements can carry the same tone, as long as they do not violate FCC policies.

#### **Some Examples of Station Policies on Accepting and Rejecting Underwriting**

Acceptance of underwriters and announcements with potential conflicts of interest and problems of listener misconceptions will be taken into consideration on a case-by-case basis.

- Station A reserves the right to refuse to accept underwriting from companies, businesses, organizations, or any other entities deemed to be inconsistent with Station A's image, not of general interest to Station A's listeners, or that could be detrimental to the welfare and image of the station.

- It is Station B's policy to accept underwriting support from businesses located in [restricted geographic location]. Station B will not accept financial support from businesses engaged in labor disputes. Station B will not accept financial support from businesses with financial interests in countries with oppressive regimes. Station B will not accept financial support from businesses that engage in discrimination on the basis of race, creed, religion, gender, skin color, sexual orientation, national origin or ancestry, disability, marital status, arrest or conviction record, political affiliation, or membership in the armed forces of the United States.

## Addendum

**For more information regarding the sponsorship identification rules discussed in this guide, you may want to consult the following sources:**

- Identification on Broadcast Station, Public Notice, 40 FCC 2 (1950)
- Applicability of Sponsorship Identification Rules, 40 FCC 141 (1963)
- Amendment of Those Provisions of Part 73 of the Commission's Rules Which Describe and Delimit the Nature of Noncommercial, Educational FM and Television Broadcast Service, and Related Matters, Memorandum Opinion and Order, 26 FCC 2d 339 (1970)
- Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200 (1978)
- Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Second Report and Order, 86 FCC 2d 141 (1981)
- Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, 90 FCC 2d 895 (1982)
- Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order, 97 FCC 2d 256 (1984)
- Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Public Notice, 7FCC Rcd 827 (1986)
- Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991)
- *Standards for National Underwriting Credits*, available at [www.deiworksite.org](http://www.deiworksite.org). Developed by NPR, PRI, American Public Media (MPR), in consultation with the station regional organizations and the Major Market Partnership, and facilitated by DEI
- *The Public Radio Legal Handbook*, available in print and online versions ([www.nfcb.org](http://www.nfcb.org)), revised and updated by John Crigler, 2002, originally written by Tom Thomas and Terry Clifford



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