

which to excerpt generic video (akin to file photos at a newspaper or “B-roll” at television stations) to illustrate other news stories and programming. Contrary to some recent suggestions, television broadcasters that NAB spoke with do not treat VNRs as “prepackaged news stories to be aired, without alteration.” *Notice* at 1. Given the limited usage VNRs receive, and the existence of Commission rules comprehensively regulating sponsorship identification and political/controversial issue programming, there appears to be no need to alter the current regulatory regime concerning VNRs.

I. Television Stations Typically Use VNRs For Limited And Generic Purposes.

NAB made inquiries to television broadcasters in different markets and to broadcast attorneys requesting information on how stations receive and use VNRs. Television stations report receiving VNRs through the mail (just like traditional paper press releases were received), through subscription “feeds” and services from sources such as CNN and some of the broadcast networks, and through Internet websites. On occasion, VNRs are provided as handouts at press conferences. *See Notice* at 5 (inquiring how broadcast licensees receive VNRs). Despite the fact that the current controversy over VNRs has been generated by a small number of government-sponsored VNRs, *see Notice* at fn.1, the vast majority of VNRs received by television stations are from private (*i.e.*, corporate/business sources), rather than from governmental sources.³

Broadcasters report that, to the extent stations use VNRs, they are generally utilized as a source from which to excerpt generic video to illustrate other news stories and programming.

See Notice at 4 (asking how VNRs are used in programming). For example, a television station

³ While some VNRs may “use actors to play reporters and include suggested scripts to introduce the stories,” *Notice* at 1, many VNRs are not so elaborate or so closely resemble actual news stories. For example, VNRs may use a recognizable spokesperson rather than an actor playing a reporter. Other VNRs may essentially be the video version of a printed press release, with video footage that illustrates news releases provided on paper. Business entities are also now putting VNRs on their web sites, where they can be accessed by anyone including broadcasters.

might receive a VNR from a pharmaceutical company promoting a new drug that recently received approval from the Food and Drug Administration. Several weeks or months later, when the station is preparing a story relating to the pharmaceutical industry, the station might use from the VNR a generic video clip showing empty pill bottles being filled on an assembly line.⁴

These examples show that broadcasters generally treat VNRs as akin to file photos at a newspaper or other generic “B-roll” at a television station.⁵ Contrary to some recent suggestions, television stations typically do not treat VNRs as “prepackaged news stories to be aired, without alteration.” *Notice* at 1. Because VNRs are essentially regarded as the electronic successor to the traditional paper press release, stations contacted by NAB emphatically state that they do not view them as “ready to air” news stories. Indeed, stations utilize VNRs relatively infrequently even for the generic, B-roll purposes described above. In fact, one station informed NAB that it has not used any VNRs, even for B-roll purposes, for more than a year, and that it does not expect to use VNRs any more frequently in the future. Other broadcasters report imposing

⁴ Similarly, a story about the tobacco industry could include a clip from a tobacco company VNR showing cigarettes being manufactured in a factory. Other broadcasters reported using VNRs as a source to obtain video clips of the logos of individual companies. Some broadcasters emphasized that they will use video from VNRs in situations where their stations would have difficulty otherwise obtaining similar video (*e.g.*, shots of brand new automobiles or aircraft just released by the manufacturer). According to some stations, they have most frequently utilized VNRs for movie reviews. Motion picture studios release VNRs that include clips from their new films. Television stations may utilize the film clip when their film critic presents his or her review of the movie.

⁵ “B roll” is archived or stored video about any type of subject that may be used as needed to generally illustrate stories produced by stations. Common B-roll video includes, for example, shots of people or crowds on the street or in a shopping mall.

certain safeguards on any use of VNRs.⁶ Significantly, broadcasters also stated that stations are *not* paid or offered payment to air VNRs.⁷

In sum, broadcasters may incorporate excerpts from VNRs into stories they produce and air because VNRs can contain video helpful in illustrating programming. Television broadcasters, after all, use pictures to tell their stories and stations therefore utilize video obtained from a wide range of sources. If generic footage from a VNR can aid in more effectively communicating a newsworthy story to viewers, then many stations will use them for that limited, non-editorial purpose. Such generic use would not appear to implicate the Commission’s core concern with VNRs – that viewers may not realize who is seeking “to persuade them with” programming, particularly “political and controversial issue programming.” *Notice* at 2-3.

II. Current Commission Rules Are More Than Adequate To Ensure Any Proper Disclosure Concerning VNRs.

As described in the *Notice* (at 2-3), the Commission has extensive rules requiring that, when payment is received or promised to a broadcast licensee for the airing of program material, the station must disclose that fact at the time of airing and identify who paid or promised to provide the consideration. These sponsorship identification rules include further requirements

⁶ One group stated that, at their stations, permission must be obtained from news management to use VNRs even for B-roll purposes. Another broadcast group reported recently instituting a training program for station staff to ensure that personnel know how to spot VNRs. Subscription news feeds and services that include VNRs are now segregating the VNRs from other material.

⁷ If broadcasters and their employees do not receive payment or other consideration (or the promise thereof) in connection with their airing of VNRs, then, according to the Commission, generally “no sponsorship identification is necessary,” under Section 317(a)(1) of the Communications Act for VNRs not concerning political or controversial issues. *Notice* at 3. However, as a matter of journalistic practice, stations NAB talked with make every effort to disclose the source of nonpolitical VNR material (with many disclosing the source of even illustrative B-roll footage).

concerning the disclosure of payments to station employees, and others involved in the production or preparation of broadcast matter, for the airing of any material. *See* 47 U.S.C. §§ 317, 507; 47 C.F.R. § 73.1212. Beyond these requirements, existing sponsorship identification regulations impose further disclosure obligations in connection with political material and programming dealing with controversial issues. *See Notice* at 4; 47 U.S.C. § 317(a)(2); 47 C.F.R. § 73.1212(d).

These rules comprehensively regulating sponsorship identification and political/controversial issue programming appear more than sufficient to ensure that viewers “know who seeks to persuade them” with any type of broadcast programming, including VNRs. *Notice* at 2.⁸ Particularly in light of the typically limited, generic usage of VNRs by television stations, there appears to be no need to alter the current regulatory regime governing programming disclosure requirements generally to address any special concerns about VNRs. Any particular concerns about VNRs can be effectively dealt with by enforcement of the Commission’s comprehensive set of existing rules governing sponsorship identification generally and political/issue programming specifically.⁹

⁸ Indeed, a review of FCC enforcement actions from the past several decades shows that there is no significant problem with broadcaster compliance with the sponsorship identification rules. There appear to be no enforcement actions involving VNRs specifically. The handful of enforcement actions in this area have involved political/issue advertising and whether sufficient disclosures were made on such paid programming. These cases have little relevance to the issue of VNRs, which broadcasters have stated that they are not paid or offered payment to air; which are typically used (if at all) by stations for limited, generic purposes and not aired in their entirety; and which are much more frequently received from corporate/business entities, rather than governmental or political entities.

⁹ If there are problems with individual broadcast stations and their failures to make proper sponsorship disclosures concerning any programming they air, including VNRs, then appropriate enforcement action can be taken against those stations.

III. Conclusion.

Broadcasters have reported to NAB that, to the limited extent television stations use VNRs, they are generally utilized as a source from which to excerpt generic video to illustrate other news stories and programming. Given the limited usage VNRs typically receive, the enforcement of the Commission's extensive rules governing sponsorship identification and political/controversial issue disclosures can certainly ensure that viewers are aware of who is seeking to persuade them, particularly about political matters.

Respectfully submitted,

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