



PUBLIC INSPECTION FILE

730 Miramonte Drive, Santa Barbara, CA 93109 805.882.3933 Fax 805.882.3934 www.keyt.com

October 10, 2006

**VIA E-MAIL**

Kenneth M. Scheibel, Jr.  
Eric J. Bash  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: KEYT-TV, Santa Barbara, California  
Facility Id. No. 60637  
FCC File No. EB-06-IH-2723

Dear Messrs. Scheibel and Bash:

On behalf of Smith Media License Holdings, LLC ("Smith"), licensee of KEYT-TV, Santa Barbara, California, we hereby respond to the Commission's request for information regarding Smith's broadcast of a certain satellite media tour ("SMT").<sup>1</sup> In the *Letter Request*, the Bureau attaches a report from the Center for Media and Democracy (the "CMD Report") that at no point claims Smith violated Section 317 of the Communications Act, as amended, or Section 73.1212 of the Commission rules (collectively, the "Sponsorship Id. Rules").<sup>2</sup> In fact, as the CMD Report itself implicitly acknowledges,<sup>3</sup> Smith fully complied with the Sponsorship Id. Rules because Smith did not accept any "money, service or other valuable consideration" in connection with the interview discussed in the report.<sup>4</sup>

**I. Introduction**

The *Letter Request* seeks additional information about a newscast in which KEYT-TV broadcast an SMT that D S Simon Productions arranged on behalf of various vendors at the 2006 Consumer Electronics Show. During its morning program on January 5, 2006, KEYT-TV's

<sup>1</sup> See Letter to Smith Media License Holdings, LLC, licensee of KEYT-TV, Santa Barbara, California, from William H. Davenport, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, EB-06-IH-2723 (Aug. 11, 2006) (the "*Letter Request*").

<sup>2</sup> See 47 U.S.C. § 317 (2000); 47 C.F.R. § 73.1212 (2005).

<sup>3</sup> See Center for Media and Democracy, *Fake TV News: Widespread and Undisclosed*, at 3 (Apr. 6, 2006) (conceding that SMTs and VNRs "are *free*." (emphasis added)). The CMD Report also makes policy recommendations to the Commission, again implicitly conceding that the under the Commission's current rules, sponsorship identification of SMTs is unnecessary. See *id.* at 28.

<sup>4</sup> 47 U.S.C. § 317(a)(1).

news anchors interviewed Robin Raskin from the Consumer Electronics Show in Las Vegas. Ms. Raskin provided information regarding various new products debuting at the annual convention. Neither Smith nor its employees or agents received any payments or other consideration for agreeing to broadcast an interview of Ms. Raskin. Smith did not have any agreement or implicit understanding with D S Simon Productions or any of the vendors at the 2006 Consumer Electronics Show regarding Smith's decision to participate in the SMT. Instead, Smith agreed to broadcast the interview because it believed in its good faith discretion that many of KEYT-TV's local viewers would be interested in the latest trends in consumer electronics.

Smith fully complied with the Sponsorship Id. Rules because (1) Smith did not receive any consideration for participating in SMT and (2) Smith did not enter into any agreement or have any implicit understanding with D S Simon Productions or any of the vendors at the Consumer Electronics Show regarding KEYT-TV's broadcast of the SMT. In such situations, the Commission has held that the Sponsorship Id. Rules are "clearly inapplicable."<sup>5</sup>

## **II. Facts**

On December 11, 2005, D S Simon Productions emailed information to KEYT-TV's assignment desk providing the station with an opportunity to interview Dick DeBartolo, the "Giz Wiz." The email explained that Mr. DeBartolo was a renowned expert on the latest consumer products, and he would discuss the latest trends from the 2006 Las Vegas Consumer Electronics Show. KEYT-TV's professional news department believed that the television station's viewers would find an interview with Mr. DeBartolo interesting, and they contacted D S Simon Productions to schedule the interview for the morning of January 4, 2006.

Station personnel did not have any further contact with D S Simon Productions until shortly before conducting the interview on KEYT-TV's morning news. At that time, KEYT-TV learned that it would interview Robin Raskin instead. KEYT-TV's news director was unfamiliar with Ms. Raskin and removed the segment from upcoming newscasts, but he did not have time to cancel the initial interview.

During the live, unscripted interview, KEYT-TV's two news anchors asked their own questions of Raskin and asked appropriate follow up questions. The news anchors created their own lead-in and tag-out to the segment. They did not follow any script, and instead relied on their own professional judgment when interviewing Raskin. In the interview, Raskin discussed various cutting edge electronics products that were making their debut at the 2006 Consumer Electronics Show.

Neither Smith nor any of its employees or agents received any payments or other consideration for agreeing to participate in the interview. D S Simon Productions did not offer to give Smith or its employees or agents any of the products that Raskin reviewed or any other gift. The parties did not reach any agreement or implicit understanding regarding the SMT beyond the

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<sup>5</sup> Barry G. Silverman, *Memorandum Opinion & Order*, 63 FCC 2d 507, ¶ 16 (1977).

necessary arrangements for the date and time of the interview.<sup>6</sup> Smith did not agree to promote any specific products, and Smith retained the right to ask whatever questions and follow up questions, its professional journalists deemed necessary in their own discretion.

### **III. Smith Fully Complied with the Commission's Sponsorship Id. Rules.**

Smith had no obligation to identify a "sponsor" of the SMT because no entity sponsored the segment or otherwise paid or promised to pay for the broadcast. "Generally, when no payment or other valuable consideration is paid or promised for the broadcast or cablecast, no 'sponsorship identification' is necessary, since by definition there is no sponsor."<sup>7</sup> The only exception to this rule concerns programming discussing political matters or other issues of public importance.<sup>8</sup> Smith's experienced news professionals determined in good faith that an interview with a consumer products expert—although of interest to viewers—is neither a political matter nor a controversial issue of public importance. Such a conclusion hardly seems unreasonable.

The mere opportunity to participate in the SMT does not qualify as valuable consideration. Smith received information regarding the SMT unsolicited and did not enter into any agreement or understanding with D S Simon Productions or any of the vendors at the Consumer Electronics Show beyond simply scheduling a time when KEYT-TV would conduct the interview. D S Simon Productions did not provide Smith with samples of any of the products discussed in the SMT. Smith controlled the interview. KEYT-TV's professional news anchors decided which questions they would ask the product reviewer. Under these circumstances, the statutory history of Section 317, binding Commission precedent, and decades of consistent industry practice all confirm that Smith had no obligation to identify the source of the video footage.

#### **A. The Legislative History of Section 317 Confirms That Congress Never Intended for Interviews to Require Identification.**

Congress never intended for SMTs or other similar interviews to require sponsor identification. Instead, the legislative history of Section 317 confirms the Sponsorship Id. Rules apply to a limited class of programs.<sup>9</sup> On March 16, 1960, the Commission released a Public Notice interpreting Section 317 to require sponsor identification when a third party provided free

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<sup>6</sup> In fact, if the parties had reached an agreement, D S Simon Productions would have breached it by replacing DeBartolo with Raskin.

<sup>7</sup> Commission Reminds Broadcast Licensees and Cable Operators of Sponsorship Identification Requirements Applicable to Paid-For "Public Service" Messages, *Public Notice*, 6 FCC Rcd 5861 (1991).

<sup>8</sup> See § 73.1212(d).

<sup>9</sup> *Silverman*, 63 FCC 2d at ¶ 15 ("Congress intended to limit [the sponsorship identification] requirement to certain well defined program types.").

material merely “with the hope that broadcast exposure would result.”<sup>10</sup> This appears to be the manner in which the CMD Report interprets Section 317 with respect to SMTs and video news releases. Congress, however, swiftly rejected the Commission’s interpretation by amending Section 317 to limit the scope of cases requiring sponsorship identification.<sup>11</sup>

In its amendment, Congress established the current rule that material received at no charge generally does not require sponsor identification.<sup>12</sup> The amendment added the following proviso directly addressing the applicability of Section 317 when material is provided to a broadcast station for free:

Provided, That “service or other valuable consideration” shall not include any service or property furnished without charge or at a 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>13</sup>

The language in the proviso is necessarily broad and ambiguous.<sup>14</sup> Therefore, to aid the Commission in interpreting the proper scope of Section 317, the House Committee Report provided several examples to clarify Congress’s intended effect. None of the examples in the House Committee Report discuss unscripted interviews with people who are promoting a product. Congress, quite simply, was not concerned with this practice.

Congress, instead, directed the proviso at gifts to station personnel. For example, an automobile dealer *gives* a new car in exchange for broadcast mentions.<sup>15</sup> A refrigerator manufacturer *gives* a refrigerator in exchange for a free sales pitch about the refrigerator.<sup>16</sup> A piano manufacturer *gives* a piano to a concert show in exchange for excessive mentions of the piano.<sup>17</sup> In each of the above examples in the legislative history, the theme is the same—the broadcaster receives the product as a gift in return for the broadcast of certain programming.

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<sup>10</sup> Sponsorship Identification of Broadcast Material, *Public Notice 85460*, FCC 60-239 (Mar. 16, 1960) *as reprinted in* 1960 U.S.C.C.A.N. 3541, 3545.

<sup>11</sup> *See Nat’l Ass’n for Better Broadcasting v. Television Station KCOP(TV)*, Los Angeles, California, *Memorandum Opinion & Order*, 4 FCC Rcd 4988, ¶¶ 14-15 (1988).

<sup>12</sup> *See* H.R. Rep. No. 1800 (1960), *as reprinted in* 1960 U.S.C.C.A.N. 3516, 3527 (“*House Report*”).

<sup>13</sup> 47 U.S.C. § 317(a).

<sup>14</sup> *See House Report* at 3539.

<sup>15</sup> *See id.* at 3529 (example 8).

<sup>16</sup> *See id.* at 3530 (example 23).

<sup>17</sup> *See id.* at 3532 (example 27).

Again in this case, Smith did not receive any of the products promoted in the SMT or any other gifts.

Smith's SMT does not fit the pattern of programs that Congress sought to include. If the Commission now attempts to again expand its Sponsorship Id. Rules to require identification for SMTs, it "would significantly broaden the type of situations in which a sponsorship identification could be required, with no indication whatever that Congress intended such a result."<sup>18</sup> The Commission has always interpreted its Sponsorship Id. Rules narrowly to only apply to the limited types of programming specifically described in the House Committee Report and earlier Commission decisions.<sup>19</sup> The Commission has consistently rejected attempts to broaden the class of programming covered by the Sponsorship Id. Rules.<sup>20</sup> No basis exists upon which the Commission should—or could—revert to its 1960 interpretation.

B. Identification Was Unnecessary Because Smith Controlled the Interview and Maintained Editorial Discretion.

Longstanding Commission precedent confirms that final editorial control is an essential element of the Sponsorship Id. Rules. A third party cannot be a sponsor if it does not have editorial control.<sup>21</sup> Final editorial control is necessary even if the third party pays the entire cost of production and even if that party makes some editorial suggestions.<sup>22</sup> If the third party does not have final editorial control, that party is not a sponsor of the programming.<sup>23</sup>

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<sup>18</sup> See *NABB v. KCOP(TV)*, 4 FCC Rcd at ¶ 16 (further explaining that any expansive reading of Section 317 "would be a novel interpretation of the statutory provision").

<sup>19</sup> *Silverman*, 63 FCC 2d at ¶ 15.

<sup>20</sup> See, e.g., *NABB v. KCOP(TV)*, 4 FCC Rcd at ¶ 19 (rejecting attempts to expand the Sponsorship Id. Rules when "[n]either the Commission nor Congress has suggested previously that [such programming] inherently raise sponsorship identification concerns").

<sup>21</sup> See Advertising Council Request for Declaratory Ruling or Waiver Concerning Sponsorship Identification Rules, *Order*, 17 FCC Rcd 22,616, ¶ 18 (2002) (stating that editorial control is "an indicia of sponsorship"); *Trumper Communications of Portland, Ltd.*, 11 FCC Rcd 20,415, 20,418 (MMB 1996) (holding that R.J. Reynolds was a sponsor because it retained exclusive editorial control); *Complaints of Nat'l Welfare Rights Org., Against Gilmore Broadcasting Corp., Licensee of WSVN-TV, Harrisonburg, VA*, 41 FCC 2d 187, ¶ 25 (1973).

<sup>22</sup> See *Gilmore Broadcasting Corp.*, 41 FCC 2d at ¶ 25 (holding that even though a pharmaceutical company paid the cost of producing a public service announcement, the pharmaceutical company was not a sponsor because it did not have final editorial control over the announcement).

<sup>23</sup> See Request for Declaratory Ruling of Paul Loveday and Californians for Smoking and No Smoking Sections, *Order*, 87 FCC 2d 492, ¶ 2 (1981) (rejecting a request to declare tobacco companies as the sponsors of certain advertising because the Commission did not have any

Neither the D S Simon Productions nor any of the vendors at the 2006 Consumer Electronics Show had any editorial control over the live, unscripted interview. Moreover, given the inherent unpredictable nature of live interviews, such editorial control is impossible. Smith's professional news reporters developed their own lead-in and questions based on what they believed would most interest their local audience. They asked follow up questions and did not follow any particular script. Smith had every right to ask challenging questions or to offer commentary contradicting the interviewee's responses. Smith controlled the interview, which further confirms that the Sponsorship Id. Rules do not apply.

C. Decades of Consistent Industry Practice Confirm That the Sponsorship Id. Rules Do Not Apply to Unscripted Interviews.

Unscripted interviews with people who are promoting products are a staple of news and entertainment programs, and the Commission has never suggested that these conventional interviews run afoul of the Sponsorship Id. Rules. In the last two weeks alone, examples abound. Former President Clinton agreed to appear on "Fox News Sunday" specifically to promote his climate change forum.<sup>24</sup> Pakistani President Pervez Musharraf agreed to appear on at least five American television programs to promote his new book *In the Line of Fire*.<sup>25</sup> Author Bob Woodward appeared on "Sixty Minutes," "Meet the Press," and several other programs to promote his new book *State of Denial*. In the week of October 2, the hosts on "The Late Show with David Letterman," "The Tonight Show," and "The Daily Show" interviewed thirty-one guests. All but two guests were promoting a movie, a book, a television show, or an album.<sup>26</sup>

Moreover, many of these interviews involve "the discussion of a controversial issue of public importance," yet the Commission again has never suggested that such an interview violates Section 73.1212(d) or Section 76.1615(c) of its rules. For example, on June 28, 2006, former Vice President Al Gore appeared on "The Late Show with David Letterman" to promote his book and movie of the same title *An Inconvenient Truth*, which both discuss the controversial topic of global warming.<sup>27</sup> The former vice president appeared on the program to induce the

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evidence that the tobacco companies exercised editorial control over the programming) *affirmed sub nom. Loveday v. FCC*, 707 F.2d 1443 (D.C. Cir. 1983).

<sup>24</sup> See Howard Kurtz, *Clinton's Finger Wagging Moment*, WASH. POST, Sept. 25, 2006, at C1 ("Fox had agreed in advance that half the interview would be about Clinton's Global Initiative forum and half about other subjects.").

<sup>25</sup> See Libby Copeland, *Punch Lines for Pakistan's President: Jon Stewart Laughs It Up With Musharraf*, WASH. POST, Sept. 27, 2006, at C1 ("In recent days Musharraf has promoted his memoir, published on Monday on 'Hannity & Colmes,' 'Today,' '60 Minutes' and 'Charlie Rose.' He has engaged in long discussions of his country's foreign policy and endured the occasional moment of awkwardness in service to the greater good of book sales.").

<sup>26</sup> See Attachment 1.

<sup>27</sup> An edited video clip of the interview is available at <http://www.youtube.com/watch?v=Tf7s0kTlfig>

Late Show to plug the movie and the book. Yet the Late Show did not provide any identification.

The Commission cannot distinguish among the SMT that KEYT-TV broadcast and any of the interviews discussed above. In each example, the program was able to book a guest, and in exchange the guest was able to use the program to promote a product. If the Commission suddenly expands the reach of the Sponsorship Id. Rules on a selective, retroactive basis it will have profoundly negative effects on public dialog and the entire media industry.

**IV. The Sponsorship Identification Requirements Under Section 507(b) Do Not Apply Because D S Simon Productions Had No Power to Influence Programming on KEYT-TV**

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The disclosure requirements under Section 507 of the Communications Act, as amended, likewise do not apply to KEYT-TV's interview.<sup>28</sup> Prior to the 1960 amendments, Section 317 only applied to licensees.<sup>29</sup> It did not cover payments to disc jockeys, program directors, or other station employees directly responsible for the selection of program material. Moreover, it did not extend to payments to program producers and others who developed television shows. With Section 507, Congress sought to close this loophole.<sup>30</sup> At the same time, however, Congress made clear that Section 507 applies "to those in fact responsible for the selection and inclusion of broadcast matter."<sup>31</sup>

Section 507 does not require disclosure of any payments that may have been made to D S Simon Productions by other parties. D S Simon Productions has no power to influence program selection on KEYT-TV. It can only pitch a potential interview to the station, as anyone else would. KEYT-TV's News Department alone decides whether to include the material. While Section 507 applies to the station's News Department because it has the power to affect programming decisions, Section 507 cannot and does not apply to those who cannot influence programming decisions.

Furthermore, Congress never intended to include public relations firms as among the entities covered by Section 507. As the House Committee Report explained, sponsorship identification is unnecessary for press releases.<sup>32</sup> Organizations, however, often pay public relations firms to create and distribute their press releases. Congress would not have excluded press releases under Section 317, only to require identification through a backdoor trap in Section 507.

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<sup>28</sup> See 47 U.S.C § 508.

<sup>29</sup> See House Report at 3526-27.

<sup>30</sup> See *id.*

<sup>31</sup> *Id.* at 3527.

<sup>32</sup> See *id.* at 3529 (example 11).

Whether D S Simon Productions was paid to produce and market the interview segment is irrelevant. If the companies featured in the interview had produced it themselves without the aid of a third party, no payments would have been made, and Section 507(b) clearly would not apply. The Commission may not read Section 507(b) so broadly as to require sponsor identification whenever a company happens to outsource program production.

Nevertheless, if the Commission now intends to expand its Sponsorship Id. Rules to include SMTs provided by public relations firms, due process demands that the Commission first warn licensees of its expansive new interpretation and licensees' sudden new obligations.<sup>33</sup>

**V. Smith Had No Obligation to Obtain Information From Its Employees Because the SMT Does Not Require Sponsorship Identification.**

Smith had no obligation under Section 317(c) to obtain information from its employees regarding any payments made in connection with the SMT because there were no such payments. Section 317(c), the reasonable diligence requirement, only applies if the licensee is required to make an announcement under Section 317(a).<sup>34</sup> As discussed above, Smith did not receive any consideration for participating in the SMT. As a result, the Sponsorship Id. Rules, including Section 317(c) do not apply.

**VI. The First Amendment Prohibits the Commission From Interfering in Smith's Constitutionally Protected Editorial Judgment.**

Smith's decision to participate in the SMT as part of its newscast is a function of its constitutionally protected editorial judgment. The First Amendment prohibits the Commission from interfering with a broadcaster's editorial discretion.<sup>35</sup> Accordingly, "[n]othing in [the

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<sup>33</sup> See *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000). In a footnote to a fifteen-year-old Public Notice, the Commission hinted that payments to public relations firms may trigger the disclosure requirements under Section 507(b). See Commission Reminds Broadcast Licensees and Cable Operators of Sponsorship Identification Requirements Applicable to Paid-For "Public Service" Messages, *Public Notice*, 6 FCC Rcd 5861, n.1 (1991). A brief mention buried in a footnote, however, does not sufficiently provide fair notice to broadcasters who in good faith interpreted Section 507 differently. Cf. *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1366 (D.C. Cir. 1993) (cautioning the Commission "not to bury what it believes to the heart of its order in the last line of a footnote").

<sup>34</sup> See *Metroplex Communications*, 5 FCC Rcd at ¶ 5 ("[W]e see no basis to fault a licensee for lacking reasonable diligence in a situation in which there has been no failure to make a required announcement.").

<sup>35</sup> See *Dr. Paul Klite*, 12 C.R. (P&F) 79, 81 (MMB 1998) ("Because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, licensees are entitled to the widest latitude of journalistic discretion in this regard.").



Communications Act of 1934, as amended] was intended to permit the exercise by the FCC of control over editorial decisions of broadcast journalists.”<sup>36</sup> The choice of which material goes into a newscast is at the heart of editorial judgment.<sup>37</sup>

Reinterpreting the Sponsorship Id. Rules now to require identification of SMTs incorporated into newscasts would unconstitutionally infringe on the editorial process. With the constant threat of forfeitures, licensees would have to be forced to abandon the news interview. Licensees would forgo interviews with respected authors such as Bob Woodward. If the Commission suddenly abandons decades of precedent to declare that free SMTs now require identification, the chilling effect on news coverage would be profound. This, quite simply, cannot occur. As the United States Supreme Court observed more than thirty years ago, “[i]t has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with the First Amendment guarantees of a free press as they have evolved to this time.”<sup>38</sup>

## **VII. Response to Inquiries**

With the foregoing as background, Smith hereby responds to the Commission’s specific questions.

1. **For Each VNR or SMT programming segment identified above, state whether the Smith station listed above aired the VNR or SMT program material as alleged in the CMD Study. If so, provide the following information:**

- a. **The date(s) on which Smith received the VNR or SMT program material;**

Smith broadcast the live unscripted interview on January 4, 2006.

- b. **Any materials Smith received that accompanied the VNR or SMT;**

To the best of Smith’s knowledge, it only received one email from D S Simon Productions. It was dated December 11, 2005. It offered KEYT-TV the opportunity to interview consumer electronics expert Dick DeBartolo. The email did not offer to provide KEYT-TV or any of its employees any consideration for agreeing to interview Mr. DeBartolo. According to the email, Smith could interview Mr. DeBartolo on January 5, 2006. Smith, in fact, broadcast the interview with Robin Raskin on January 4, 2006. Smith has reviewed the emails for all of its

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<sup>36</sup> *New Jersey State Lottery Comm’n v. United States*, 491 F.2d 219, 222 (3d Cir. 1974), *cert. granted*, 417 U.S. 907 (1974), *vacated and remanded for consideration of mootness*, 420 U.S. 371 (1975) (per curiam), *on remand*, 519 F.2d 1398 (3d Cir. (table)).

<sup>37</sup> *See ABC, Inc., Memorandum Opinion & Order*, 84 FCC 2d 302, ¶ 10 (1980) (“The choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion.”).

<sup>38</sup> *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

current employees who likely would have had any contact with D S Simon Productions. To the best of Smith's belief, D S Simon Productions contacted Smith after December 11, 2005, and offered Smith the opportunity to participate in the SMT on January 4, 2006. Smith does not have any record of this second contact with D S Simon Productions.

**c. The person(s) from whom Smith received the VNR or SMT program material;**

Smith received the SMT material from Liv Davick at D S Simon Productions.

**d. The date(s) and time(s) that Smith aired any portion of the VNR or SMT program material;**

As discussed above, Smith broadcast the interview during its morning program on January 4, 2006.

**e. Two recordings in VHS videotape format of the program(s) containing the VNR or SMT program material;**

In a simultaneously filing under separate cover, Smith is submitting two recordings of the interview in VHS format.

**f. A written transcript of the segment(s) containing the VNR or SMT program material;**

Attached is a written transcript of the interview, which Smith created after reviewing the video tape of the interview.

**g. The steps, if any, Smith took to determine whether the VNR or SMT program material required sponsorship identification, and the information Smith learned through taking such steps;**

As explained above, Smith had no obligation to provide any sponsorship identification information regarding the interview. Smith did not receive any money, service, or other consideration in connection with its decision to participate in the SMT. As a result, the Sponsorship Id. Rules are inapplicable.

**h. Whether Smith was aware of or had reason to believe that any person involved in the production of the VNR/SMT segment paid or received consideration for the inclusion of the material in the segment; and**

Not applicable. Neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

- i. Whether Smith identified the VNR or SMT program material as sponsored, and if so, the manner in which that identification took place.**

Smith had no obligation to identify the source of the SMT because Smith did not receive any consideration from the D S Simon Productions or any of the vendors at the 2006 Consumer Electronics Show. Consequently, Smith did not identify its story as sponsored.

- 2. For each VNR or SMT programming segment identified above, state whether Smith, or any of its employees or representative, received or were promised any consideration, from any source, in exchange for airing the VNR or SMT program material. If so, provide the following information:**

As noted above, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

- a. The person(s) from whom such consideration was received or was promised:**

Not applicable. As noted in the previous answer, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

- b. The consideration involved;**

Not applicable. As noted in the previous answer, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

- c. The dates on which the payment was promised and/or received;**

Not applicable. As noted in the previous answer, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

- d. The circumstances surrounding each such payment or promise to pay; and**

Not applicable. As noted in the previous answer, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of SMT material.

**e. Any pertinent documents relating thereto.**

Not applicable. As noted in the previous answer, neither Smith nor any of its employees or representatives received any money, service, or other valuable consideration that was either directly or indirectly paid to it or them or promised or charged or accepted by it or them in connection with the broadcast of the SMT material.

**3. State the policies and procedures of Smith relating to:**

**a. Compliance with 47 U.S.C. § 317 of the Communications Act of 1934, as amended, and the Commission's sponsorship identification rules; and**

Smith takes very seriously its compliance with all provisions of the Communications Act of 1934, as amended, including Section 317, and all provisions of the Commission's rules, including the sponsorship identifications rules. Therefore, it is Smith's policy to comply with all known federal laws and regulations.

All of Smith's on-air personality employment agreements include clauses requiring such employees to be familiar with and agree to comply with the Commission's rules governing payola and sponsorship identification. Furthermore, Smith's employees who are involved in programming decisions must sign affidavits certifying that they will never accept payment of any kind for causing program material to be presented on KEYT-TV without proper identification. Smith's employee handbook also contains the company's payola policy, and it is attached hereto.

**b. Handling and use of VNR and SMT program material.**

The FCC's rulemaking and adjudicatory precedent do not yet include any cases directly addressing either VNRs or SMTs, and as discussed above, the statutory text of Section 317, its legislative history, and the Commission's interpretive decisions all confirm that such material does not require identification. Accordingly, Smith reviews all VNR and SMT material on a case by case basis.

**4. To the extent not otherwise specifically requested, provide copies of all Documents that otherwise provide the basis for, support or otherwise relate to the responses to Inquiries 1 through 4 above.**

Smith attaches the following material:

1. A transcript of the interview
2. A copy of the email dated December 11, 2005, from D S Simon Productions.
3. A copy of Smith's payola policy.

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Under separate cover and filed concurrently, Smith is delivering two VHS videotapes of the interview to your attention. Please contact Kevin P. Latek of Dow Lohnes, PLLC if you have any further questions about this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cathy Jacquemin", followed by a horizontal line.

Cathy Jacquemin  
Vice President and General Manager

## **Exhibit 1**

### Transcript of Interview

ANCHOR #1: In Las Vegas with more than 250 thousand visitors expected, it is the world's largest annual trade show for consumer technology.

ANCHOR #2: It takes place in Las Vegas each year.

ANCHOR #1: Robin Raskin is at the show hosting and it's called the last gadget standing.

ANCHOR #2: Good morning to you Robin.

ROBIN RASKIN: Good morning, how are you doing?

ANCHOR #2: Good, how are you doing?

ROBIN RASKIN: Oh good, things are heating up here.

ANCHOR #1: I bet they are. Now is this the first of the days of this opening? And how many days does it go and what are some of the really cool products you can show us?

ROBIN RASKIN: Well, the show is going to run through Sunday, I think and opening, I think it opens tomorrow.

A cool million people have been running around here, and some of the coolest things you're seeing are the things that let you take your technology with you. You know, out of the house, wherever you go. When they talk about accessorizing in Las Vegas at the show, they are talking about things like Bluetooth technology that make two things close together talk to each other without wires, so everybody here has this jewelry piece. This is the Nokia MS 800, very small and chic, and I can talk to myself from either my glove compartment or handbag, and I can just dial you just by saying your name--voice recognition technology. So, that's from Nokia.

Now, at home, we're seeing a lot of people saying simplify my life, make it all work together, and you see this is a solution from Motorola. So, I come home my cell phone's 3 rooms away recharging, I can now answer it using my cordless home phone, and I can use my free minutes on my cell from my home phone. As a matter of fact, I can control all sorts of accessories. I put a camera on this and it becomes a remote baby monitor and this is from Motorola. It's a connected cordless communication system. A very cool way for you to customize a solution for your home that's here new at the show.

Moving on to bigger things, and I mean bigger, you're seeing a lot of big TV screens here. One of the new technologies that's making it affordable is Texas Instrument's DLP chip. This is a Mitsubishi television, 62 inches and it shows the action on things like this and on video games incredibly well because of the DLP technology. Well, of course, anybody who has a lot of electronics knows you can get a lot of dust so one thing I found there's this swifter duster. You can use this on your electronics safely, nothing wet and you can get into all these little cracks that you know electronics accumulate dust that you stack up to.

ANCHOR #2: That's a good idea. So, are these available now or will they be available in the future and how much will they cost?

ROBIN RASKIN: Some of what you see is available right now. BlueTooth headsets for about \$150 for this. The Motorola systems start at about \$150 and goes up from there. You're seeing things like an internet tablet replacing notebooks this year, and you will see a lot of people walking around showing you how you can go from room to room in your house, logging onto the internet, playing games, surfing the web and that's called the pepper pad, that's about \$800.00. And of course, your televisions are in the thousands still. The one I showed you is about \$6,000.

ANCHOR #1: Real quickly, what do you think this show means to the technology industry, Robin?

ROBIN RASKIN: You know, this is a lot of money for the technology industry and it is a time when you get consumer confidence. The pieces have to come together, the systems have to work together, the iPod, you want to go and watch your video, you want to go and watch it on the phone or iPod or [unintelligible] at this show.

ANCHOR #1: Alright Robin, we're running out of time and I think we are going to run out of audio. Robin Raskin, thank you for joining us so early in the morning from Las Vegas and again this is the last gadget standing. The annual technology show runs through Sunday.

ANCHOR #2: Starts tomorrow.

ANCHOR #1: Thank you.

ANCHOR #2: Some pretty cool stuff!

ANCHOR #1: Very cool stuff. We will have to ask Dexter about all those things and have him bring them in one by one. It's now 6:15.

## **EXHIBIT 2**



**Cathy Jacquemin**

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**From:** Scott Sperry [sdsperry@keyt.com]  
**Sent:** Monday, August 28, 2006 10:22 AM  
**To:** c.jacquemin@keyt.com  
**Subject:** Fw: Satellite Interviews! "THE GIZ WIZ" Reveals the HOTTEST NEW ELECTRONICS from the WORLD'S MOST PRESTIGIOUS CONSUMER ELECTRONICS SHOW (CES) in LAS VEGAS!

----- Original Message -----

**From:** keyt3news@aol.com  
**To:** sdsperry@keyt.com  
**Sent:** Monday, December 12, 2005 9:03 AM  
**Subject:** Fwd: Satellite Interviews! "THE GIZ WIZ" Reveals the HOTTEST NEW ELECTRONICS from the WORLD'S MOST PRESTIGIOUS CONSUMER ELECTRONICS SHOW (CES) in LAS VEGAS!

-----Original Message-----

**From:** liv davick <livdavick@msn.com>  
**To:** livdavickpr@msn.com  
**Sent:** Sun, 11 Dec 2005 17:19:12 -0800  
**Subject:** Satellite Interviews! "THE GIZ WIZ" Reveals the HOTTEST NEW ELECTRONICS from the WORLD'S MOST PRESTIGIOUS CONSUMER ELECTRONICS SHOW (CES) in LAS VEGAS!

As always, we hope you find this entertaining because we promise it will be informative!

---

**Satellite Interviews with**

**"The Giz Wiz"**

**(CES) in Las Vegas!**

**Live from the Consumer Electronics Show**

**"The Giz Wiz"**

**Reveals The Hottest New Electronics  
At the World's Most Prestigious Consumer Electronics**

**Show in Las Vegas!**

**Satellite Interviews Available with "The Giz Wiz" on**

**Thursday, January 5th!**

**What:** Live from the world's most prestigious consumer electronics show (CES) in Las Vegas, "The Giz Wiz" Dick DeBartolo reveals to your viewers the hottest new must-have electronics!

**Who:** The Biz of "The Giz Wiz": The most popular and sought-after gizmo and gadget guru in the country and a renowned expert on the latest consumer products, both practical and weird, "The Giz Wiz" (whose real name is Dick DeBartolo and whom is also often known as "The Gizmo Guy") has been sharing his electronic expertise with consumers nationwide for more than three decades! He appeared weekly as "The Gizmo Wizard" on "CNBC's" "Steals and Deals" and has appeared more than 125 times on both "Live with Regis and Kathie Lee" and "Live with Regis and Kelly," offering gadget, gizmo, and gift-buying advice! "The Giz Wiz" has also appeared frequently on "Good Morning, America" and currently brings his high-energy gadgetry to "World News Now." In addition to writing a bi-weekly feature for E-Town.com (chosen one of the best websites for high-tech information by "Popular Science" Magazine), Dick is also "MAD Magazine's" MADDEST WRITER! For almost 40 years, "The Giz Wiz" famous off-the-wall movie, TV, and ad take-offs have graced the pages of every issue of the enormously popular magazine!

To learn much more about "The Giz Wiz," please visit his website [www.gizwizbiz.com](http://www.gizwizbiz.com).

**LOCATION:** Consumer Electronics Show (CES) in Las Vegas (The Consumer Electronics Show occurs in Las Vegas from Thursday, January 5th through Sunday, January 8th.)

**IMPORTANT! SET DÉCOR and PROPS**

"The Giz Wiz" will be at the world's most prestigious consumer electronics show, CES, in Las Vegas and will have with him on the set the hottest new must-have electronics!

**When:** Satellite interviews with "The Giz Wiz" are available on Thursday, January 5th at the following times:

6:15a.m.-1:15p.m. ET

5:15a.m.-12:15p.m. CT

4:15a.m.-11:15a.m. MT

3:15a.m.-10:15a.m. PT

**\*\*To schedule an interview, please respond to this e-mail message or contact Liv Davick at (661) 222-9998 or Shana Davick at (507) 282-0274.**

### **EXHIBIT 3**

## **PAYOLA/PLUGOLA POLICY**

The Station has a policy against the acceptance of payola and plugola. This means that no employee may accept any remuneration or other consideration for the preparation or presentation of any program material without prior disclosure of such remuneration or consideration to the Station.

Accepting gratuities in exchange for broadcasting any program material is a serious Federal criminal offense; the penalties for which include fines and jail. The Station policy also requires that anyone violating this policy is subject to immediate dismissal.

## **PERFORMANCE APPRAISALS**

Performance appraisals for each employee will be prepared on a regular basis, but at least annually. New employees will receive a review after the first sixty or ninety days of employment. Appraisals will be reviewed with the employee and the employee will be required to sign the appraisal form as an indication of their review with the supervisor.

Appraisals provide an opportunity for the employee's supervisor and the employee to discuss areas of strength, areas where improvement is required and the setting of goals for career development.

The performance appraisal is prepared on an annual basis and is the major determinate of salary increases.

## **PROFESSIONAL AND CIVIC ORGANIZATIONS**

Leadership in the community benefits the individual and the Station. Active participation in civic organizations and activities is strongly encouraged. Your Station is an active member of many local, state and national organizations and encourages employees to take an active part in community activities.

The Station will only consider sponsoring your affiliation as long as you are an active and regular participant in the organization. Upon approval of the General Manager, the Station will pay the initial fees and annual dues for qualified employees.

## **RECEIPT OF GIFTS**

No employee may ever solicit gifts from other employees, vendors or other organizations with whom the Station does business. The Station is opposed to the receipt of gifts from business associates because it puts the employee and the Station in a questionable business relationship.

However, to prevent embarrassment to well-meaning associates, employees may accept gifts valued at no more than \$75. The recipient of such gifts should advise