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Via Electronic Filing

The Honorable Julius Genachowski
Chairman, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

September 27, 2010

RE: *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, MB Docket 08-90

Dear Chairman Genachowski:

We write to alert you to a disturbing practice that is becoming increasingly prevalent in the media: the use of undisclosed commercials in television newscasts and programming.

The Commission's sponsorship identification rules are supposed to combat covert product placement, payola and propaganda by requiring broadcasters and cablecasters to disclose when they are paid (or otherwise receive consideration) to air particular content.¹ These rules are premised on the principle that viewers deserve to know when someone is paying to persuade them. However, in spite of these rules, the use of covert commercials – many without the required disclosure – is on the rise.

The *Los Angeles Times* has recently identified several instances where local television stations aired programming in exchange for consideration without clearly disclosing that fact to the viewing public. In one particularly disconcerting case, a local CBS affiliate aired a segment entitled "CBS Healthwatch" in which the station's news reporters interviewed local hospital officials about cancer treatments.² In fact, this "news segment" was part of a series of paid medical advertisements sponsored by the hospital in question. More recently, the *Los Angeles Times* has drawn attention to local TV stations' undisclosed use of a spokesperson-for-hire who is paid to tout toys to parents watching the morning news.³ These reports reveal that the practice of pay-for-play "news" is ratcheting up.

¹ Specifically, Section 317 of the Communications Act of 1934 requires broadcasters to make sponsorship identification announcements in any programming for which consideration has been received and to "exercise reasonable diligence" to acquire sponsorship information. See 47 U.S.C. § 317(a)(1). See also 47 C.F.R. § 73.121. Section 76.1615 of the Commission's rules applies the broadcast provisions of Section 317 of the Communications Act to "origination cablecasting."

² James Rainey, "On the Media: KCBS ads masquerade as news," *Los Angeles Times* (April 21, 2010), available at <http://articles.latimes.com/2010/apr/21/entertainment/la-et-onthemediala-20100421>.

³ James Rainey, "On the Media: The news is, that pitch was paid for," *Los Angeles Times* (Sept. 15, 2010), available at http://www.latimes.com/entertainment/news/la-et-onthemediala-20100915_0,370372.column; James Rainey, "On the Media:

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Free Press has long been concerned about the use of covert corporate and government propaganda in the media. In 2006 and 2007 Free Press, along with the Center for Media and Democracy, sent three complaints to the Commission regarding the use of undisclosed video news releases (VNRs) by broadcasters and cablecasters.⁴ The FCC later initiated an investigation and, in September 2007, fined Comcast Corporation for airing five separate VNRs on its CN8 channel without identifying the sponsors.⁵ However, while more than a hundred instances of undisclosed VNRs use were cited by Free Press and Center for Media and Democracy, no further enforcement action has been taken by the Commission.

Even where local stations technically may be abiding by the FCC disclosure rules, the public still may not realize they are watching paid propaganda. Currently, most broadcasters relegate sponsorship identification disclosures to a minuscule, fast moving scroll at the end of the program credits. Most viewers would be unable to read the disclosures, assuming they even bother to watch the credits. The FCC currently has an open proceeding on this very issue.⁶ In that proceeding Free Press, as well as a number of consumer and children's advocacy groups, proposed ways to make disclosure more effective by developing standards for the frequency, size and duration of such disclosures.⁷ Unfortunately, the Commission has failed to take any action in this proceeding in two years. Meanwhile, the current rules remain insufficient to protect consumers from more advanced embedded advertising practices.

In the absence of Commission enforcement and improved rules, the use of covert advertising has only increased. This trend has adverse implications for the public's ability to trust or ascertain whether information it receives is accurate and unbiased. People rely on news and informational programming to inform decisions they make about everyday issues – as well as more consequential ones, such as the type of medical treatment to seek, or how to vote on an issue. They deserve to know when programming or news coverage has been influenced by commercial consideration. More importantly, they deserve to know when programming that resembles *bona fide* news coverage is in fact a commercial.

Fake news flourishes under the feds' noses," *Los Angeles Times* (Sept. 17, 2010) available at <http://www.latimes.com/entertainment/news/la-et-onthemedias-20100918,0,566983.column>.

⁴ See First Complaint of Free Press and Center for Media and Democracy (April 6, 2006), available at http://www.freepress.net/files/fcc_complaint_4-06-06.pdf; Second Complaint of Free Press and Center for Media and Democracy (Nov. 14, 2006), available at http://www.freepress.net/files/final_vnr_letter_nov06.pdf; and Third Complaint of Free Press and Center for Media and Democracy (Oct. 11, 2007), available at http://www.freepress.net/files/oct2007_fcccomplaint.pdf.

⁵ *In the Matter of Comcast Corp.*, Notice of Apparent liability for Forfeiture, 22 FCC Rcd 17030 (Sept. 21, 2007) and *In the Matter of Comcast Corp.*, Notice of Apparent liability for Forfeiture, 22 FCC Rcd 17474 (Sept. 26, 2007).

⁶ *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket No. 08-90, 23 FCC Rcd 10682 (2008).

⁷ See, e.g., Comments of Free Press, MB Dkt 08-90 (filed Nov. 21, 2008).

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In conclusion, we urge the Commission to promptly:

- Initiate an investigation into these new instances of covert commercials in news programs to determine whether these stations have violated the Commission's sponsorship identification rules;
- Conclude any remaining investigations into the undisclosed uses of VNRs cited in the complaints filed by Free Press and the Center for Media and Democracy in 2006 and 2007, and issue citations where the sponsorship identification rules have been violated;
- Re-open the Commission's extant proceeding on sponsorship identification and promulgate rules requiring stricter and more prominent disclosure so that viewers know when they are watching *bona fide* news, as opposed to paid propaganda.

Respectfully,

Corie Wright
Free Press
202-265-1490

Cc:

Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
William Lake, Chief, Media Bureau
Michele Ellison, Chief, Enforcement Bureau