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ALERT

FCC Shows Renewed Interest in Sponsorship Identification

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The Federal Communications Commission (FCC) is demonstrating renewed interest in whether stations are complying with the rules governing sponsorship identification, particularly with respect to what critics have termed "undisclosed commercials in TV newscasts." In September, the group Free Press filed a complaint with the FCC asking the agency to investigate news reports about one local television station airing a paid advertisement for a local hospital made to look like a news report and others broadcasting interviews with a "toy expert" who allegedly was paid by manufacturers to include specific products in the segment.

Under Section 317 of the Communications Act, broadcasters are required to disclose to their listeners or viewers if they have aired matter in exchange for money, services or other valuable consideration. Notably, the Act exempts from the disclosure requirements material "furnished without charge or at a nominal charge." This safe harbor seemingly would cover situations where a broadcaster receives no payment and makes its own independent judgment about what to air, such as when a broadcaster receives products or tickets for the purpose of performing an independent review or derives story material from a video news release (VNR).

In 2006, however, the FCC's Enforcement Bureau sent letters of inquiry to 77 stations, seeking information about whether those stations aired VNRs without sponsorship identification announcements. While most of these investigations remain pending, the FCC fined Comcast for airing VNR material without proper sponsorship identification. Even though Comcast received the VNR material for free and made its own editorial decision to broadcast the content, extensive images and product mentions triggered a sponsorship ID requirement in the

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Commission's estimation.

Most of these so-called "fake news" cases involve no allegation that broadcast stations or their employees themselves received or were promised consideration to air the material, thus triggering a sponsorship ID requirement. Instead, Free Press and others appear to be urging the FCC to broadly interpret its rules so as to require disclosure if there is a reason to believe that anyone in the chain of distribution has received or been promised consideration in exchange for promoting or appearing in a broadcast about certain content. In turn, that raises questions about what form of "reasonable diligence" may be expected of broadcasters in making such a determination.

We will keep our clients apprised about developments concerning FCC enforcement with respect to sponsorship ID. In the interim, it may be advisable to review your sponsorship identification and payola policies as well as your newsroom practices with respect to disclosures.

*Not admitted to the District of Columbia Bar, supervised by principals of the firm.