

**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Fox Television Stations, Inc.)	File Number: EB-06-IH-3709
)	Facility ID Number: 68883
Licensee of Station KMSP-TV, Minneapolis, Minnesota)	NAL/Acct. Number: 201132080023
)	FRN: 0005795067

FORFEITURE ORDER

Adopted: July 7, 2011

Released: July 8, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we assess a monetary forfeiture in the amount of four thousand dollars (\$4,000) against Fox Television Stations, Inc. (“Fox” or “the Licensee”), licensee of Station KMSP-TV, Minneapolis, Minnesota (“Station KMSP-TV” or “the Station”). We find that Fox willfully violated section 317 of the Communications Act, as amended (“the Act”), and the Commission’s sponsorship identification rule, section 73.1212 of the Commission’s rules.¹

II. BACKGROUND

2. This case arises from a complaint jointly filed by Free Press and the Center for Media and Democracy (“CMD”) alleging that Fox’s Station KMSP-TV aired a Video News Release (“VNR”) produced for General Motors without also airing the required sponsorship identification announcement.² The Enforcement Bureau (“Bureau”) issued a letter of inquiry to the Licensee concerning the allegations raised in the Complaint.³ Fox responded to the *LOI* and stated that Station KMSP-TV had broadcast a news report that included the General Motors VNR, which it had received from Fox News Edge, a news service for broadcast stations affiliated with the Fox Network.⁴ Fox also provided a recording and transcript of the relevant news report during which the VNR material aired.⁵ The news report concerned

¹ See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212.

² See Complaint of Timothy Karr, Campaign Director, Free Press, and Diane Farsetta, Senior Researcher, Center for Media and Democracy, dated November 14, 2006 (“*Complaint*”).

³ See Letter from Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, to Fox Television Stations, Inc., dated April 26, 2007 (“*LOI*”).

⁴ See Letter from John C. Quale, Esquire, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Fox Television Holdings, Inc., and Fox Television Stations, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 25, 2007 (“*LOI Response*”), at 3 & n.6. The *LOI Response* was filed on behalf of both Fox and Fox Television Holdings, Inc., and stated that Fox Television Holdings, Inc. wholly owns Fox Television Stations, Inc., the licensee of Station KMSP-TV. See *id.* at n.1.

⁵ See *id.* at 3, 5 & Exh. A.

the consumer demand for convertible automobiles during the summer. The transcript is reproduced in its entirety in the Notice of Apparent Liability issued in this case, along with the anchor's introduction.⁶ The recording of the broadcast at issue showed approximately 12 different shots of the three General Motors convertibles mentioned in the transcript, and no other convertibles or other automobiles were either shown or mentioned.⁷

3. Fox, in its *LOI Response*, also argued that no sponsorship identification announcement was required for the inclusion of the General Motors VNR material in Station KMSB's news report because neither the Station nor any of its employees received or was promised consideration of any kind in exchange for broadcasting the VNR. In addition, Fox argued that the Station did not believe that it received any reports from any third party, including the provider of the VNR, that such party had received consideration in connection with the preparation of the content.⁸ Fox further argued that its use of the General Motors VNR material was "not substantively different from a newspaper's use of editorial content gleaned from press releases," pointing out that the Commission has specifically recognized that a broadcaster is not required to make a sponsorship identification announcement in cases in which "[n]ews releases are furnished to a station [...], and editorial comment therefrom is used on a program."⁹ In addition, Fox objected to the *LOI* and its inquiries on First Amendment grounds, arguing that they represented an impermissible encroachment on the Station's editorial discretion.¹⁰

4. The *NAL* set forth the sponsorship identification requirements of section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules, requiring an announcement at the time the matter is aired whenever that matter is broadcast in exchange for valuable consideration.¹¹ In addition, the *NAL* set forth the proviso to section 317(a)(1) of the Act, as implemented in section 73.1212(a) of the Commission's rules, which generally provides an exception to the sponsorship identification requirements for material "furnished without a charge or at a nominal charge for use on, or in connection with, a

⁶ See *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3964 (Enf. Bur. 2011) ("*NAL*").

⁷ See *id.* at 3966 ¶ 5. The three General Motors convertibles mentioned in the news report were: the Pontiac Solstice, the Saturn Sky, and the Pontiac G6. See *id.*

⁸ See *LOI Response* at 6-9.

⁹ See *id.* at 7 (citing *In re Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) ("*1963 Public Notice*"), as modified, 40 Fed. Reg. 41936 (1975), at Example 11). The *1963 Public Notice* was updated in 1975. See *Applicability of Sponsorship Identification Rules*, Public Notice, 40 Fed. Reg. 41936 (1975) ("*1975 Public Notice*").

¹⁰ See *LOI Response* at 1.

¹¹ See *NAL*, 26 FCC Rcd at 3966-67 ¶ 7. The *NAL* explained that VNR material constitutes "valuable consideration" within the meaning of section 317 that may require a sponsorship announcement under some circumstances. *Id.* at 3968 ¶ 11.

broadcast.”¹² In accordance with the proviso, a disclosure is required for material furnished without charge or at nominal charge when the use of the material involves “an identification of any person, product, service, trademark or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.”¹³

5. In the *NAL*, we considered whether Station KMSP-TV’s use of VNR material fell outside the section 317(a)(1) proviso such that Fox was required to provide a sponsorship identification announcement for that material.¹⁴ Our analysis was informed by illustrative examples, provided by Congress at the time that it adopted the proviso, in order to explain whether particular material would trigger the obligation to provide sponsorship identification.¹⁵ We rejected Fox’s argument relying on Example 11 from the *House Report*, which pertains to a “news release” and “editorial comment therefrom.”¹⁶ Instead, we found that the VNR material broadcast on Station KMSP-TV is more closely analogous to Example 26 from the *House Report*, describing the use of a promotional film provided by a bus company, because rather than merely quoting from a press release, the Station broadcast the script and video footage of three different General Motors convertibles.¹⁷ Example 26 provides that no announcement is required for a promotional film in which a company’s products or services are clearly identifiable and “shown fleetingly ... in a manner reasonably related” to the subject matter of the film, but that announcement is required if the company’s products or services are clearly identifiable and “shown to an extent disproportionate to the subject matter of the film.”¹⁸ We concluded that the identification of General Motors products in Station KMSP-TV’s report exceeded an identification that was reasonably related to the subject matter of the programming at issue, which, as stated above, was the consumer demand for convertible automobiles during the summer.¹⁹ Specifically, the VNR focused exclusively on

¹² See *id.* at 3966-67 ¶¶ 7-8. Specifically, section 73.1212(a) provides:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

- (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: *Provided, however,* That “service or other valuable consideration” shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

¹³ See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a)(2).

¹⁴ See *NAL*, 26 FCC Rcd at 3969 ¶¶ 12-14.

¹⁵ See *id.* at 3967-68 ¶¶ 9-10; H.R. Rep. No. 1800, 86th Cong., 2nd Sess. 1, at 12-17 (1960) (“*House Report*”). The Commission included the twenty-seven examples from the *House Report* and nine additional examples in public notices released following adoption of revised sponsorship identification rules in 1963 and 1975. See *1975 Public Notice*, *supra* note 9; *1963 Public Notice*, *supra* note 9.

¹⁶ See *NAL*, 26 FCC Rcd at 3968 ¶ 10. See also *1975 Public Notice*, 40 Fed. Reg. at 41938, Example 11; *1963 Public Notice*, 40 FCC at 146, Example 11.

¹⁷ See *NAL*, 26 FCC Rcd at 3968 ¶ 10.

¹⁸ See *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26; *1963 Public Notice*, 40 FCC at 148, Example 26.

¹⁹ See *id.* at 3969 ¶¶ 13-14.

General Motors products and contained extensive images of the three General Motors convertibles identified by name in the report.²⁰ In addition, we found that the VNR's portrayal of General Motors's overall prospects for success based on the popularity of its new vehicle models was disproportionate to the subject matter of the program segment.²¹ As a result, we found that the VNR material aired on the Station does not fall within the proviso, which is directed to material that contains only "fleeting or transient" references to products or brand names.²² We ruled that Fox's airing of the VNR material on Station KMSP-TV's June 19, 2006, news program without the required sponsorship identification announcement constituted an apparent violation of section 317 of the Act and section 73.1212 of the Commission's rules and proposed a forfeiture in the amount of four thousand dollars (\$4,000).²³

6. In addition, we rejected Fox's arguments that the proposed enforcement action impermissibly interferes with its First Amendment rights or violates the anti-censorship provisions of section 326 of the Act.²⁴ The *NAL* specifically recognized that Fox is free to exercise its newsgathering and editorial functions by making independent decisions concerning the selection and presentation of news.²⁵ The *NAL* explained that the Commission's sponsorship identification rules are disclosure requirements and do not restrict speech.²⁶ Similar disclosure requirements have been upheld against First Amendment challenges, and the Commission has the obligation to administer statutory provisions requiring such disclosures.²⁷ For these reasons, we found that Fox failed to demonstrate how the enforcement action chilled the Station's speech or otherwise violated the First Amendment or the Act.²⁸

7. Fox filed its response to the *NAL* on April 8, 2011, and contends that the Bureau should cancel the proposed forfeiture.²⁹ Fox argues that the sponsorship identification requirements of section 317(a)(1) and section 73.1212 of the Commission's rules do not apply to Station KMSP-TV's airing of the General Motors VNR because the Station did not receive consideration in exchange for including the material in its newscast. Fox also, for the first time in this proceeding, claims that Station KMSP-TV paid

²⁰ *See id.* at 3969 ¶ 13.

²¹ *See id.*

²² *See id.* at 3969 ¶ 14.

²³ *See id.* at 3969 ¶ 14, 3971-72 ¶¶ 18-19.

²⁴ *See id.* at 3970-71 ¶ 17.

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See Response and Opposition of Fox Television Stations, Inc. to Notice of Apparent Liability for Forfeiture*, filed April 8, 2011 ("*NAL Response*"). We also received an amicus filing on behalf of the Radio Television Digital News Association ("*RTNDA*") supporting Fox's *NAL Response*. *See* Letter from Kathleen A. Kirby, Esquire, and Ari Meltzer, Esquire, Wiley Rein LLP, Counsel for the Radio Television Digital News Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 28, 2011. RTNDA supports Fox's *NAL Response* and urges the Bureau to cancel the *NAL* and rescind the underlying interpretation of the sponsorship identification rules. Specifically, RTNDA asserts that the sanctions proposed in the *NAL* represent a flawed application of the Commission's sponsorship identification rules and an unconstitutional form of content regulation especially because Fox actually paid for the material at issue. We find nothing new in RTNDA's filing that Fox has not already raised in this proceeding. Accordingly, we need not address RTNDA's arguments separately herein.

for the VNR material through its subscription to and payment for the Fox News Edge service.³⁰ In addition, Fox argues that the *NAL* impermissibly encroaches on Station KMSP-TV's news judgments. Specifically, Fox asserts that the Bureau erred by failing to find that its use of the General Motors VNR material was exempt from sponsorship identification announcements under the Example 11 exemption for news releases and by relying instead on the bus company's promotional travel film in Example 26.³¹ Fox also argues that the 15-day deadline for it to file a response to the *NAL* was not reasonable.³²

8. After receiving Fox's *NAL Response*, the Bureau issued a letter to Fox concerning its claim that the Station paid for the VNR material.³³ Fox responded to the *April 21st Letter* and provided additional information concerning Fox News Edge and the intercompany transfers through which it claimed that Station KMSP-TV paid for the General Motors VNR material.³⁴

III. DISCUSSION

A. Fox's Argument that the Sponsorship Identification Rules Do Not Apply Because it Paid Fox News Edge for the VNR Material Lacks Merit

9. Fox reiterates its argument that Station KMSP-TV did not receive any valuable consideration in exchange for broadcasting the General Motors VNR material.³⁵ Fox further asserts that the sponsorship identification rules are not applicable to the General Motors VNR material because it paid Fox News Edge for that material. We conclude that Fox's assertions lack merit. With respect to Fox's first argument, we note that it cites no authority, only generally referencing its *LOI Response*, and wholly fails to address or dispute our conclusion in the *NAL* that Commission precedent makes clear that VNR material may constitute valuable consideration that may require a sponsorship identification announcement under certain circumstances.³⁶ Consequently, its argument on this point does not persuade us to disrupt the *NAL*'s conclusion.

10. With respect to its further assertion, we note that the Commission has recognized that when program materials are sold in a commercial setting to a broadcaster for use on the air, the provision of the programming may be wholly unrelated to any desire to promote a particular product or message, and "it can be assumed that the broadcaster has significant independent motivation to air the material," so that the factors underlying the sponsorship identification regulations' application to free, or nearly free, programming do not apply.³⁷ Based on Fox's response to the *April 21st Letter*, we cannot conclude that such circumstances are present here. Fox News Edge is owned and operated by Fox News Network,

³⁰ See *NAL Response* at 1-2.

³¹ See *id.* at 3-4.

³² See *id.* at n.1.

³³ See Letter from Theresa Z. Cavanaugh, Acting Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Fox Television Stations, Inc., dated April 21, 2011 ("*April 21st Letter*").

³⁴ See Letter from Joseph M. Di Scipio, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated May 23, 2011 at 1, 5 ("*Supplemental Response*").

³⁵ See *NAL Response* at 2.

³⁶ See *NAL*, 26 FCC Rcd at 3968 ¶ 11.

³⁷ See *Complaint of National Ass'n for Better B'casting against KCOP(TV)*, Memorandum Opinion and Order, 4 FCC Rcd 4988, 4990 ¶ 18 (1989).

LLC, a wholly owned subsidiary of Fox Television Stations, Inc., which is the licensee of Station KMSP-TV.³⁸ Fox News Edge received the General Motors VNR unsolicited and did not pay any form of consideration for the VNR material.³⁹ In addition, Fox's response indicates that Station KMSP-TV's alleged payments for the VNR material were not arms' length transactions. Station KMSP-TV accessed the VNR material through Fox News Edge, but does not have a written subscription agreement with Fox News Edge, nor does it make any form of cash payment to Fox News Edge.⁴⁰ The Station, like other Fox owned and operated stations, makes monthly intercompany accounting transfers to the Fox Television Stations, Inc. general ledger account through an expense account specifically provided for the Fox News Edge service.⁴¹ Station KMSP-TV debits its expense account for Fox News Edge, a credit is made to the Fox Television Stations, Inc. "Home Office Account," and there are subsequent transactions in which the Fox Television Stations, Inc. account is debited and Fox News Edge ultimately is credited for its service.⁴² Fox's response does not demonstrate that the transactions are arms' length; instead, they represent little more than intercompany accounting ledger entries of Fox and its wholly owned subsidiaries. Based on the foregoing, we find that Fox failed to demonstrate that section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules do not apply to its use of the General Motors VNR material.

B. Fox Has Not Demonstrated that the Bureau Erred by Finding that Station KMSP-TV was Required to Air a Sponsorship Identification Announcement for the VNR Material Aired on Station KMSP-TV

11. Fox also argues in the alternative that the sponsorship identification rules do not apply to the General Motors VNR material because it was a news release that is exempted from the rules' disclosure requirements.⁴³ Specifically, Fox argues that the Bureau "erred by ignoring the exception Congress created (and the Commission adopted) for 'news releases' (Example 11) and by relying instead on their approach toward a promotional 'travel film' (Example 26)."⁴⁴ Fox further contends that the news release exception represents Congress's appropriate sensitivity to government intrusion into the news judgment of broadcasters arising from the First Amendment.⁴⁵ Fox argues that the Bureau's analysis of the General Motors VNR material under Example 26 impermissibly intrudes into and second-guesses its

³⁸ See *Supplemental Response* at 2.

³⁹ See *id.* at 3-4.

⁴⁰ See *id.* By contrast, other non-owned Fox affiliate stations enter into individually negotiated news service subscription agreements with Fox News Network, LLC and apparently agree to monthly cash payments for access to Fox News Network's news service content. See *id.* at 2 n.5 & Exh. B.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *NAL Response* at 3-4.

⁴⁴ See *id.* at 4.

⁴⁵ See *id.* In addition, Fox reiterates and incorporates into its *NAL Response* First Amendment and other arguments raised in its *LOI Response*. See *id.* These arguments were fully addressed in the *NAL*, and Fox has not demonstrated error or any other basis for disturbing our conclusions in the *NAL* that our enforcement of the disclosure requirements of section 317 and the sponsorship identification rules does not impermissibly chill or restrict the Station's speech and that the Station's airing of the General Motors VNR material without the required sponsorship identification announcement violated section 317 and section 73.1212 of the Commission's rules. Accordingly, we need not address these arguments again in this Order.

news judgment in order to determine whether the identification of General Motors products exceeded an identification that was reasonably related to the subject matter of the news segment.⁴⁶

12. We find Fox's argument unpersuasive, for the reasons set forth in the *NAL*. Fox does not dispute our conclusion that the subject of Station KMSP-TV's report was consumer demand for convertible automobiles or that the VNR focused exclusively on General Motors and its products. Instead, Fox argues that because the VNR material was used in a news report, it should be exempted from sponsorship identification disclosures under Example 11. We disagree, and find no reason to disturb our conclusion in the *NAL* that the VNR material aired on Station KMSP-TV is more closely analogous to Example 26, which concerns the use of a promotional film showing a product.⁴⁷ Example 11 does not exempt news programming. It simply states that no announcement is required when a station uses editorial comment from a news release on a program.⁴⁸ In contrast, Example 26 concerns a station's use of a promotional film furnished by a company, in which case the announcement requirement hinges on the identification of the company's products or services within the film.⁴⁹ This case, which involves Station KMSP-TV's airing of program material showing GM products, clearly falls under Example 26 rather than Example 11.⁵⁰ Fox's argument effectively would abrogate Example 26 for anything that may be labeled a "news release," regardless of the circumstances of its use by a station. We find no support for such an approach in the Act itself or the legislative history.

13. In addition, Fox's argument that the sponsorship identification rules are inapplicable to the General Motors VNR material because it did not receive any valuable consideration also ignores the applicability of the section 317(a)(1) proviso, which, as set forth above, requires a disclosure for material furnished without charge or at nominal charge when the use of material involves an identification of products or services beyond what is reasonably related to the use of the product or service in the broadcast. In the *NAL*, we found that like the bus company in Example 26(c), General Motors products were shown to an extent disproportionate to the subject matter of the news report, such that the VNR material does not fall within the scope of the proviso, which is directed to material that contains only "transient or fleeting" references to products or brand names.⁵¹ Aside from arguing that Example 11 concerning news releases exempts its use of the General Motors VNR material, and that our analysis of the VNR material under Example 26 constitutes an impermissible intrusion into its news judgment, which we address below, Fox does not dispute our conclusion that the VNR focused exclusively on General Motors products in its visual depictions or verbal identifications such that Station KMSP-TV "impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film."⁵²

14. Contrary to Fox's argument, the Bureau did not impermissibly scrutinize the content of Station KMSP-TV's news broadcast or dictate what that news programming must include, as explained in detail in the *NAL*.⁵³ The *NAL* applies the disclosure requirements of section 317 and the Commission's

⁴⁶ *See id.*

⁴⁷ *See NAL*, 26 FCC Rcd at 3968 ¶ 10.

⁴⁸ *See 1975 Public Notice*, 40 Fed. Reg. at 41938.

⁴⁹ *See id.* at 41939.

⁵⁰ We reject Fox's suggestion that Example 26 is inapplicable here because it involves a "travel film," as opposed to any other promotional film.

⁵¹ *See NAL*, 26 FCC Rcd at 3969 ¶ 14.

⁵² *Id.* at 3969 ¶ 13.

⁵³ *See id.* at 3969-70 ¶¶ 15-17.

sponsorship identification rules in order to determine whether a sponsorship identification announcement was required based on Fox's decision to use VNR material in which General Motors products were shown. Fox does not challenge the Bureau's authority to administer statutes in its jurisdiction, including section 317 and the precedent cited in the *NAL* upholding disclosure requirements similar to the Commission's sponsorship identification rules.⁵⁴ Moreover, the Commission's investigation and enforcement action do not prohibit Fox from using the VNR material or require Fox to do anything more than make the required sponsorship identification announcement for the use of VNR material in this case.

15. For these reasons, we find that Fox has failed to demonstrate error in the *NAL*'s conclusion that the sponsorship identification rules obligated Station KMSP-TV to provide a sponsorship identification announcement for the VNR material in question to alert viewers that General Motors was the source of the VNR material seeking to persuade them.⁵⁵ We find by a preponderance of the evidence that Fox's airing of VNR material on Station KMSP-TV's June 19, 2006 news program without providing a sponsorship identification announcement violated section 317 of the Act and section 73.1212 of the Commission's rules.

C. The Fifteen Day Period for Fox's *NAL* Response was Reasonable under Section 1.80 of the Commission's Rules

16. Section 1.80 of the Commission's rules provides that when the Bureau issues a Notice of Apparent Liability, the "[r]espondent will be afforded a reasonable period of time (*usually* 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture."⁵⁶ The Commission's rules do not mandate a 30-day response period, and the Bureau has the discretion to set a response period that is less than 30 days, as long as the shortened period is reasonable.⁵⁷ The Commission has previously held that providing a response period of less than 30 days is reasonable where, as in this case, there are potential statute of limitations concerns.⁵⁸

17. Fox claims that the fifteen day response period was not reasonable based on the length of time that had elapsed between the filing of its *LOI Response* in this case and the release of the *NAL*.⁵⁹ Fox, however, did not submit any evidence of actual harm occasioned by the 15-day response period and, in fact, substantively responded to the *NAL* within the 15-day period afforded for such response. Moreover, the *April 21st Letter* provided Fox an additional 30-day period to submit information in support of its *NAL Response*. Accordingly, we conclude that the time provided for its response was reasonable.⁶⁰

⁵⁴ See *id.* at 3970-71 ¶ 10.

⁵⁵ See 47 U.S.C. § 317; 47 C.F.R. § 73.1212(a)(2).

⁵⁶ See 47 C.F.R. § 1.80(f)(3) (emphasis added).

⁵⁷ See 47 C.F.R. § 1.80. See also *Complaints Against Various Television Licensees Concerning Their February 25, 2003 Broadcast of the Program "NYPD Blue,"* Forfeiture Order, 23 FCC Rcd 3147, 3159-60 ¶ 28 (2008), *vacated on other grounds sub nom. ABC, Inc. v. Fed. Communications Comm'n*, Nos. 08-0841-ag, 08-1424-ag, 08-1781-ag, 08-1966-ag (2d Cir. Jan. 4, 2011) ("*NYPD Blue Forfeiture Order*").

⁵⁸ See *NYPD Blue Forfeiture Order*, 23 FCC Rcd at 3158 ¶ 25 n.84. (finding a 17-day response period reasonable in light of potential statute of limitations concerns under 28 U.S.C. § 2462 relating to the Department of Justice's enforcement of forfeiture penalties).

⁵⁹ See *NAL Response* at n.1.

⁶⁰ See *NYPD Blue Forfeiture Order*, 23 FCC Rcd at 3159-60 ¶ 28.

D. Fox's Violation of Section 317 of the Act and the Commission's Sponsorship Identification Rules Warrant the Imposition of a Forfeiture

18. The proposed forfeiture in this case was assessed in accordance with section 503(b)(1) of the Act, section 1.80 of the Commission's rules, and the Commission's forfeiture guidelines set forth in its *Forfeiture Policy Statement*.⁶¹ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account "the nature, circumstances, extent, and gravity of the violation, and with respect to violator, the degree of culpability, any history of prior offenses, ability to pay and such other matters as justice may require."⁶² Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶³ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁶⁴ and the Commission has so interpreted the term in the section 503(b) context.⁶⁵

19. We have examined Fox's responses to the *NAL* and the *April 21st Letter* pursuant to the aforementioned statutory factors, our rules and the *Forfeiture Policy Statement*, and find by a preponderance of the evidence that Fox willfully violated section 317 of the Act and section 73.1212 of the Commission's rules by failing to provide the required sponsorship identification announcement for the VNR material used in the Station's June 19, 2006, broadcast. We conclude that Fox is liable for a forfeiture in the amount of four thousand dollars (\$4,000).

IV. ORDERING CLAUSES

20. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁶⁶ and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,⁶⁷ that Fox Television Stations, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for its willful violation of section 317 of the Communications Act of 1934, as amended, and section 73.1212 of the Commission's rules.⁶⁸

21. **IT IS FURTHER ORDERED**, that payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules by close of business on July 18, 2011. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice

⁶¹ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80; *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶² 47 U.S.C. § 503(b)(2)(E).

⁶³ 47 U.S.C. § 312(f)(1).

⁶⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312 and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. . . . The definitions are intended primarily to clarify the language in section 312 and 503, and are consistent with the Commission's application of those terms").

⁶⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶⁶ See 47 U.S.C. §§ 317, 503(b).

⁶⁷ See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

⁶⁸ See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212.

for enforcement pursuant to section 504(a) of the Act.⁶⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Fox Television Stations, Inc. must also send electronic notification on the date said payment is made to Terry.Cavanaugh@fcc.gov, Melanie.Godschall@fcc.gov, Anjali.Singh@fcc.gov and Kenneth.Scheibel@fcc.gov.

22. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to Joseph M. Di Scipio, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., 444 North Capitol Street, N.W., Suite 740, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

⁶⁹ See 47 U.S.C. § 504(a).