

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

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

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 24, 2011**

**Released: March 24, 2011**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), 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”), for its apparent willful violation of section 317 of the Communications Act, as amended (“the Act”), and section 73.1212 of the Commission’s rules.<sup>1</sup> As discussed below, we find that Fox apparently violated section 317 of the Act and the Commission’s sponsorship identification rule.

**II. BACKGROUND**

2. The Commission received a complaint jointly filed by Free Press and the Center for Media and Democracy (“CMD”) alleging that Fox’s Station KMSP-TV had aired a Video News Release (“VNR”) produced for General Motors without also airing a sponsorship identification announcement.<sup>2</sup> The Enforcement Bureau (“Bureau”) issued a letter of inquiry to the Licensee concerning the allegations raised in the Complaint.<sup>3</sup>

3. Fox responded to the *LOI* and stated that Station KMSP-TV had broadcast a news report on June 19, 2006, relating to new car designs that included the General Motors VNR.<sup>4</sup> Fox further stated

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

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

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

<sup>4</sup> 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*”). 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.

that it had received the VNR from Fox News Edge, a news service for broadcast stations affiliated with the Fox Network.<sup>5</sup>

4. Fox provided a recording and transcript of the broadcast at issue.<sup>6</sup> Station KMSP-TV's anchor introduced the VNR as follows: "Well, convertibles are a sure sign of summer, and even though some makes and models of cars are actually seeing a purchase slowdown, Andre Schmertz finds out that's not the case with the open air rides."<sup>7</sup> The transcript, in its entirety, is as follows:

Voiceover: Thinking of getting a convertible now that summer is here? Well think fast. The buzz around this year's convertibles, many brand-new and affordable, means there may not be many left.

[Caption: Bob Lutz, General Motors] "The Solstice is sold out. The Sky is sold out. The Pontiac G6 convertible is sold out."

Bob Lutz, who has worked at all three domestic manufacturers, is now the head of product development at General Motors. He was hired 5 years ago to revive GM's much criticized product line – and the hope is that the success he's had bringing these new convertibles to market will continue across the entire company.

[Caption: Jean Jennings, Automobile Magazine] "Does General Motors have the ability to make cars that people want? Yes they do. It's absolutely clear. This is the key to their survival and on top of that, I have seen, as many journalists have, cars that are scheduled for the next couple of years and I'll tell you that if those cars were on the road right now today, I don't think they'd be in this jam at all."

But Lutz knows [that] making higher quality automobiles is only part of the equation – changing a generation[']s worth of less-than-favorable opinions is the real battle.

"What we're seeing is the old beliefs about General Motors, which we probably earned over twenty, twenty-five years. The old beliefs of all our cars look the same, our quality isn't very good, the vehicles use a lot of gas, none of that stuff is true anymore but these perceptions linger."

However[,] the good looking convertibles coming from GM may be changing that perception, as well as the company's fortunes. America's largest manufacturing company actually turned a profit in the first quarter of '06. [...].<sup>8</sup>

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<sup>5</sup> See *id.* at 3 & n.6.

<sup>6</sup> See *id.* at 3, 5 & Exh. A.

<sup>7</sup> See *id.* at 5 (citing recording submitted in response to Inquiry 1.f).

<sup>8</sup> *LOI Response* at Exh. A.

5. The recording of the broadcast at issue showed approximately 12 different shots of the three convertibles mentioned in the script: the Pontiac Solstice, the Saturn Sky, and the Pontiac G6.<sup>9</sup> All are General Motors cars. No other convertibles or other cars were either shown or mentioned.

6. Although Fox acknowledged that it aired the VNR, and responded to the inquiries set forth in the *LOI*, it also objected to the inquiries as an impermissible encroachment on the Station's editorial discretion.<sup>10</sup> In addition, Fox stated its belief that no sponsorship identification announcement was required for the inclusion of this VNR material in the Station's June 19, 2006, news report.<sup>11</sup> Specifically, Fox stated that: neither the Station nor any of its employees received or was promised consideration of any kind in exchange for broadcasting the VNR; none of the content constituted political broadcast matter or broadcast matter relating to any controversial issues of public importance; and 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.<sup>12</sup> Fox further argued that its use of VNR material in the Station's news report was no different from the use of a press release, and that the Commission has specifically recognized that a broadcaster is not required to make a sponsorship announcement in cases in which news releases are furnished to a station and editorial comment therefrom is used during a program.<sup>13</sup>

### III. DISCUSSION

#### A. Sponsorship Identification Laws

7. Section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules require broadcast stations to broadcast an announcement disclosing whenever any matter is broadcast in exchange for valuable consideration "directly or indirectly paid or promised to or charged or accepted by, the station so broadcasting" at the time the material is aired.<sup>14</sup> Specifically, section 317(a)(1) provides:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or 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: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.<sup>15</sup>

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<sup>9</sup> See *id.* at 5 (citing recording submitted in response to Inquiry 1.f).

<sup>10</sup> See *LOI Response* at 1.

<sup>11</sup> See *id.* at 5-8.

<sup>12</sup> See *id.* at 6-9.

<sup>13</sup> See *id.* at 7.

<sup>14</sup> 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a).

<sup>15</sup> 47 U.S.C. § 317(a)(1). The clause from this subsection stating, "*Provided*, That 'service or other valuable consideration' shall not include . . . unless . . ." is hereinafter referred to as the "proviso."

Section 73.1212(a) of the Commission's rules, which implements section 317(a)(1) of the Act further 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 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.<sup>16</sup>

8. The Commission has explained that the sponsorship identification rules are "grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them."<sup>17</sup> The disclosures required by the sponsorship identification rules provide listeners and viewers with information concerning the source of material in order to prevent misleading or deceiving those listeners and viewers.<sup>18</sup> As set forth above, pursuant to section 317 and the Commission's implementing rule, the obligation to provide such a disclosure for material "furnished without a charge or at a nominal charge for use on, or in connection with, a broadcast" is triggered when the use of the material falls outside of the proviso because it 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."<sup>19</sup>

9. When Congress amended section 317 in 1960 and adopted the proviso, it provided twenty-seven examples regarding the types of consideration that would trigger the obligation to provide sponsorship identification and those that would not because they fell within the proviso.<sup>20</sup> The Commission included those examples plus nine more in public notices released following its adoption of revised sponsorship identification rules in 1963 and 1975.<sup>21</sup> Example 26 provides as follows:

26. (a) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company or its buses. No announcement is required because there is no payment other than the matter furnished and there is no mention of the bus company.

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<sup>16</sup> 47 C.F.R. § 73.1212(a).

<sup>17</sup> See, e.g., *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video New Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593-94 (2005) ("2005 Public Notice").

<sup>18</sup> See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686 (2007), Forfeiture Order, 24 FCC Rcd 14830, 14834 ¶ 12 (2009) (forfeiture reduced, based on licensee's history of compliance, and paid).

<sup>19</sup> See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a)(2).

<sup>20</sup> See H.R. Rep. No. 1800, 86<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 1, at 12-17 (1960) ("House Report").

<sup>21</sup> See *In re Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) ("1963 Public Notice"). The 1963 Public Notice was updated in 1975. See *Applicability of Sponsorship Identification Rules*, Public Notice, 40 Fed. Reg. 41936 (1975) ("1975 Public Notice").

(b) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(c) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.<sup>22</sup>

10. Fox argues that the section 317(a)(1) proviso does not apply to broadcasters' use of VNR material, relying on Example 11 from the *House Report*.<sup>23</sup> Example 11 pertains to a "news release" and "editorial comment therefrom" and states that no sponsorship identification announcement is required.<sup>24</sup> Example 26, in contrast, pertains to a film showing a product. We find that the VNR material broadcast on Station KMSP-TV is more closely analogous to Example 26 because, rather than merely quoting editorial comment from a press release, the Station broadcast the above-quoted script and video footage of three different General Motors convertibles.<sup>25</sup> Under these circumstances, Example 26, which concerns the use of a promotional film provided by a bus company, states that an announcement is required if the bus is identified "to an extent disproportionate to the subject matter of the film."<sup>26</sup>

11. Commission precedent makes clear that VNR material constitutes "valuable consideration" within the meaning of section 317 that may require a sponsorship announcement under some circumstances.<sup>27</sup> Furthermore, in 2005, the Commission reminded broadcast licensees that applicable statutory provisions and the Commission's rules generally require them to clearly disclose the nature, source and sponsorship of program matter that they air, including VNRs.<sup>28</sup> The Commission also has warned that it will take enforcement action against broadcast stations that do not comply with the disclosure responsibilities set forth in the rules.<sup>29</sup>

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<sup>22</sup> 1975 *Public Notice*, 40 Fed. Reg. at 41939, Example 26; 1963 *Public Notice*, 40 FCC at 148, Example 26.

<sup>23</sup> See *LOI Response* at 7. See also 1975 *Public Notice*, 40 Fed. Reg. at 41938, Example 11; 1963 *Public Notice*, 40 FCC at 146, Example 11.

<sup>24</sup> See 1975 *Public Notice*, 40 Fed. Reg. at 41938, Example 11; 1963 *Public Notice*, 40 FCC at 146, Example 11.

<sup>25</sup> See *LOI Response* at Exh. A & recording submitted in response to Inquiry 1.f.

<sup>26</sup> 1975 *Public Notice*, 40 Fed. Reg. at 41939, Example 26(c); 1963 *Public Notice*, 40 FCC at 148, Example 26(c).

<sup>27</sup> See *Comcast Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17474, 17477 ¶ 8, 17478 ¶¶ 9-10, 17479 ¶ 11 (Enf. Bur. 2007) (forfeiture paid). See also *Advertising Council Request for Declaratory Ruling or Waiver Concerning Sponsorship Identification Rules*, Order, 17 FCC Rcd 22616 (2002) (credit towards satisfaction of a statutorily-mandated matching PSA obligation constituted valuable consideration for airing programming with government-approved anti-drug and anti-alcohol themes); *Westinghouse Broadcasting Co., Inc.*, Letter by Direction of the Commission, 40 FCC 28 (1958) (furnishing of films of a Senate hearing investigating a strike against the Kohler Company to a television station by the National Association of Manufacturers constituted "valuable consideration" under section 317).

<sup>28</sup> See *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video New Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8594 (2005) ("2005 *Public Notice*").

<sup>29</sup> See *id.*

**B. Fox Failed to Provide Requisite Sponsorship Identification Announcement**

12. We now consider whether Fox was required to provide a sponsorship identification announcement for the VNR material broadcast on Station KMSP-TV. In other words, did the use of the VNR material fall outside of the section 317(a)(1) proviso? As set forth above, Example 26 from the *House Report* indicates that no announcement is required for a promotional film in which the 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 an announcement is required if the company's products or services are "shown to an extent disproportionate to the subject matter of the film."<sup>30</sup>

13. The subject matter of the Station's report here, based on the recording and transcript, was the consumer demand for convertible automobiles during the summer.<sup>31</sup> Both the announcer's introduction to the story and the beginning of the story itself focused on the desirability of such cars. Yet, the VNR focused exclusively on General Motors products in its visual depictions or verbal identifications of products, and it contained extensive images of the General Motors products – specifically, a total of 12 different shots, some of them close-up and some of them extended, of three General Motors convertibles identified by name. By its use of the VNR, Station KMSP-TV has "impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film."<sup>32</sup> In addition, the VNR's portrayal of General Motors' overall prospects for success based on the popularity of its new vehicle models, including interview segments with General Motors' head of product development and an "Automobile Magazine" commentator who stated that "General Motors ha[s] the ability to make cars that people want," was disproportionate to the subject matter of the program segment.

14. We conclude that the identification of General Motors products exceeded an identification that was reasonably related to the subject matter of the programming at issue. The VNR material in question therefore does not fall within the scope of the proviso set forth in section 317 and section 73.1212(a)(2), which is directed to material that contains only "fleeting or transient" references to products or brand names.<sup>33</sup> Instead, like the bus company in Example 26(c), General Motors products were shown to an extent disproportionate to the subject matter of the report, obligating Station KMSP-TV to provide a sponsorship identification announcement.<sup>34</sup> Because the material that aired on Station KMSP-TV fell outside the proviso, a sponsorship identification announcement was required to alert viewers that General Motors was the source of the VNR material seeking to persuade them. For the foregoing reasons, we find that Fox's airing of VNR material on Station KMSP-TV's June 19, 2006 news program without providing a sponsorship identification announcement was an apparent violation of section 317 of the Act and section 73.1212 of the Commission's rules.<sup>35</sup>

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<sup>30</sup> Compare *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26(b); *1963 Public Notice*, 40 FCC at 148, Example 26(b) with *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26(c); *1963 Public Notice*, 40 FCC at 148, Example 26(c).

<sup>31</sup> See *LOI Response* at Exh. A.

<sup>32</sup> *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26(c); *1963 Public Notice*, 40 FCC at 148, Example 26(c).

<sup>33</sup> *Comcast Corp.*, 22 FCC Rcd at 17477.

<sup>34</sup> See 47 U.S.C. § 317; 47 C.F.R. § 73.1212(a)(2).

<sup>35</sup> Because we find that Fox was required to provide sponsorship identification for this material as it fell outside the proviso, we need not address Fox's arguments that no announcement was required under the provisions of the Act and the Commission's rules requiring announcements in connection with broadcasts involving political matters or controversial issues of public importance and broadcasts for which the broadcaster receives a report pursuant to section 507 of the Act.

### C. First Amendment and Press Freedom Arguments

15. Fox argues that the Bureau's investigation of this matter, and the resulting *LOI*, represent an impermissible intrusion into the journalistic and editorial discretion in the presentation of news and public information that is at the core of the First Amendment's free press guarantees, and is inconsistent with precedent holding that the Commission has little authority to interfere with a licensee's selection and presentation of news and editorial programming.<sup>36</sup> Fox also asserts that the Bureau's *LOI* carries a significant risk of chilling speech because "broadcasters likely will self-censor and eschew perfectly legitimate speech, rather than expose themselves to government interference."<sup>37</sup>

16. The Act, Commission rules, and precedent grant the agency broad authority to investigate complaints of this nature. Section 403 specifically grants the Commission "full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, . . . or relating to the enforcement of any of the provisions of this chapter."<sup>38</sup> The Act and the Commission's rules also include provisions authorizing the Commission to require "written statements of fact" from broadcasters concerning matters within its jurisdiction.<sup>39</sup> The courts have affirmed the Commission's authority to investigate any matter relating to the enforcement of the Act and to obtain the information necessary to perform such an investigation.<sup>40</sup> Thus, the Commission generally has great discretion in seeking information from its regulatees, including broadcast licensees, on any issue within the Commission's jurisdiction in order to enable it to discharge its statutory mandates.<sup>41</sup>

17. We also find unpersuasive Fox's assertions that the Bureau's enforcement action in this case impermissibly interferes with its First Amendment rights or violates the anti-censorship provisions of section 326 of the Act.<sup>42</sup> Section 317 and the Commission's sponsorship identification rules are disclosure requirements, and do not restrict speech. All the Commission's rules require in terms of an announcement is a statement at the time of broadcast that program matter is furnished and on whose behalf.<sup>43</sup> Thus, Fox is free to exercise its newsgathering and editorial functions to determine what news to cover and how such news should be presented. In this regard, the Supreme Court has emphasized that disclosure requirements are a less restrictive alternative to direct speech restrictions that may serve

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<sup>36</sup> See *LOI Response* at 1-2 (citing *Nat'l Broadcasting Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 124 (1973); *Dr. Paul Klite*, Letter Decision, 12 Comm. Reg. (P&F) 79, 82 (1998); *American Broadcasting Companies, Inc.*, Memorandum Opinion and Order, 83 FCC 2d 202, 305 (1980); *Columbia Broadcasting Sys., Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273 (1975)).

<sup>37</sup> *LOI Response* at 2.

<sup>38</sup> 47 U.S.C. § 403.

<sup>39</sup> See 47 U.S.C. § 308(b); 47 C.F.R. § 73.1015.

<sup>40</sup> See, e.g., *Stahlman v. Fed. Communications Comm'n*, 126 F.2d 124, 127 (D.C. Cir. 1942).

<sup>41</sup> See *Fed. Communications Comm'n v. Schreiber*, 381 U.S. 279, 290 (1965); *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950) (an agency will not exceed its investigatory power if its "inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant").

<sup>42</sup> See 47 U.S.C. § 326.

<sup>43</sup> See 47 C.F.R. § 73.1212(a).

important government interests.<sup>44</sup> The Court has ruled that similar disclosure requirements do not violate the First Amendment.<sup>45</sup> The precedents cited by Fox do not support its argument.<sup>46</sup> Unlike the cases cited by Fox, section 317 of the Act provides the Commission with the authority to determine whether material aired by Station KMSP-TV required sponsorship identification disclosures. Although the Commission must avoid intrusion on a broadcaster's editorial judgments, it cannot abrogate its responsibility to administer statutes within its jurisdiction, including section 317.<sup>47</sup> In sum, Fox has failed to demonstrate how the burden of responding to inquiries concerning whether Station KMSP-TV's aired sponsorship announcements can be credibly deemed to chill the Station's speech.

#### D. Proposed Action

18. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>48</sup> 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.<sup>49</sup> 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,<sup>50</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>51</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no

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<sup>44</sup> See *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 914 (2010) (upholding Bipartisan Campaign Reform Act of 2002 disclaimer and disclosure requirements for electioneering communications not funded by a candidate); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 237 (2003) (rejecting a facial challenge to disclosure requirements contained in 47 U.S.C. § 315(e)(1)). The Court partially overturned *McConnell* in *Citizens United*, but the portion of *McConnell* concerning the section 315(e)(1) disclosure provisions remains good law.

<sup>45</sup> See, e.g., *Meese v. Keene*, 481 U.S. 465, 480-81 (1987) (upholding the Foreign Agents Registration Act, which required the labeling of films distributed by agents of foreign governments to indicate the agent's identity and the identity of the principal for whom the agent acts, finding that such disclosures "better enable the public to evaluate the import of the propaganda," and that striking down the disclosure requirement under the First Amendment "withholds information from the public").

<sup>46</sup> See *LOI Response* at 4 & n.8 (citing *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957); *Fed. Election Comm'n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 389 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 897 (1981)).

<sup>47</sup> See *Columbia Broadcasting Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 102-103 (1973) ("The [First] Amendment should be interpreted so as not to cripple the regular work of the government. [. . .] Although free speech should weigh heavily in the scale in the event of conflict, still the Commission should be given ample scope to do its job.") (quoting 2 Z. Chafee, *Government and Mass Communications* 640-41 (1947)). Cf. *Radio-Television News Directors Assoc'n v. Fed. Communications Comm'n*, 184 F.3d 872, 881 (D.C. Cir. 1999) (rules that to "some degree interfere with the editorial judgment of professional journalists and entangle the government in day-to-day operations of the media" are "cause for concern, though not fatal in moderation").

<sup>48</sup> See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). See also 47 U.S.C. § 503(b)(1)(D) (providing that any person who is determined by the Commission to have violated any provision of section 1464 shall be liable for a forfeiture penalty).

<sup>49</sup> 47 U.S.C. § 312(f)(1).

<sup>50</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>51</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

such penalty should be imposed.<sup>52</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>53</sup>

19. The Commission's forfeiture guidelines establish a base forfeiture amount of four thousand dollars (\$4,000) for sponsorship identification violations.<sup>54</sup> In addition, the Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act<sup>55</sup> and section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>56</sup> Based upon our review of the record in this case and the statutory factors identified above, we find that Fox is apparently 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,<sup>57</sup> and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,<sup>58</sup> that Fox Television Stations, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of four thousand dollars (\$4,000) for its apparent willful violation of the sponsorship announcements requirements of section 317 of the Communications Act of 1934, as amended, and section 73.1212 of the Commission's rules.

21. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that within fifteen (15) days of the release date of this *NAL*, Fox Television Stations, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. 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

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<sup>52</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>53</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

<sup>54</sup> See *The 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, 17115 (1997), *recons. denied*, 15 FCC 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

<sup>55</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>56</sup> 47 C.F.R. § 1.80(a)(4).

<sup>57</sup> See 47 U.S.C. §§ 317, 503(b).

<sup>58</sup> See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1212.

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](mailto: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](mailto:Terry.Cavanaugh@fcc.gov), [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov), [Anjali.Singh@fcc.gov](mailto:Anjali.Singh@fcc.gov) and [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

23. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Commission's rules. The written statement shall be mailed to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554, and **MUST INCLUDE** the NAL/Account Number referenced above. To the extent practicable, any response should also be sent by e-mail to [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov), [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov), [Anjali.Singh@fcc.gov](mailto:Anjali.Singh@fcc.gov), and [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

25. **IT IS FURTHER ORDERED**, that the *Complaint* **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the Complaint proceeding **IS HEREBY TERMINATED**.<sup>59</sup>

26. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to Fox Television Stations, Inc., at its address of record and to its counsel, Antoinette C. Bush, Esquire, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>59</sup> For purposes of the forfeiture proceeding initiated by this *NAL*, Fox Television Stations, Inc., and Fox Television Holdings, Inc., shall be the only parties to this proceeding.