

# **KAZU UNDERWRITING GUIDELINES**

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**by**

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# Section 1 - Principles

Public broadcasting is defined by the Public Broadcasting Act of 1967 and subsequent amendments. Public radio differs from commercial radio in several ways:

- public radio is nonprofit;
- public radio produces primarily informational, cultural and educational programs, and
- public radio may accept gifts, grants, donations, and contributions for the production, acquisition and broadcast of those programs.

Public radio in general, and KAZU in particular, is noncommercial and preserves its noncommercial character in both fact and perception. The overall content and on-air sound of each sponsorship acknowledgement should be in keeping with the noncommercial nature of public radio.

Public radio is a major, independent, and crucial element in the free press system and culture of America. As such, it must protect both its journalistic and artistic integrity from intrusion, either in fact or appearance.

In research, public radio listeners have cited the lack of advertisements as one of the most important aspects of the medium. Sponsorship acknowledgements should not detract from the quality or sound of the programming with which they are associated; the most effective announcements present sponsorship credits that are brief, tasteful, easily understood, and most likely to be appreciated by listeners.

KAZU's ability to raise funds from businesses is dependent on the public service we provide to listeners, as well as the credibility and consistency of our underwriting programs.

To that end, we will strive to adhere to the following principles, which maintain the non-commercial nature of our programming while upholding the letter and spirit of the underwriting guidelines as set forth by the Federal Communications Commission to ensure the reputation of both our service and our underwriting programs.

## *Principle #1:*

The overall content of on-air funding acknowledgements must respect and ensure the non-commercial nature of public broadcasting. Corporate and non-profit acknowledgements are not commercials and, as such, must refrain from characteristics of advertising.

## *Principle #2:*

All underwriting content will be in keeping with public radio programming principles and with the core values of public radio. Our underwriting messages will be presented in such a way as to maintain the uncluttered air sound our listeners expect.

*Principle #3*

Corporations that make financial commitments to support programs on KAZU must be treated fairly, honestly and openly. We must carefully and clearly make them aware of FCC rules and other guidelines. In addition, we must be sure they fully understand the context in which the listener hears the acknowledgment of their support.

## **Section 2: Standards for KAZU Underwriting Credits**

The standards governing appropriate underwriting practices for KAZU are set forth in the rules and regulations of the F.C.C. In general, a sponsorship credit conforming to those rules will be deemed appropriate to public radio underwriting. However, in addition, the rules below set forth certain additional prudential limitations not required by law that will apply to KAZU underwriting credits.

### **A. Advocacy Groups**

This rule covers organizations that, as their primary business, seek to influence matters of public concern, either through public outreach on a matter or through affecting the legislative process. Sponsorship by such groups is permitted under appropriate circumstances and under appropriate conditions. Sponsorship by such groups will be taken on a case-by-case basis, applying a reasonable listener standard. While there is no prohibition in these rules against sponsorship by advocacy groups, in no circumstances will the language of an underwriting announcement express an opinion on matters of public concern or otherwise advocate positions on controversial matters. In applying the reasonable listener standard, consideration will be given to the nature of the organization and whether the organization has an interest in matters currently prominent in the news. To the best of KAZU's operational ability, underwriting from these groups will not air adjacent to program content concerning their organization or an issue in which they have direct involvement.

KAZU shall take reasonable measures to ensure that credit language is appropriate and non-controversial, as defined by the reasonable listener standard. As such, copy might include, but is not necessarily limited to, the name, contact information and established mission or positioning statement of the organization or an established identifying slogan. Station and licensee management shall take careful note of the number and nature of listener complaints regarding language received by KAZU, and shall reassess practices accordingly.

- By implication, this approach bars all sponsorship by political candidates, groups formed to influence election outcomes, or political parties. This presumption against political sponsorship flows from two different aspects of the rule: (1) the likelihood that such sponsorship would be timed to coincide with an election campaign and (2) the likelihood that a reasonable listener would believe that sponsorship by a candidate, political party or similar group would be intended to influence electoral or public policy outcomes.

### **B. Alcoholic Beverages**

Sponsorship by makers and distributors of alcoholic beverages, including wine, beer and distilled spirits, are permitted. Credit language must be restrained in tone, and should not involve product descriptions, other than that necessary to identify the sponsor's line of business. In addition, without expressing a specific limitation on the number of such credits, sponsorship of KAZU by this sector of the local economy should remain a small minority of

credits and limitations on credit numbers may be imposed if frequency of credits during any program or season becomes notably high.

KAZU is cognizant of the fact that it is licensed to an institution that must always be sensitive to the implications of alcohol use and abuse by young people.

### **C. Instrumentalities of Government**

Sponsorship by governments or instrumentalities of government is permitted under certain circumstances. Underwriting from politically or policy-oriented instrumentalities of government, including foreign countries, will not be accepted. At the same time, we encourage sponsorships by government agencies or government funded organizations that are engaged in commerce, tourism or public education.

### **D. Religiously Affiliated Organizations**

Sponsorship by churches or other religiously affiliated groups are acceptable. However, given that most listeners will be of different religions, care should be given to ensure that sponsorships messages are appropriate to the context of public radio, consistent with our publicly-supported mission and funding profile, and not unacceptable to those listeners who may not share the underwriters' religious perspective. A reasonable listener test will be applied under these circumstances. The previous rule concerning advocacy groups would also apply to these organizations.

In addition, this rule prohibits proselytizing language or other language intended to draw distinctions between different religions. It also bars any call to action or worship.

### **E. Competitive Media**

Sponsorship by commercial and non-commercial media organizations is generally permitted. However, decisions to accept such an announcements are subject to review by the General Manager and will be guided both by competitive considerations and the need to respect the overall sensibilities of our listeners.

### **F. Lotteries and Casinos**

Underwriting by lotteries or casinos that identifies or describes their gambling activity is not permitted. Language that identifies a casino as a concert venue or an active partner in community service efforts would be acceptable.

### **G. Tobacco Products**

Sponsorships from diversified companies engaged in the manufacture of tobacco products (e.g. Altria, formerly Philip Morris) are acceptable, but specific references to tobacco products are prohibited, consistent with long-standing federal statutes.

## **H. Controversial Companies**

In order to ensure that there is no perceived conflict between underwriting and editorial content, this rule sets restrictive parameters around organizations that are currently experiencing significant and controversial news coverage, as understood by the reasonable listener. Sponsorship by such companies is permitted under appropriate circumstances and under appropriate conditions. Sponsorship will be evaluated on a case-by-case basis applying the reasonable listener test; determination of significant national coverage shall be made by assessment of the number and nature of news stories on the subject within the 30 days immediately preceding the beginning of the flight of announcements. Under no circumstances will the language of an underwriting announcement express an opinion on matters of public concern or otherwise comment on matters of controversy. In the case of companies with established underwriting relationships that become subjects of controversy, KAZU management shall review all copy with reference to the reasonable listener standard. KAZU will exert every reasonable effort to insure that underwriting from these companies will not air adjacent to program content concerning their organization.

## Section 3: Copy Guidelines

### Copy Length

Underwriting credits should be no less than 12.0 seconds and no more than 14.8 seconds in length.

### Calls to Action

The following opinion, based on law, was prepared by Mari Dennehy, attorney, General Counsel's Office, National Public Radio and concurred with by a group of consulting lawyers representing the FCC and the Development Exchange Inc..

The FCC has stated that certain underwriting credit language clearly violates its underwriting rules, including announcements containing price information, an inducement to buy, sell, rent or lease, or a call to action.<sup>1</sup> In 1986, the FCC issued a Public Notice<sup>2</sup> which identified certain announcements as examples of each of these categories that would clearly violate the FCC's underwriting rules. For example, the FCC cited "Stop by our showroom to see a model," and "Try product X next time you buy oil" as prohibited calls to action.<sup>3</sup>

In the enforcement actions taken against stations since then, the FCC has consistently recited the foregoing list, along with qualitative or comparative language, as credit language which its underwriting rules prohibit. While qualitative or comparative language may be more commonly attacked in FCC enforcement proceedings, a number of proceedings have also addressed the prohibition against calls to action.

- *Notice of Apparent Liability for Forfeiture*, Baptist Bible College, Licensee of Noncommercial Radio Station KWFC (FM)(Apr. 13, 1988). "Hey, call him up and invite him to lunch." (p.3 n.2); "You do call --- and arrange to have your initials [sic] consulted." (p.5 n.10).
- *Notice of Apparent Liability for Forfeiture*, University of Kansas, Licensee of Noncommercial Radio Station KHJK (FM)(Aug. 7, 1989). "Well, come to Computer Arc." (Attachment 1 n.1); "See Chet, Ron or Larry Johnson for all your ... furniture needs." (Attachment 1 n.2); "Remember Gateway Auto Service.... Look for us between Lawrence Avenue and Castle." (Attachment 1 n.7); "Let your brain lead you to Rudy's Pizza." (Attachment 2 ¶ 3).
- Letter from Edythe Wise, Chief, Complaints and Investigations, MMB, to Dr. William G. Suratt, General Manager, Kosciusko Educational Broadcasting Foundation, Licensee of WJTA (FM), 5 FCC Rcd. 7106 (1990). "So stop by and talk to the friendly folks at Frontier Ford Lincoln Mercury today." (Attachment ¶ 3).

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<sup>1</sup> See *In re Noncommercial Nature of Educational Broadcasting Stations*, *Policy Statement*, 97 F.C.C.2d 255 (1984).

<sup>2</sup> *In re Noncommercial Nature of Educational Broadcast Stations*, *Public Notice*, 7 FCC Rcd. 827 (1986) [hereinafter *1986 Policy*].

<sup>3</sup> *Id.* at 6.

- *Notice of Apparent Liability for Forfeiture, In re* Minority Television Project, Licensee of Noncommercial Television Station KMTP (Aug. 7, 2002). "Drive Escalade." (p. 5 n.10).

While these examples may be straightforward and easily recognizable as a call for the listener to take some sort of action or response, determination as to compliance of credits containing more subtle forms of language or variations on standard phrasing can be quite difficult.

When the FCC first implemented the regulatory framework for determining compliance of underwriting credit language, it recognized the difficulty of distinguishing between announcements that promote and ones that identify. Rather than adopting rigid regulatory requirements, however, the Commission accorded public broadcast licensees a degree of discretion to determine whether a particular underwriting credit identifies rather than promotes the program sponsor.<sup>4</sup> The ultimate test is whether the broadcaster can show that it exercised good faith in approving the credit language. If the language can at least arguably be interpreted as not being promotional and there is no evidence that the broadcaster did not act in good faith, then the credit will be deemed compliant. Among the actions determined to evidence good faith may be an inquiry into the intent of the funder's message, including, for example, the meaning of the language as used in the funder's industry.

Where language can be interpreted in two ways, one of which is promotional and one of which is not, whether an underwriting credit is permissible is determined not by reference to the possible interpretation of the credit as promotional. Rather, the determination will be made by reference to the public broadcaster's good faith judgment.

The FCC has continued to view "the public broadcaster's good faith judgment [as] the key element in meeting Congress' determination that the service should remain free of commercial and commercial-like matter."<sup>5</sup>

Furthermore, the Enforcement Staff at the FCC has consistently and explicitly stated that there are no prohibited or permitted words in underwriting credits. Instead the totality of the facts should be considered. In short, there is no lexicon of prohibited or permitted words.

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<sup>4</sup> *In re* Noncommercial Nature of Educational Broadcast Stations, *Memorandum Opinion and Order*, 90 F.C.C.2d 895, 911 (1982). "Therefore, public broadcasters should review donor acknowledgments, and make a reasonable, good faith determination as to whether they identify, rather than promote."

<sup>5</sup> *1986 Policy*, *supra* note 2, at 5; *see also In re* Petition of Xavier University, Licensee of Noncommercial Radio Station WVXU (FM), Cincinnati, OH, *Reconsideration of Letter of Admonition*, 5 FCC Red. 4920, at ¶ 6 (1990) ("the language at issue . . . is not clearly promotional as opposed to identifying and that the licensee exercised reasonable, good faith judgment regarding the language in the . . . disputed announcements describing its underwriters' product lines and services.").

Indicative of the application of these policies are two credits that aired in national programming in the past few years:

- “Microsoft. Helping business make the connections to quickly act, react and succeed. Learn more about software for the agile business at Microsoft dot com slash enterprise.”
- “AstraZeneca, makers of prescription Nexium (esomeprazole magnesium). Ask your doctor. Nexium, the purple pill, at purple pill.com.”

These credits were both examined in the light of the good faith test outlined above. The Microsoft credit was deemed acceptable because it merely restated the familiar “Information at” with “Learn more about”. There is fundamentally no difference between these two invitations to become informed. In informal guidance, staff in the Enforcement Bureau concurred, stating that in context of the credit, the phrase “Learn more about” was not a call to action but was simply another way to provide information to the listener.

The Nexium credit’s “Ask your Doctor” language raised the same issue as the Microsoft “learn more” credit. Through questions to the funder, it was determined that the intent of this language was not to urge the listener to call their doctor to ask for a prescription, but simply to provide guidance to listeners as to sources of information, much as a Web site or a toll free number does. Furthermore, under FDA regulations, pharmaceutical companies are required to make certain disclosures, including the indications and side effects of the drug. Such information can be supplied, for example, in print or by referring people to their doctors. Although such requirements do not apply explicitly to non-commercial underwriting, it was important to the funder that the listener be provided with some method of obtaining more information about the drug. Thus, taken *in the context of this industry*, the language “Ask your doctor” provided guidance to listeners as to sources of information, much as a Web site or a toll free number would do so. Notably, the FCC opined in informal guidance at the time that, in the context of this credit, the language was acceptable.

## Summary

*Modified by the Ad Hoc Committee on Standards for National Credits.*

Four lessons emerge: (a) NCE broadcasters should examine the language of each credit in context, (b) no language should *per se* be considered prohibited even if it differs from standard iterations, (c) if, exercising of good faith, the broadcaster can articulate a non-promotional interpretation of credit language, then, under current FCC rulings at least, the credit will be deemed to conform to the FCC requirements for NCE broadcasters, and (d) the longer the credit the more likely that it could be interpreted to have promotional intent.

## Inducements

The following opinion, based on law, was prepared by John Crigler, attorney, Garvey, Schubert, Barer and concurred with by the lawyers group.

Section 399B of the Communications Act prohibits noncommercial stations from *promoting*, in exchange for remuneration, “any service, facility, or product offered by any person who is engaged in such offering for profit.” The FCC acknowledges that it may be difficult to distinguish between an announcement that promotes from one that merely “identifies” a contributor’s goods or services, and rather than fashion rigid regulations or guidelines, it has relied heavily upon the “reasonable good faith judgment” of the broadcaster to draw this distinction.

In response to requests from noncommercial stations for additional guidance, however, the FCC in 1986 issued a Public Notice that identified three distinct types of promotional announcements: (1) announcements containing price information; (2) announcements containing a call to action; and (3) announcements containing an inducement to buy, sell, rent or lease. FCC rulings identify a fourth category of promotional announcements: announcements that contain prohibited qualitative or comparative language.

The four categories are not mutually exclusive, and a single announcement may be objectionable for more than one reason. For example, a call to action may also contain comparative or qualitative language, a price term, and an inducement (“Buy today, highest quality at lowest prices, while supplies last”).

Inducements are closely related to price terms, and are often lumped together in staff rulings as “price information and other inducements for listeners to patronize the commercial entities named.” Inducements, however, may be broader than price information, since inducements may include forms of added value, guarantees of quality, or incentives to purchase that do not translate directly into dollars and cents.

The 1986 Public Notice gave three examples of inducements: “Six months’ free service,” “A bonus available this week,” and “Special gift for the first fifty visitors.”

The following are excerpts from FCC rulings that fine or admonish a station for airing promotional announcements that include some form of “inducement.” Most of the cases cited involve other forms of promotional announcements.

1988	\$2,000 fine to Radio Station KWCF, Springfield, Missouri	“Free initial consultation”
1989	\$2,000 fine to Radio Station KJHK, Lawrence, Kansas	“Free jewelry cleaning” ”No waiting, no membership fee” “We accept Visa and MasterCard” “Frequent cleaning club” “Saver card”

1991	\$3,000 fine to Radio Station KCEP-Las Vegas	<p>“Ladies night”</p> <p>“No down payment on approved credit”</p> <p>“Accepts income tax returns as a down payment”</p> <p>“First time buyer’s plan and preferred financing”</p>
1992	Admonishment to WNYE-TV, New York, New York	<p>“The pleasure of convenience and the wisdom of thrift”</p>
1992	\$7,500 fine to WMPR(FM), Jackson, Mississippi	<p>“Complimentary memberships”</p> <p>“Complimentary delivery and refreshments”</p> <p>“Free Cone of ice cream”</p> <p>“Free Big Mac to next person who drives up”</p> <p>“Visit of Ronald McDonald”</p> <p>“Free estimates”</p> <p>“Insurance claims are welcome”</p>
1992	Admonishment to WERG(FM), Erie, Pennsylvania	<p>“First come, first served”</p> <p>“Satisfaction guaranteed”</p> <p>“Buy one long footlong, get one free”</p> <p>“Featuring spring savings”</p>
1992	\$5,000 fine to KNON(FM), Dallas, Texas	<p>“Sundays free entry”</p> <p>“Free consultations”</p> <p>“Saturdays are opportunity days”</p> <p>“Free drinks before 11”</p> <p>“Free hand stripping”</p> <p>“In addition to terrific food, you’ll love the atmosphere at the Feedbag”</p>
1992	\$5,000 fine for WBHC(FM), Florence, Alabama	<p>“Excellent service”</p>
1992	\$5,000 fine to KRTM(FM), Temecula, California	<p>“Recognized by Honda as a satisfaction plus dealer”</p> <p>“Why wait in line when Postal Annex can speed you through in no time at all”</p> <p>“The only locally owned independent bank serving Temecula”</p>
1996	Admonishment to KATB(FM), Anchorage, Alaska	<p>“Convenient layaway plan”</p> <p>“Espressos with delivery”</p>

1997	\$5,000 fine to KRTM(FM), Temecula, California	“Rebuilt transmission carries a one year warranty” prizes and giveaways awarded at the underwriter’s place of business
1999	Admonishment to WPSR, Evansville, Indiana	“No equipment purchase and no contract needed” “Money back guarantee for satisfaction” “Free pickup or delivery”
2002	\$10,000 fine to KMTR-TV, San Francisco, California	“Bonus mileage plan” “Toll-free phone number”
2003	Admonishment to WKTV-FM, Jacksonville, Florida	“Full service finance and insurance office offers a broad range of offers” [car dealership]

## Good Faith Judgment

The following opinion, based on law, was prepared by John Crigler, attorney, Garvey, Schubert, Barer and concurred with by the lawyers group.

One of the most important, and mysterious, concepts in underwriting law is that of a “good faith” judgment. In establishing the policies governing “enhanced underwriting” in 1982, the FCC noted: “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 judgments in this regard.” *Commission Policy Concerning the Noncommercial Nature Of Educational Broadcasting Stations* 90 FCC2d 895 (1982). In reversing a staff decision that had found violations of the underwriting rules, the Commission again emphasized the fact that the licensee had exercised “reasonable, good faith judgment.” *Xavier University*, 5 FCC Rcd 4920 (1990).

Although the good faith standard allows broadcasters a margin of judgmental error, it is important to understand that the standard used by the FCC is an objective, not a subjective standard. That is, the FCC does not consider the actual perceptions of a particular broadcaster, but the analysis of the facts by a “reasonable” broadcaster.

The Commission recently discussed the issue of “good faith” in *Minority Television Project, Inc.*, DA 03-4062 (Enforcement Bureau, 2003), where it said that, “Contrary to Minority’s implication, licensee discretion under *Xavier University*, 5 FCC Rcd 4920 (1990), is not unlimited, but is constrained by the bounds of reason. The [Notice of Apparent Liability] properly evaluated Minority’s discretion under *Xavier* through a reasonable, objective intent standard, and concluded that the announcements in question violated Section 399B of the Act based on the total circumstances of the case...”

Thus, good faith is a legal, not a psychological concept. Broadcasters exercise a good faith judgment not by relying on intuitive factors such as how an announcement “sounds,” or how it could be perceived by listeners, but upon objective factors, such as an analysis of the “total circumstances of the case,” informal advice from FCC staff and prior FCC decisions.

## Section 4 - Legal Advice

*This chapter explores the degree of discretion broadcast licensees have in deciding whether to air underwriting announcements. It is an opinion, based on law, prepared by John Crigler, attorney, Garvey, Schubert, Barer who – by the way – supervises KAZU's very capable Station Counselor Melodie Virtue, Esq.*

Section 317 of the Communications Act and Section 73.1212 of the FCC's Rules require broadcast stations to air an announcement when the station transmits any matter for which some form of consideration is paid or promised. These provisions *require* a broadcaster to identify those who make any contributions *in exchange for* the broadcast of any matter, including an “enhanced” underwriting announcement that provides certain “value-neutral” information about the underwriter or its business.

**These provisions do *not* require that noncommercial broadcasters accept contributions from all sources.** This issue was resolved by a federal court of appeals, which held that KWMU in St. Louis did not have to accept contributions from, or air underwriting announcements on behalf of, the KKK. Stations are not merely passive outlets for underwriters, but “speakers” in their own right: “As speaker, [KWMU] exercises control not only over the decision whether to accept or reject the contributions, but also over the form and content of the announcements themselves... To require [KWMU] to accept programs sponsorship from all sources would surely intrude upon the editorial discretion which Congress delegated.” Knights of the Ku Klux Klan v. Curators of the University of Missouri, 203 F.3d 1085 (8<sup>th</sup> Cir. 2000). Thus, broadcast stations generally have discretion to pick and choose their underwriters and to edit underwriting copy to station specifications.

**Broadcasters need not be “fair,” either in their selection of programs, or their choice of underwriters.** Noncommercial stations, may, in their discretion, accept underwriting from one group, such as a gun control group, without having to accept underwriting from a philosophically opposed group, such as the NRA. This discretion in choosing the underwriter does not extend to the underwriter's message. The Communication's Act bars “issue ads” on noncommercial stations. A noncommercial station may not broadcast, in exchange for consideration, material intended “to express the views of any person with respect to any matter of public importance or interest.” This prohibition applies to the views of non-profit as well as for-profit underwriters. So, while a station may accept underwriting from a gun control group, it may not air underwriting announcements that urge listeners to support legislation requiring trigger locks on all handguns.

**Does a broadcast station's discretion allow it to accept underwriting announcements in national programs if the station would reject the same announcement from a local underwriter?** Consistency between national and local credits is obviously desirable for a number of reasons. Listeners may be confused by underwriting credits that sound markedly different for local and national underwriters. Local underwriters are likely to be frustrated if they are held to different standards than underwriters in national programs aired on the station. The FCC, of course, applies only one legal standard to all underwriting announcements. Each broadcast licensee is held responsible for everything which it broadcasts, regardless of the source of the programming.

But the FCC's rules are silent or vague on many critical issues, such as the duration of an announcement, the number of product mentions allowable, or the use of music in announcements. Most stations have underwriting policies that specify such details so that the details do not have to be renegotiated with every underwriter. To the extent that these policies are discretionary, they can be waived to accommodate national credits. Put another way, a station may air a national credit inconsistent with station policy, provided the national credit does not violate FCC rules.

### **Are stations, owned by state universities, held to a different standard of fairness?**

University licensees are not held to a different standard of access under the FCC's rules, but can be subject to a different constitutional standard.

Here's why. If the university is a public institution, its actions are considered "state action." Only "station action" can violate the First Amendment.

Some attorneys may have the Arkansas case in mind. There, a fringe candidate named Forbes, challenged his exclusion from a station-sponsored debate, not on grounds that the debate violated FCC political rules, but on grounds that the station, as an agency of the state, could not exclude views with which it did not agree.

The candidate lost the challenge, and the Supreme Court found that state-owned stations were not "public forums" that had to give access to any candidate who wanted a soapbox. Public stations could exclude candidates based on a good faith editorial judgment that the public had no interest in the candidate. The Court reminded state-owned stations, however, that they could not exclude candidates based solely on the candidate's point of view. Had Arkansas excluded a popular third-party candidate from the debate, the result might have been different.

*Addition by the Ad Hoc Committee on Standards for National Credit (the Committee is a collaboration of DEI, NPR, APM, PRI and other leading organizations and stations)☺*

For example, there is no FCC regulation that would require a station to accept underwriting from a local organization, even if the station aired a national underwriting message from the same or similar organization.