

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

In the Matter of	)	
	)	
<b>MINISTERIO RADIAL CRISTO VIENE</b>	)	EB-06-IH-5641
<b>PRONTO, INC.</b>	)	Facility ID No. 42685
	)	NAL/Account No. 200932080024
Licensee of Noncommercial Educational Station	)	FRN 0009422858
WCRP(FM), Guayama, Puerto Rico	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 16, 2009**

**Released: January 16, 2009**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Ministerio Radial Cristo Viene Pronto, Inc., (“Ministerio”), licensee of noncommercial educational Station WCRP(FM), Guayama, Puerto Rico, has apparently violated Section 399B of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and Section 73.503 of the Commission's rules,<sup>2</sup> by willfully and repeatedly broadcasting prohibited advertisements. Based upon our review of the facts and circumstances of this case, we conclude that Ministerio is apparently liable for a monetary forfeiture in the amount of \$2,500.

**II. BACKGROUND**

2. This case arises from a complaint made to the Commission alleging that noncommercial educational Station WCRP(FM) broadcast prohibited underwriting announcements on or about October 25, 2006.<sup>3</sup> Thereafter, the Bureau inquired of the licensee concerning the allegations contained in the complaint.<sup>4</sup> Ministerio responded substantively to the *LOI* on June 5, 2007.<sup>5</sup>

<sup>1</sup> See 47 U.S.C. § 399b.

<sup>2</sup> See 47 C.F.R. § 73.503 (the “Underwriting Rules”).

<sup>3</sup> See E-mail from Diane Law Hsu, Regional Counsel, Tampa Field Office, Enforcement Bureau, to Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated November 16, 2006 (“*Complaint*”).

<sup>4</sup> See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Ministerio, dated April 20, 2007 (“*LOI*”).

<sup>5</sup> See Letter from Frank R. Jazzo, Esq., and Anne Goodwin Crump, Esq., to Marlene H. Dortch, Secretary, FCC, dated June 5, 2007 (“*Response*”).

### III. DISCUSSION

3. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>6</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>7</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>10</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>11</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>12</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>13</sup> As described in greater detail below, we conclude under this procedure that Ministerio is apparently liable for a forfeiture in the amount of \$2,500 for its apparent willful and repeated violations of the Commission’s Underwriting Rules.

#### A. Ministerio Has Willfully and Repeatedly Broadcast Advertisements in Violation of Section 399B of the Act and Section 73.503 of the Commission’s Rules

4. 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.<sup>14</sup> The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>15</sup> Although contributors of funds to such 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 businesses.<sup>16</sup> Specifically, such announcements may not contain comparative or qualitative

<sup>6</sup> See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>11</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

<sup>12</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>13</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

<sup>14</sup> See 47 U.S.C. § 399b(a).

<sup>15</sup> See 47 U.S.C. § 399b(b)(2).

<sup>16</sup> See Public Notice, *In the Matter of the Commission Policy Concerning the Noncommercial Nature of*

descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.<sup>17</sup> 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 that licensees exercise reasonable, “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.<sup>18</sup>

5. At issue here are two underwriting announcements made by Ministerio on behalf of William’s Furniture and Rainbow that Ministerio admits were broadcast by its station during the period October 1, 2006, until December 2, 2006.<sup>19</sup> Ministerio acknowledges that it received monetary consideration in exchange for airing these announcements.<sup>20</sup> Ministerio also represents that the underwriters are both for-profit entities, and that the messages were repeated a total of 12 times during the stated period.<sup>21</sup>

6. After careful review of the record in this case, we find that the announcements in question apparently exceed the bounds of what is permissible under Section 399B of the Act, and the Commission’s pertinent rules and policies, notwithstanding the “good faith” discretion afforded licensees under *Xavier*. In this regard, an announcement made on behalf of William’s Furniture, which describes it as offering “quality craftsmanship,” seeks impermissibly to distinguish that underwriter’s business favorably from that of its competitors.<sup>22</sup> The Commission has broadly held that, in underwriting announcements, the station’s use of comparative and qualitative language to describe the underwriter or its products or services is generally forbidden.<sup>23</sup> In addition, in this case, the underwriter improperly attempts to induce patronage through its offer of “free estimates,” “10% discounts,” and by urging listeners to “call now.”<sup>24</sup> Similarly, an announcement made on behalf of Rainbow improperly promotes the underwriter by claiming that its cleaning product offers “the best cleaning system,” and presents a “unique environment.”<sup>25</sup> Further, Rainbow improperly seeks to induce patronage in offering that “for a limited time only, [listeners may] obtain a special gift with a free in-home presentation and another when [they] purchase”; by offering financing “without interest”; and by imploring listeners to “call right now.”<sup>26</sup> The underwriter makes further prohibited references to price in implying that its services are low cost, by stating “because you deserve to be healthy and your

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*Educational Broadcasting Stations* (1986), republished, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

<sup>17</sup> *See id.*

<sup>18</sup> *See Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990) (“*Xavier*”).

<sup>19</sup> *See Response* at 1.

<sup>20</sup> *See id.* at 2.

<sup>21</sup> *See id.* at 1-2.

<sup>22</sup> *See id.* at Exhibit 1; *see also Public Notice*, *supra* note 16.

<sup>23</sup> *See Public Notice*, *supra* note 16; *Minority Television Project, Inc. (KMTP-TV)*, Forfeiture Order, 18 FCC Rcd 26611 (Enf. Bur. 2003), *aff’d*, Order on Review, 19 FCC Rcd 25116 (2004), *recons. den.*, 20 FCC Rcd 16923 (2005) (forfeiture paid).

<sup>24</sup> *See Response* at Exhibit 1; *see also Public Notice*, *supra* note 16.

<sup>25</sup> *See Response* at Exhibit 1.

<sup>26</sup> *See id.*

pocket deserves also.”<sup>27</sup> Thus, the instant announcements appear to contain numerous prohibited promotional references.

7. Ministerio claims that it closely monitors its underwriting content, and that “any violation found to have been contained in the [foregoing] announcements . . . was inadvertent and represents an aberration from [its] general practices”, and that these occurrences were only “isolated instances.”<sup>28</sup> We do not agree that Ministerio’s multiple repetitions of such announcements during a two-month period can be characterized as truly isolated. Nor do we find convincing Ministerio’s assertion of care in reviewing the content of its underwriting messages, given the plainly promotional nature of the material at issue here. In short, none of Ministerio’s assertions provide a basis for mitigation.

## B. Proposed Action

8. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>29</sup> The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$2,000 for violation of the enhanced underwriting rules.<sup>30</sup> The *Forfeiture Policy Statement* also provides that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>31</sup>

9. In this case, it appears that, during a two-month period from October 1, 2006, until December 2, 2006, Ministerio willfully and repeatedly broadcast two separate advertisements on a total of twelve occasions in violation of Section 399B of the Act and Section 73.503 (d) of the Commission’s rules. Based on all the circumstances, the relatively limited period of time over which the prohibited announcements were aired, the small number of announcements and repetitions at issue, and after examining forfeiture actions in other recent underwriting cases, we believe that a forfeiture of \$2,500 is appropriate.<sup>32</sup> Accordingly, applying the *Forfeiture Policy Statement* and the statutory factors to this case, we conclude that Ministerio is apparently liable for a forfeiture in the amount of \$2,500 for willfully and repeatedly violating the Commission’s Underwriting Rules.

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<sup>27</sup> See *id.*

<sup>28</sup> See *Response* at 3.

<sup>29</sup> See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>30</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Policy Statement, 12 FCC Rcd 17087, 17113 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b).

<sup>31</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.

<sup>32</sup> *Cf. Family Life Educational Foundation (KOUZ(FM))*, Notice of Apparent Liability, 17 FCC Rcd 16317 (Enf. Bur. 2002) (forfeiture paid) (\$2,000 forfeiture imposed for repeat violation involving 120 repetitions of single message over a three-month period).

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules, Ministerio Radial Cristo Viene Pronto, Inc., licensee of noncommercial educational Station WCRP(FM), Guayama, Puerto Rico, is **HEREBY NOTIFIED OF ITS APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$2,500 for willfully and repeatedly broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399b, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503, from October 1, 2006 until December 2, 2006.

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within 30 days of the release of this Notice, Ministerio **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Ministerio will also send electronic notification on the date said payment is made to Hilary.DeNigro@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anita.Patankar-Stoll@fcc.gov.

13. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W, Room 4-C330, Washington D.C. 20554 and **SHALL INCLUDE** the NAL/Acct. No. referenced above. To the extent practicable, the response, if any, shall also be sent via e-mail to Hilary.DeNigro@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anita.Patankar-Stoll@fcc.gov.

14. 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.

15. **IT IS FURTHER ORDERED** that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Ministerio Radial Cristo Viene Pronto, Inc., P.O. Box 344, Guayama, Puerto Rico, 00785-0344, and to its counsel, Frank R. Jazzo, Esq., and Anne Goodwin Crump, Esq., Fletcher Heald & Hildreth, P.L.C., 11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

**ATTACHMENT**

The following text was transcribed from underwriting announcements broadcast over noncommercial educational Station WCRP(FM), Guayama, Puerto Rico.

*William's Furniture*

We do all types of wood work (carpentry) with teak, white oak, red oak. We work with European styles, natural and Italian. We do work for offices, bathrooms, and kitchens. Bring us your idea and we will make it happen. Free estimates upon completing your order for immediate service. Quality craftsmanship. If you mention you heard this on Revelacion Radio 88.1, you'll receive a 10% discount. Call now at 939-630-3552. Willam's Furniture.

*Rainbow*

Because you deserve to be healthy and your pocket deserves to be also, the new Rainbow has arrived. The best cleaning system, it has 42 functions. Enjoy the unique environment that Rainbow offers. Now you can finance it for 12, 14 or up to 18 months without interest. What, you can't believe it? Call right now. You can obtain one easier than ever at (787) 914-0335 or at (787) 586-6220. For a limited time only obtain a special gift with a free in-home presentation and another when you purchase.