

Remarks by Commissioner James H. Quello  
Before the  
Schwartz, Woods & Miller Underwriting Seminar  
Brookings Institution  
October 29, 1990

I am especially pleased to make this brief appearance before your Underwriting Seminar -- because the concept of underwriting for public broadcasting was developed by the TCAF committee, acronym for Temporary Commission on Alternative Financing for Public Telecommunications which I chaired from 1981 through 1984. The Commission created by Congress consisted of the heads of all public broadcasting entities -- the presidents of CPB, PBS, NAPTS, public radio, two at-large members and Senators Hollings and Packwood and Congressmen Al Swift and Tom Tauke. Incidentally, Congressmen Swift and Tauke personally attended every monthly meeting. Senators Packwood and Hollings were represented by their senior communications staff members.

The backdrop for the Temporary Commission was Section 1231 of the Omnibus Budget Reconciliation Act of 1981 and the amendments of the Communications Act of 1934. Because of the decreasing federal funding for public broadcasting at that time, the congressional amendments provided authorization to generate increased private sector financial support. The Commission explored a variety of alternative financing proposals for public

broadcasting including a limited 18-month experiment with regular advertising on a representative 10 public television stations. Public radio did not participate in the advertising experiment. Enhanced underwriting, which at that time represented a thoroughly debated contentious proposal, was eventually adopted by the Commission and constituted a major recommendation that TCAF presented to Congress and the FCC.

The unifying factor for the TCAF Commission was that all individual members were sincerely interested in the long-term economic viability of public broadcasting while preserving its character as a distinctive, distinguished program service that is not influenced by advertising pressure or dictated by cost-per-thousand ratings points.

As you know, advertising and underwriting was controversial then and remains a contentious issue today. Some in the public broadcasting community oppose all underwriting announcements, while others would like even greater leeway in soliciting support. The TCAF Commission viewed enhanced underwriting as a reasonable compromise between the two extremes. Still, it is not always easy to apply the policy.

An FCC Memorandum Opinion and Order of last spring approving the reconsideration of a letter of admonition to WVXU(FM)

Cincinnati licensed to Xavier University, illustrates the typical confusion and problems of compliance with underwriting rules.

The FCC issued a letter of admonition as a result of a formal complaint alleging that WVXU(FM) had been airing advertisements or promotion material inappropriate for broadcast on a noncommercial station. The complainant submitted audio tapes containing six specific announcements that WVXU(FM) had broadcast them during its "Morning Edition" program between 7 AM and 9 AM (prime time radio) on various days in August 1989.

The letter of admonition (LOA) determined that the following material from six of WVXU(FM)'s announcements was inconsistent with the requirements of Section 73.503(d) of the Commission's Rules and Section 399B of the Communications Act.

-- "This WVXU traffic watch update is brought to you by Jiffy Lube now offering a discount on air conditioner recharge with a Penzoil oil change and 14-point lube check."

-- "Morning Edition is brought to you in part by Ametury (sic) and Associates offering creative services for advertising, marketing and training."

-- "The Choice is Yours" is pleased to sponsor programming on WVXU. A health food store and restaurant, The Choice is Yours

is located at 821 Delta, on Mount Lookout Square . . . . Fresh and original foods are the specialty."

-- "Programming on WVXU is made possible in part by the new Meritan Gallery . . . featuring art expressing timeless traditional truths in contemporary visual vocabulary."

-- "Morning Edition is made possible in part by a grant from Arthur Anderson and Company and Anderson Consulting, serving accounting and audit, tax and management information consulting needs for over 75 years."

-- "Morning Edition in made possible in part by Strauss and Troy, a Cincinnati based law firm in its 36th year."

The LOA found that the word "discount" was comparative and provided price information, that the words "creative," "fresh and original," and those describing the Meritan Gallery's art, were qualitative and promotional in the context of the foregoing announcements, and that specifying a company's number of years in business was qualitative and impliedly comparative.

I disagreed. The only violation I discerned was the Jiffy Lube and WVXU took immediate corrective action before the FCC issued the LOA.

The rest of the MO&O I have included in my written text. Suffice it to say that underwriting relies more on good faith judgements rather than semantic distinctions.

The following paragraphs are direct quotes from the FCC's MO&O which rescinded the letter of admonition.

"Xavier argues that any sanctions are unwarranted in the above cases. It explains that, shortly after the subject Jiffy Lube announcement was aired (in August), it determined that the language in the announcement (created by "the Traffic Watch") exceeded station underwriting policies and it discontinued such broadcast. Moreover, Xavier instituted a policy requiring that Traffic Watch provide advance FAX notification of any tag lines for review by station personnel, and in September 1989 a four-member underwriting screening committee began to review the FAX submissions on a daily basis. Because of the isolated nature of the infraction as well as the prompt and effective corrective action, all of which occurred well before the initiation of any Commission action, the licensee asks that the admonition be rescinded with respect to this violation."

"Further, Xavier explains its reasoning in concluding that the phrasing in the other five announcements was within the bounds of our rules and policies governing underwriting credits on noncommercial broadcast stations. For example, regarding the

description of Amateuli & Associates' product or service listing, Xavier states that Amateuli offers "creative services for advertising, marketing, and training" in the sense of "creating original material for their clients," "creative material" being the stock in trade of all ad agencies. Mention of the health food store/restaurant's "fresh and original foods," the licensee argues, is a statement identifying a product offered by the underwriter, comparable to "French food, or homemade food, or fast food," and describes the underwriter's practice of bringing in foods "right from the farm" and creating "its own totally original menu entrees." Reference to the longevity of business underwriters, the licensee maintains, describes what the firms have to offer in the way of experience and is not necessarily qualitative, a belief further bolstered by informal opinions it claims to have received from Commission personnel. Xavier urges that its reasonable, good faith judgements in these situations, rather than fine semantic distinctions, should be given more weight and that the admonition should be rescinded."

"As the Commission stated in Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 90 FCC 2d 895 (1982), "We recognize that it may be difficult to distinguish at times between announcements that promote and those that identify. We only expect our public broadcast licensees to exercise their reasonable, good faith judgements in this regard. We are persuaded that the language at issue in the latter five

announcements listed at paragraph 3, above, is not clearly promotional as opposed to identifying and that the licensee exercised reasonable, good faith judgement regarding the language in the five disputed announcements describing its underwriters' product lines and services. Accordingly, we find that the broadcast of these announcements is not a violation of Section 73.503(d) of the Commission's Rules or Section 399B of the Communications Act, and that no sanction should have been issued."

"With respect to the other announcement, which mentioned a discount being offered by Jiffy Lube, the underwriter, we find that under the totality of circumstances WVXU should not be admonished. In this case, the licensee immediately took action to correct this isolated lapse well before the Commission issued the LOA. Such action included deleting the questionable announcement and instituting review procedures to prevent airing similar announcements in the future. Moreover, although the announcement appears to cross the line established by our rules, it certainly is not as egregious as the promotional announcements that triggered previous enforcement actions. See, e.g., Public Notice, "In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations," FCC 86-161 at 5 n.3, April 11, 1986."

"In light of the foregoing, we believe it appropriate to rescind the November 14, 1989 letter of admonition. Accordingly, the subject petition for reconsideration filed by Xavier University on December 11, 1989, IS HEREBY GRANTED."

I believe justice and reason were well served by the Commission action. In fact, I requested that any future enhanced underwriting complaint be referred to my office before any FCC sanctions.

As "the public broadcasting Commissioner," I'll be interested in any practical recommendations this forum may develop. You have my best wishes for an educational, productive forum.



**ATTACHED SENT TO THE FOLLOWING:**

Bruce Christensen

Douglas Bennett

Donald Ledwig

Sharon P. Rockefeller

Terry Rakolta

Lloyd Kaiser

Dr. Bob Larson

Henry Cauthen

Dan Brenner

David Brugger

James C. King  
GM, WVVU(FM)