



PUBLIC NOTICE

Federal Communications Commission
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COMMISSION REMINDS BROADCAST LICENSEES, CABLE OPERATORS AND OTHERS OF REQUIREMENTS APPLICABLE TO VIDEO NEWS RELEASES AND SEEKS COMMENT ON THE USE OF VIDEO NEWS RELEASES BY BROADCAST LICENSEES AND CABLE OPERATORS

Comment Date: June 22, 2005

Reply Date: July 22, 2005

The Commission has recently received a large number of requests that it consider whether the use of “video news releases” or “VNRs,” by broadcast licensees, cable operators, and others complies with the Commission’s sponsorship identification rules.¹ VNRs are essentially prepackaged news stories, that may use actors to play reporters and include suggested scripts to introduce the stories.² These practices allow such externally prepackaged news stories to be aired, without alteration, as broadcast or cable news. Some of the parties contacting the Commission have suggested that broadcast licensees and cable operators may have aired VNRs with news stories containing material paid for, prepared and/or provided to them by or on behalf of commercial, governmental and other entities without disclosing, at the time of the airing, the source of and the circumstances surrounding their acquisition of such material.

With this Public Notice, the Commission reminds broadcast licensees and cable operators that air VNRs, as well as all entities and individuals involved in the production and provision of the material at issue here, of their respective disclosure responsibilities under the Commission’s sponsorship identification rules. These rules are grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them with the programming offered over

¹ See, e.g., Letter from Josh Silver, Executive Director, Free Press, et al., to Hon. Kevin Martin, Chairman, FCC et al. (March 21, 2005) (stating that the authors “are writing you today on behalf of nearly 40,000 Americans who have signed a petition urging the Federal Communications Commission to investigate all broadcasters who distribute government-sponsored news reports without properly identifying their source”); Letter from Hon. John F. Kerry, U.S. Senator, to Hon. Michael Powell, Chairman, FCC (March 15, 2005); Letter from Hon. Daniel Inouye, U.S. Senator, to Hon. Michael K. Powell, Chairman (March 14, 2005). Also, the Commission has received thousands of emails about this practice.

² See, e.g., Joe Mandese, *The Art of Manufactured News*, BROADCASTING AND CABLE, March 28, 2005, at 24; David Barstow and Robin Stein, *The Message Machine: How the Government Makes News; Under Bush, a New Age of Prepackaged News*, N.Y. TIMES, March 13, 2005, at A1.

broadcast stations and cable systems.³ For the reasons noted in this Public Notice, and as provided for in the statutory provisions and in the Commission’s rules, whenever broadcast stations and cable operators air VNRs, licensees and operators generally must clearly disclose to members of their audiences the nature, source and sponsorship of the material that they are viewing. We will take appropriate enforcement action against entities that do not comply with these rules. This Public Notice is confined to the disclosure obligations required under Section 317 and our rules thereunder, and does not address the recent controversy over when or whether the government is permitted to sponsor VNRs, which is an issue beyond the Commission’s jurisdiction.

The Sponsorship Identification Rules

The sponsorship identification rules, which are contained in sections 317 and 507 of the Communications Act of 1934, as amended (the “Act”),⁴ and sections 73.1212 and 76.1615 of the Commission’s rules,⁵ generally require that, when payment has been received or promised to a broadcast licensee or cable operator for the airing of program material, at the time of the airing, the station or cable system must disclose that fact and identify who paid or promised to provide the consideration.

Specifically, section 317(a)(1) of the Act provides, in pertinent part:

All matter broadcast by any radio station⁶ for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. . . .

To provide parties with the information necessary to air these disclosures, section 507(a) requires that each station employee who has accepted or agreed to accept consideration for the airing of program matter, or any person who has paid or has agreed to so pay any such employee, must disclose that fact to the station prior to the airing of the matter. Similarly, section 507(b) imposes such a duty of disclosure upon any person involved in the production or preparation of

³ See, e.g., *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963); *Sponsorship Identification Rules, Applicability*, 40 FR 41936 (1975).

⁴ 47 U.S.C. §§ 317, 508.

⁵ 47 C.F.R. §§ 73.1212, 76.1615.

⁶ The Commission has ruled that the sponsorship identification requirements also apply to origination programming by cable operators. *Amendment of the Commission’s Sponsorship Identification Rules (Sections 73.119, 73.289, 73.654, 73.789 and 76.221)*, Report and Order, 52 FCC 2d 701 (1975), ¶ 37 (“We see no reason why the rules for such cablecasting should be different from those for broadcasting, for the consideration of keeping the public informed about those who try to persuade it would appear to be the same in both cases.”) Under our rules, origination cablecasting is defined as “programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.” 47 C.F.R. § 76.5(p). The broadcast and cable rules are substantially identical with the single exception that paragraph (c) of the broadcast rule, which pertains to reports under Section 508 of the Act (which applies only to broadcasters), is not applicable to cable television. See *In the Matter of Amendment of the Commission’s Sponsorship Identification Rules, Report and Order*, 52 FCC 2d 701, 712 n.10 (1975).

broadcast matter who receives or agrees to receive, or provides or promises to provide, such consideration. The disclosure must be made to each payee's employer, the person for whom the material is being produced, or the licensee. Section 507(c) requires this disclosure by anyone who supplies broadcast matter to the person to whom he or she provides the matter. In this way, the information must ultimately be provided up the chain of production and distribution, before the time of broadcast, to the licensee so that it can timely air the required disclosure.

Moreover, section 317(b) of the Act requires that any broadcast station that has received such information pursuant to section 507 must air the section 317 announcement, as if the consideration was paid to the station for airing the broadcast matter, even if the station itself received no such consideration.⁷ Section 317(c) requires each licensee to "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section."

Based upon these requirements of Section 317 of the Act, the Commission's rules require broadcasters (section 73.1212) and cable operators (section 76.1615), where appropriate, to inform their audience, at the time of airing: (1) that such matter is sponsored, paid for or furnished, either in whole or in part; and (2) by whom or on whose behalf such consideration was supplied. The announcement must fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other incorporated group, or other entity by whom or on whose behalf such payment is made or promised, or services or other valuable consideration is received, or by whom the material or services received by the licensee or operator are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station or cable system on behalf of another, and that fact is known or, by the exercise of reasonable diligence could be known to the station or system, the announcement should disclose the identity of the person or persons or entity on whose behalf the agent is acting, rather than the agent.⁸

In situations in which a broadcast licensee has not directly received or been promised consideration, has not received any Section 507 report that material has been paid for from its employees or others that must make such reports pursuant to that section of the Act, and, acting with the requisite diligence, has no information concerning the making of such promise or payment, Section 317(a)(1) of the Act provides generally that no sponsorship identification is necessary with regard to material that is furnished to the licensee "without charge or at a nominal charge."

⁷ See, e.g., *Letter to Mr. Earl Glickman, President, General Media Associates, Inc.*, 3 FCC 2d 326 (1966); *KMAP, Inc.*, Memorandum Opinion and Order, 44 FCC 2d 971 (1974).

⁸ 47 C.F.R. §§ 73.1212(e), 76.1615(d).

Political and Controversial Issue Programming

The sponsorship identification rules impose upon broadcast licensees and cable operators a greater obligation of disclosure in connection with political material and program matter dealing with controversial issues. The Commission has noted that, particularly in the case of such programming, audience members are “entitled to know when the program ends and the advertisement begins.”⁹ Congress has acknowledged the danger that groups advocating ideas or promoting candidates, rather than consumer goods, might be particularly inclined to attempt to mask their sponsorship in order to increase the apparent credibility of their messages.¹⁰ Thus, deviating from the general rule contained in Section 317(a)(1) that no sponsorship identification announcement is necessary if material is provided to a station free or at a nominal charge, Section 317(a)(2) of the Act enables the Commission to require such an announcement regarding material so provided, if the programming involves political material or the discussion of a controversial issue.

Consistent with this statutory provision, both the broadcast rule (section 73.1212(d)) and the cable rule (section 76.1615(c)) expressly require the airing of sponsorship disclosure in such situations. In contrast to the general disclosure requirement that a single announcement be made at the time of airing of the material, for political or controversial programming of more than five minutes’ duration, the announcements must be made both at the beginning and the conclusion of the airing of the material.¹¹ Moreover, if a corporation, committee, association or other unincorporated group or other entity is paying for or furnishing the broadcast matter, the station must include, for public inspection at the location of its public file,¹² a list of the chief executive officers or members of the executive committee or of the board of directors of such corporation, committee, association, other unincorporated group or other entity.¹³

Request for Comments

In addition to reminding broadcast licensees, cable operators, and others, pursuant to this Public Notice, of their respective disclosure responsibilities under the Commission’s sponsorship identification rules, the Commission seeks comment on VNRs and their use by broadcast licensees and cable operators. With this more detailed information, we will be better positioned to monitor this area and ensure that broadcast licensees, cable operators and others comply with our rules. To this end, we seek comment on the ways in which VNRs are used in programming, and on which practices are the most common. For example, we also seek comment on whether the entities producing or providing VNRs, including the government, pay broadcast licensees and cable operators to air VNRs, or whether the VNRs are provided free of charge, without separate

⁹ Richard Kielbowicz and Linda Lawson, “Unmasking Hidden Commercials in Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963,” FED. COMM. L.J. 329 at 344 n. 80 (2004) *citing* FCC, PUBLIC SERVICE RESPONSIBILITY OF BROADCAST LICENSEES 47 (1946).

¹⁰ 56 FED. COMM. L.J. at 338.

¹¹ 47 C.F.R. §§ 73.1212((d), 76.1615(c). For political or controversial programming that is five minutes or less in duration, only one announcement must be made, at the beginning or the end of the material. *Id.*

¹² 47 C.F.R. §§ 73.3526, 73.3527.

¹³ 47 C.F.R. § 73.1212(e).

payment or consideration. Are mechanisms in place to ensure that broadcast licensees and cable operators receive notice regarding the payment of consideration from all individuals and entities that are involved in the production and provision of VNRs? Are mechanisms in place to ensure that broadcast licensees and cable operators receive notice regarding the identity of entities providing programming involving political material or the discussion of controversial issues of public importance? Do broadcast licensees and cable operators receive VNRs as part of an overall news service, which may be provided under contract or on a subscription basis? If so, should this affect the applicability of our sponsorship identification rules? Finally, we seek comment on whether there are alternative or better means of ensuring proper disclosure concerning VNRs in addition to those prescribed by the existing rules. The Commission intends to issue a report, or initiate a more formal proceeding, as appropriate, on the comments received in response to these questions about VNRs forthwith. Although we seek comment on the use of VNRs in this Notice, we emphasize that the rules remain in effect and that we will continue to investigate complaints and enforce the rules during the pendency of this proceeding.

Conclusion

In sum, the Commission acknowledges the critical role that broadcast licensees and cable operators play in providing information to the audiences that they serve. This information is an important component of a well-functioning democracy. Along with this role comes the responsibility that licensees and operators make the sponsorship announcements required by the foregoing rules and obtain the information from all pertinent individuals necessary for them to do so. We remind all such licensees and operators, as well as those involved in the production and provision of the material that they air, that they must strictly adhere to the foregoing requirements and to fully meet their responsibilities under them.

The Commission will investigate any situation in which it appears that these requirements of the law may have been violated and will order administrative sanctions against its regulatees, including the imposition of monetary forfeitures and the initiation of license revocation proceedings, where such action is appropriate. In addition to these sanctions that the Commission may impose, we note that the criminal penalty for violation of the disclosure requirements of Section 507 of the Act is a fine of up to \$10,000, imprisonment of not more than a year, or both.¹⁴

Procedural Rules

Ex Parte Rules. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

Comments Information. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties must file comments on or before June 22, 2005 and reply comments on or before July 22, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 13 FCC Rcd 11322 (1998). Documents filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Only one copy of an electronic submission must be filed. In completing the transmittal screen,

¹⁴ 47 C.F.R. §508(g).

commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C., 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW, Washington, D.C., 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (800) 378-3160, or via email to fcc@bcpiweb.com. In addition, parties should serve one copy of each filing via email or three paper copies to Hope Cooper, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., 2-C266, Washington, D.C., 20554, or one electronic copy via e-mail to Hope.Cooper@fcc.gov.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or Bill.Cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their website at <http://www.bcpiweb.com>.

Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

For further information, contact Hope Cooper, Media Bureau, (202) 418-1440.
Press inquiries should be directed to Rebecca Fisher, Media Bureau, (202) 418-2359. TTY: (202)
418-7172 or (888) 835-5322

Action by the Commission on April 13, 2005: Chairman Kevin J. Martin, Commissioners
Kathleen Q. Abernathy, Michael J. Copps, Jonathan S. Adelstein; Commissioners Copps and
Adelstein issuing a separate statement.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators

People in this country have a right to know where their news is coming from, but it's getting almost impossible to know. Everyone understands that a story cannot be judged without knowing its source, but increasingly the source goes unreported. Recently tens of thousands of citizens contacted the FCC demanding an investigation into the failure of broadcasters to disclose their use of government-generated "news" stories. They were right to do so. This Commission should investigate each such case. And it should strenuously enforce the rules against inadequate sponsorship identification.

In this era of huge corporate media, it has gotten just about impossible to tell the difference between news and entertainment or to differentiate between legitimate information and propaganda. Knowing the source of a story can help viewers and listeners judge its substance. Today's Public Notice underscores the importance of the issue and seeks more information on how some broadcasters and cable operators may be avoiding their responsibilities. I am pleased the Commission emphasizes in this Notice that while it collects more information, it will continue to enforce its rules.

These recent allegations, as well as other reports of payments involving local news shows, commentators and airtime for recording artists, highlight the need for stepped-up focus on these obligations. As an initial step, the Commission needs to complete its localism proceeding to determine to what extent broadcasters are serving the public interest.

STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

RE: Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators, Public Notice (released April 13, 2005)

I am pleased that today the Commission issues a Public Notice reminding broadcasters, cable operators, and others about our sponsorship identification rules as they apply to video news releases, or VNRs. I commend Chairman Kevin Martin for his leadership in addressing the growing concern about the role of VNRs in today's media environment. We have recently received a large number of complaints from the public about VNRs that were created by or for the federal government, and which were broadcast on television stations without identifying the government's role in developing the VNR.¹ Two U.S. Senators also have asked the Commission to investigate whether the broadcast of government-sponsored VNRs without attribution complies with our sponsorship identification rules.² Today's Public Notice is in response to these developments, and reminds broadcast stations, cable operators, and others of their disclosure obligations under our rules, if and when they choose to air VNRs, and to reinforce that we will take appropriate enforcement action against stations that do not comply with these rules.

It's high time for the FCC to remind broadcasters and others subject to our sponsorship identification rules that they have a legal obligation to let their viewers know when they run stories from someone else. People have a legal right to know the real source when they see something on TV that is disguised as "news." We are already seeing public confidence in the news dropping quickly, and this step should help restore confidence.

In issuing the Public Notice, the Commission of course takes no position on recent controversies surrounding the appropriateness of the government creating and developing VNRs more generally. Congress has long prohibited agencies from using appropriated funds for propaganda.³ In a recent memorandum to department and agency heads, the U.S. Government Accountability Office stated that "agencies may not use appropriated funds to produce or distribute prepackaged news stories intended to be viewed by television audiences that conceal or do not clearly identify for the television viewing audience that the agency was the source of those materials."⁴ But in a slightly later memorandum to the same audience, the Office of

¹ E.g., Letter from Josh Silver, Executive Director, Free Press, et al, to Hon. Kevin Martin, Chairman, FCC et al. (March 21, 2005). The Commission has also received recently thousands of emails about VNRs.

² Letter from Hon. John F. Kerry, U.S. Senator, to Hon. Michael Powell, Chairman, FCC (March 15, 2005); Letter from Hon. Daniel Inouye, U.S. Senator, to Hon. Michael K. Powell, Chairman (March 14, 2005).

³ Current appropriations law states that "[n]o part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by Congress," and nearly identical language has existed for decades. Consolidated Appropriations Act, 2005, Pub. L. No. 108-477, div. G, title II, § 624, 118 Stat. 2809, 3278 (Dec. 8, 2004).

⁴ Memorandum from David M. Walker, Comptroller of the United States to Heads of Departments, Agencies, and Others Concerned at 2 (Feb. 17, 2005).

Management & Budget stated that the GAO guidance “conflicts with the views of the Department of Justice’s Office of Legal Counsel (‘OLC’) . . . and it is OLC (subject to the authority of the Attorney General and the President), and not the GAO, that provides the controlling interpretations of law for the Executive Branch.”⁵ These issues are for the Administration and Congress to resolve. The Commission’s role is limited to ensuring that broadcast stations and others identify sponsors when required to do so.

So we have seen a debate between the GAO and the OMB/DOJ about whether governmental VNRs constitute “covert propaganda.” The surprising thing, though, is nobody bothered to mention that there are separate disclosure requirements enforced by the FCC under the Communications Act.

Today, we are putting broadcasters and others subject to our rules on notice that we intend to enforce our rules vigorously. And we ask some key questions about new practices in the industry that deserve scrutiny. We plan to issue a report based on our findings to clarify our rules even further to broadcasters.

The laws we are charged to enforce focus on the need for broadcasters and others subject to the rules to disclose the source of material they put on the air. It would be up to Congress if it chooses to further strengthen the responsibility of government agencies to disclose more fully that material is government-produced.

⁵ Memorandum from Joshua B. Bolten, Director, Executive Office of the President, Office of Management & Budget, to Heads of Departments & Agencies (March 11, 2005).