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Special Advisory to Broadcasters
November 2006

Communications Broadcast Advisory

FCC Commissioner Jonathan Adelstein Continues to Make “News” Regarding Video News Releases

On November 14, 2006, FCC Commissioner Adelstein issued a statement commending The Center for Media Democracy and Free Press for its continued study regarding video news releases (VNRs). The Commission has described VNRs as “essentially prepackaged news stories, that may use actors to play reporters and include suggested scripts to introduce the stories.” This advisory briefly outlines the current law regarding the broadcast of VNRs and alerts broadcasters to the need for caution in this area.

The Law Regarding the Broadcast of VNRs

A “sponsorship” type of disclosure statement must be aired if a VNR is aired in any of the following three circumstances, where: (1) the VNR is broadcast in exchange for valuable consideration received or promised; (2) the VNR is political in nature, whether or not consideration is received or promised; or (3) the VNR relates to a controversial matter of public importance, whether or not consideration is received or promised.

The sponsorship identification portion of the Communications Act of 1934, in conjunction with the Commission’s rules (section 73.1212), control VNR disclosure requirements. Specifically, section 317(a)(1) mandates:

All matter broadcast by any radio station for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to be 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...

In order to ensure compliance with this mandate, there are further disclosure requirements. Section 507 requires each station employee who agrees to accept consideration, any individual who has offered to pay a station employee for airing a matter, any person involved in the production or preparation of broadcast mat-

ter who receives or provides consideration, and any person who supplies broadcast matter involving consideration to disclose the arrangement to station management prior to airing the material so that the licensee can evaluate what type of on-air disclosure is required.

If consideration is involved in the broadcast, as a general matter, the requisite sponsorship identification disclosure must be made. The exceptions to this “pay for airing” requirement are very narrow. Even if no consideration is involved, but the broadcast material furnished to the station is political in nature or involves a controversial issue of public importance, the station must air the required sponsorship disclosure. In all of these circumstances, the required disclosure should include the following statement to be broadcast at the time the material is aired:

- that the matter is sponsored, paid for or furnished, either in whole or in part; and
- by whom or on whose behalf such consideration was supplied, if any (if no consideration is involved, the station must still identify the person or entity who, or on whose behalf, the broadcast material was furnished if the material is political in nature or involves a controversial issue of public importance).

For any of the three types of “furnished” broadcasts mentioned above, if the broadcast is fewer than five minutes in duration, the sponsorship identification may be made at the beginning or end of the broadcast. If the “furnished” broadcast is political in nature or involves a controversial issue of public importance, and the broadcast lasts longer than five minutes, the requisite disclosure announcement must be made at both the beginning and end of the material.

Commissioner Adelstein's November 14 Statement

In a statement released November 14, Commissioner Adelstein praised the Center for Media Democracy and Free Press, which have been critical of stations using VNRs without sponsorship identification, for their new study entitled “Still Not the News: Stations Overwhelmingly Fail to Disclose VNRs.” In his statement, Adelstein states that “[s]ome stations have developed such an ingrained pattern of running VNRs that even a direct investigation by the FCC isn’t enough to snap them out of it.” He further stated that, “[i]t’s time to start handing out citations.” Brushing aside First Amendment concerns, Commissioner Adelstein focused on the Commission’s position that “Americans have a legal right to know that what appear to be independent news reports are actually bought and paid for by a private corporation.”

The allegations of the Center for Media Democracy and Free Press have been strongly refuted by many in the broadcasting industry. For example, both the Radio-Television Directors Association and the National Association of Broadcast Communicators have responded that many, if not all, of the allegations are false. These groups have further countered that “[e]ven if the allegations made about VNR use by stations in this latest report are true...it provides no credible basis upon which the FCC can justify the extraordinary step of inserting itself into broadcast newsrooms and questioning their exercise of editorial discretion.”

Despite this opposition, the FCC has begun investigations into the broadcast of VNRs. In August of this year, the FCC issued 42 Letters of Inquiry to 77 broadcast licensees to determine whether the source of VNR material was properly disclosed. The investigations have blocked or slowed station renewals as well as assignments and transfers. The change in leadership on Capitol Hill may have the effect of adding gravitas to Commissioner Adelstein’s position in this area. In order to avoid becoming a target of an FCC investigation and being assessed potentially large fines of up to \$32,500 per violation, broadcasters should ensure that

they are airing the required disclosures. We continue to monitor FCC actions in this area and intend to publish Client Alerts updating the broadcast industry from time to time.

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