

STAMP & RETURN

January 9, 2013

VIA HAND DELIVERY AND E-MAIL

Melanie A. Godschall
Anjali K. Singh
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
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JAN - 9 2013
Federal Communications Commission
Bureau Office

Re: WBNG-TV, Binghamton, New York
Facility Id. No. 23337
FCC File No. EB-11-IH-1192

Dear Mss. Godschall and Singh:

Granite Broadcasting Corporation ("Granite"), owner of WBNG License, Inc., licensee of WBNG-TV, Binghamton, New York ("WBNG"), hereby responds to the Commission's request for information regarding WBNG's broadcast of "Marcellus Shale Voices/Gas Odyssey" on or about September 14, 2010 ("Program Material").¹ In the *Letter Request*, the Bureau attaches a complaint alleging that the Program Material violated Section 317 of the Communications Act, as amended, or Section 73.1212 of the Commission rules (collectively, the "Sponsorship Id. Rules").²

Granite hereby responds to the Commission's specific questions in the *Letter Request* regarding the Program Material:³

¹ See Letter to WBNG License, Inc., licensee of WBNG-TV, Binghamton, New York, from Anjali K. Singh, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, EB-11-IH-1192 (Oct. 18, 2012) (the "*Letter Request*"). Granite is submitting its response on January 9, 2013, pursuant to an extension of time granted by the Commission's staff on December 27, 2012. See Email from Melanie Godschall to Robert Folliard (Dec. 27, 2012).

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

³ By email dated December 4, 2012, the Commission's staff modified certain questions in the *Letter Request*. See Email from Melanie Godschall to Robert Folliard (Dec. 4, 2012). Therefore, Granite's response refers to the questions as modified by the staff.

1. **State whether the Licensee Broadcast the Program Material on September 14, 2010 or any other date. If the answer is “yes,” answer the remaining Inquiries. If the answer is “no,” fully explain the basis for such answer.**

On September 14, 2010, at 7:00PM, Granite broadcast a thirty minute program consisting of highlights from the documentary “Gas Odyssey” and a discussion of the issues raised in the documentary. On June 18, 2010 at 8:00PM, Granite broadcast the full two-hour documentary. On June 21, 2010 at 12:00PM, Granite re-aired an identical broadcast of the full documentary on its multi-cast channel. Additionally, on June 16, 2010 during its 5:30PM and 6:00PM newscasts (and again in the newscasts the following morning at 5:00AM, 6:00AM), Granite broadcast virtually identical news stories containing clips from the Gas Odyssey documentary. Finally, during two newscasts on April 8, 2010 at 5:30PM and 11:00PM, WBNG aired news stories regarding the documentary. The station did not retain recordings of those newscasts. It is therefore impossible to confirm whether those stories contained clips of the Program Material. Based on Granite’s review of the transcript of the news stories on April 8, 2010, Granite believes those news stories did not include any Program Material. Nevertheless, Granite is disclosing its broadcast of these news stories out of an abundance of caution.

2. **As to the Program Material:**

- a. **State the date(s) and time(s) that the Licensee Broadcast such Program Material, and fully describe the Broadcast during which the Program Material aired.**

September 14, 2010 Broadcast: The September 14, 2010 broadcast of the Program Material consisted of a thirty minute program containing footage from the two-hour documentary, “Gas Odyssey.” The documentary discusses the economic benefits of oil drilling in and around Binghamton, New York.

June 18 and 21, 2010 Broadcasts: On June 18, 2010 at 8:00PM and on June 21, 2010 at 12:00PM, Granite broadcast the entire two-hour “Gas Odyssey” documentary. Both broadcasts included a brief introduction from the Joint Landowner’s Coalition of New York, the sponsors of the documentary. The introduction included the statement “We are the sponsors of the program you’re about to watch.” Additionally, following the documentary, a tagline graphic was broadcast stating that the program was sponsored by the Joint Landowner’s Coalition of New York.

June 16, 2010 Broadcast: On June 16, 2010 during its 5:30PM and 6:00PM newscasts (and again in the newscasts the following morning at 5:00AM, 6:00AM), Granite broadcast virtually identical news stories about the documentary. In the story, Aaron Price, the Director of the documentary was interviewed, and the story included a handful of clips from the documentary. When Granite broadcast these news stories, Granite already had agreed to air the full-length documentary on WBNG-TV, but the decision to air the news story was a product solely of Granite’s independent news judgment. Granite did not enter into any agreement, expressed or

implied, with the producer of Gas Odyssey or anyone affiliated with Gas Odyssey to air any news story or provide any other coverage of the documentary. Indeed, it is Granite's understanding that other local news organizations also prepared news reports about the documentary and the issues discussed therein. Granite included clips from the documentary in its news stories under the copyright doctrine of fair use. Granite did not seek or obtain permission from the producer of the film to use any material from the documentary in its news stories.

April 8, 2010 Broadcast: On April 8, 2010 during its 5:30PM and 11:00PM newscasts, Granite broadcast news stories explaining that Aaron Price, the director of "Gas Odyssey" had shown a trailer of the documentary at a luncheon held at the Greater Binghamton Chamber of Commerce. Other media outlets in the Binghamton market also covered the same event. When Granite broadcast this April news story, Granite had not agreed to air the full-length documentary on WBNG-TV. The decision to cover the showing of the trailer at the Chamber of Commerce luncheon was wholly a product of Granite's independent news judgment. Granite no longer has recordings of those news stories. Therefore, it is impossible to confirm whether the stories included clips from the Program Material. Based on Granite's review of the transcripts for these news stories, Granite believes no Program Material was included. In any event, if any clips from the documentary were incorporated into the April news stories, Granite did not seek or obtain permission from the producer of the film to use that material. Rather, Granite would have included such material under the copyright doctrine of fair use.

- b. For each date that the Program Material aired, provide a DVD or a VHS videocassette tape. Clearly label each recording provided with the file number referenced above and the date and time the Program Material was Broadcast.**

Attached as Exhibit 1 are recordings in DVD format of the September 14, 2010 Broadcast of the Program Material and the various news stories from June 16, 2010. The DVDs are labeled as requested with the file number referenced above and the date and time the Program Material was broadcast. As indicated in the previous answer, Granite no longer has recordings of April 8, 2010 news stories. Moreover, due to space restraints, Granite did not retain a copy of the full length documentary from June 18, 2010 or June 21, 2010. Granite did, however, retain a copy of the sponsor introduction and tagline from the June 18, 2010 and June 21, 2010 broadcasts, which is attached as Exhibit 3.

- c. Provide a written transcript of each Broadcast of the Program Material.**

Attached as Exhibit 2 are transcripts of the April 8, 2010 and June 16, 2010 news stories that referenced the documentary. Granite also has attached a transcript of the sponsor's introduction and tagline from the June 18, 2010 and June 21, 2010 broadcasts. Pursuant to the Commission staff's email from December 4, 2012,

Granite is not providing a transcript of the September 14, 2012 or June 18, 2010 and June 21, 2010 broadcasts of the Program Material.

- d. If the Licensee cannot provide a recording and/or transcript of the Program Material, state whether the recording submitted by the complainant is complete and accurate, and fully describe omitted portions, if any, of the recording.**

As noted in the previous answer, Granite has provided recordings of the September 14, 2010 broadcast of the Program Material, the June 16, 2010 news clips and the introduction and tagline from the June 18, 2010 and June 21, 2010 broadcasts of the documentary.

3. **State whether the Licensee identified the Program Material as sponsored, and if so, the manner in which that identification took place. If the Licensee provided a sponsorship identification announcement at the time of the Broadcast(s) of the Program Material, provide a DVD or VHS videocassette tape for each Broadcast of such announcement. Clearly label each recording provided with the file number referenced above and the date and time the sponsorship identification announcement was Broadcast.**

As described in response to Question 15, Granite's policy is to properly label all sponsored material as either sponsored or paid. Therefore, Granite properly identified the June 18, 2010 and June 21, 2010 broadcasts of the two hour documentary as sponsored programs. In particular, a representative of the Joint Landowner's Coalition of New York introduced the film by saying "We are the sponsors of the program you're about to watch." Additionally, following the broadcast, a tagline was displayed which read "The program you just watched was sponsored by the Joint Landowner's Coalition of New York." Attached as part of Exhibit 3 is a recording of these identifications for the June 18, 2010 and June 21, 2010 Broadcasts.

Granite did not label either news story as sponsored because both stories were the product of Granite's independent news judgment. Granite did not have any agreement, expressed or implied, with the producer of Gas Odyssey or anyone associated with Gas Odyssey regarding its news broadcasts.

Due to an inadvertent error and contrary to Granite's policy, Granite did not identify the September 14, 2010 broadcast of the Program Material as sponsored.

4. **Identify the producer of the Program Material, and if the Licensee produced the Program Material, provide a full explanation and all Documents relating to the production of the Program Material.**

The Program Material was produced by Red Dragon, Inc.

5. **State whether the Licensee paid or promised Consideration for the Program Material, and fully describe the nature of the Consideration, including whether the Licensee acquired the Program Material on a Barter basis, and if so, from whom. Provide all Documents relating to the Licensee's acquisition of the Program Material.**

To the best of its knowledge, information, and belief, neither Granite nor any of its employees or representatives paid or promised any money, service, or other valuable consideration in connection with the broadcast of the Program Material.

6. **If the answer to Inquiry 5, above, is "no," state whether the Licensee was promised or charged or accepted Consideration in exchange for the Broadcast of the Program Material, and if so, provide a full explanation as to the nature of the Consideration and from whom the Licensee received or was promised such Consideration. Provide all Documents relating to a promise of Consideration to the Licensee in exchange for the Broadcast of the Program Material and/or to the Licensee's acceptance of Consideration in exchange for the Broadcast of the Program Material.**

7. **If the answer to Inquiry 6, above, is "no," then fully explain how and from whom the Licensee obtained the Program Material, including a full explanation as to whether and if so, how, the Licensee received the Program Material at no charge. Provide all Documents relating to the Licensee's acquisition of the Program Material.**

Not applicable. As noted in the previous answer, Granite did receive payment from the producer and sponsors in connection with the broadcast of the Program Material.

8. **Identify Aaron Price, the individual referenced above as the Director of the Program Material, and provide a full explanation and Documents relating to Aaron Price's participation in the Program Material, including the following:**

Aaron Price is the Director of the documentary, "Gas Odyssey" and appeared in the Program Material. He is not an employee of Granite or in any way affiliated with Granite.

- a. **State whether Aaron Price accepted or agreed to accept Consideration, and if so, from whom to appear on the Broadcast in which the Program Material aired.**

Aaron Price did not accept or agreed to accept any Consideration from Granite, WBNG or any of its employees or representatives. Granite did not receive any report suggesting that Mr. Price received or agreed to accept any Consideration from any other party in connection with the Program Material.

- b. **State whether Aaron Price paid or promised Consideration to the Licensee relating to the Program Material.**

Aaron Price did not pay or promise Consideration to the Licensee relating to the Program Material.

- c. **State whether Aaron Price's appearance on the Broadcast in which the Program Material aired was provided as an inducement for Broadcasting the Program Material.**

Aaron Price's appearance in the Program Material was not provided as an inducement for broadcasting the Program Material. Given that Mr. Price is in no way affiliated with Granite, his role in the Program Material was not relevant to Granite's decision to air the Program Material.

9. **Identify Julie Lewis, an individual referenced above who appeared in the Program Material, and provide a full explanation and Documents relating to Julie Lewis' participation in the Program Material, including the following:**

Julie Lewis is photographer who was featured in the Program Material. She is not an employee of Granite or in any way affiliated with Granite.

- a. **State whether Julie Lewis accepted or agreed to accept Consideration and if so, from whom to appear on the Broadcast in which the Program Material aired.**

Julie Lewis did not accept or agreed to accept any Consideration from Granite, WBNG or any of its employees or representatives. Granite did not receive any report suggesting that Ms. Lewis received or agreed to accept any Consideration from any other party in connection with the Program Material.

- b. **State whether Julie Lewis paid or promised Consideration to the Licensee relating to the Program Material.**

Julie Lewis did not pay or promise Consideration to the Licensee relating to the Program Material.

- c. **State whether Julie Lewis's appearance on the Broadcast in which the Program Material aired was provided as an inducement for Broadcasting the Program Material.**

Julie Lewis's appearance in the Program Material was not provided as an inducement for broadcasting the Program Material. Given that Ms. Lewis is in no way affiliated with Granite, her role in the Program Material was not relevant to Granite's decision to air the Program Material.

10. **Identify Bob Williams, an individual referenced above who appeared in the Program Material, and provide a full explanation and Documents relating to Bob Williams' participation in the Program Material, including the following:**

Bob Williams is an Environmental Consultant who appeared in the Program Material. He is not an employee of Granite or in any way affiliated with Granite.

- a. **State whether Bob Williams accepted or agreed to accept Consideration and if so, from whom to appear on the Broadcast in which the Program Material aired.**

Bob Williams did not accept or agreed to accept any Consideration from Granite, WBNG or any of its employees or representatives. Granite did not receive any report suggesting that Mr. Williams received or agreed to accept any Consideration from any other party in connection with the Program Material.

- b. State whether Bob Williams paid or promised Consideration to the Licensee relating to the Program Material.**

Bob Williams did not pay or promise any Consideration to the Licensee relating to the Program Material.

- c. State whether Bob Williams's appearance on the Broadcast in which the Program Material aired was provided as an inducement for Broadcasting the Program Material.**

Bob William's appearance in the Program Material was not provided as an inducement for broadcasting the Program Material. Given that Mr. Williams is in no way affiliated with Granite, his role in the Program Material was not relevant to Granite's decision to air the Program Material.

- 11. State whether the Licensee was aware of or had any reason to believe that any individual involved in the production of the Program Material paid or promised and/or charged or accepted Consideration for the inclusion of Program Material during the Broadcast.**

To the best of its knowledge, information and belief, Granite is not aware of nor has any reason to believe that any individual involved in the production of the Program Material paid or promised and/or charged or accepted Consideration for the inclusion of Program Material during the Broadcast.

- 12. Describe the steps, if any, that the Licensee took to determine whether the Program Material constituted Political Broadcast Matter or a Controversial Issue of Public Importance.**

Under Section 73.1212(d) of the Commission's rules, a licensee must make a determination of whether program material constitutes a political broadcast or a controversial issue of public importance if the material was furnished to the licensee as an inducement to broadcast it. *See* 47 C.F.R. § 73.1212(d).

It was unnecessary for Granite to make such a determination with respect to any of its broadcasts of the Program Material. For the June 18, 2010, June 21, 2010 and September 14, 2010 broadcasts, a third party paid Granite to air the material. Thus, Granite was obligated to identify the sponsors of those broadcasts under Section 73.1212(a). As a result, once that determination was made, any further determination under Section 73.1212(d) was unnecessary. With respect to the news stories, Section 73.1212(d) does not apply because no one furnished the clips from the documentary to Granite. Rather, Granite incorporated the material into its news stories on its own right under the copyright doctrine of fair use without permission of the program producer. Moreover, the clips from the documentary did not induce Granite to air the news stories. Rather, Granite's independent news professionals determined that the topic was newsworthy.

13. **Describe the steps, if any, that the Licensee took to determine whether the Program Material required sponsorship identification, and the information the Licensee learned through taking any such steps.**

Granite received payment from sponsors for the broadcasts of the full documentary on June 18, 2010 and June 21, 2010 and, therefore, was aware it required sponsor identification. Accordingly, the June 18, 2010 and June 21, 2010 broadcasts of the Program Material contained proper sponsor identification. When Granite aired the thirty minute program containing highlights of the documentary on September 14, 2010, it inadvertently broadcast the program without the required sponsorship identification. Granite did not make a specific decision not to include the sponsorship identification when it broadcast the Program Material on September 14, 2010. For reasons Granite cannot explain, the employees responsible for ensuring that the program contained the necessary graphic identifying the programming as "paid" did not do so in this single instance. To its knowledge, Granite has not failed to provide the required sponsorship identification in any other instances for any reason within a month of airing the September 14, 2010 Program Material.

14. **Describe any inaccuracies in the Complaint.**

Granite has no knowledge of and received no reports regarding whether any of the participants in the documentary "Gas Odyssey" have any interests in the gas industry and thus cannot comment on whether those allegations in the Complaint are accurate.

15. **Provide a copy of all written policies and directives of the Licensee relating to the Licensee's compliance with Sections 317 and 507 of the Communications Act and Section 73.1212 of the Commission's rules.**

Granite 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 identification rules.

Granite employees receive a number of different materials regarding compliance in various forms. Employees with any involvement in programming are required to sign annual affidavits of compliance with the Commission's rules against payola and plugola. Attached as Exhibit 5 is Granite's explanation of the rules against payola and plugola as well as an example of the affidavit employees are required to sign. Granite trains its employees extensively regarding these policies and provides employees with information on FCC requirements as well as industry "best practices" and company policies that may be more stringent than FCC requirements.

Melanie K. Godschall
Anjali K. Singh
January 9, 2013
Page 10

16. **Provide copies of all Documents that provide the basis for or otherwise relate to the Licensee's responses to Inquiries 1-15, above.**

Attached as Exhibit 1 are recordings of the September 14, 2010 broadcast of the Program Material and the June 16, 2010 news stories. Attached as Exhibit 2 are the transcripts of the April 8, 2010 news stories, the June 16, 2010 news stories and the sponsorship identification for the June 18, 2010 and June 21, 2010 broadcasts of the Program Material. Attached as Exhibit 3 is a recording of the sponsorship identification for the June 18, 2010 and June 21, 2010 broadcasts of the Program Material. Attached as Exhibit 4 are copies of the invoices paid to WBNG by the producer and sponsor of the Program Material for the June 18, 2010, June 21, 2010 and September 14, 2010 broadcasts of the Program Material. Attached as Exhibit 5 is a copy of WBNG's anti-payola/plugola policy and employee affidavit.

17. **To the extent not otherwise provided in response to the preceding Inquiries, provide any additional information that the Licensee believes may be helpful in our consideration and resolution of this matter.**

Granite has provided all information it believes may be helpful to the Commission's review of this matter.

Please contact Robert J. Folliard, III of Dow Lohnes, PLLC if you have any further questions about this matter.

Respectfully submitted,



Greg Catlin
General Manager