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WRITER'S DIRECT DIAL

October 10, 2006

**Via Hand-Delivery**

Mr. Eric J. Bash, Assistant Chief  
Mr. Kenneth M. Scheibel, Jr., Esq.  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
c/o NATEK  
9300 East Hampton Drive  
Capitol Heights, Maryland 20743

**Re: WKRN, G.P.  
File No. EB-06-IH-2733  
Response to Letter of August 11, 2006**

Dear Gentlemen:

Please find enclosed, on behalf of WKRN, G.P., licensee of Station WKRN-TV, Nashville, Tennessee, a Response to the August 11, 2006, Letter of William H. Davenport, including two VHS recordings of the material actually broadcast by WKRN-TV. Also enclosed are two CD recordings of material that the Center for Media and Democracy represents on its website to be the complete video news release material that is apparently the subject of the instant inquiry, excerpts of which WKRN-TV's news department used as source material in its own news story. A copy of the transcript of each recording is attached to the Response; a sealed original transcript of each recording is enclosed separately.

Mr. Eric J. Bash  
Mr. Kenneth M. Scheibel, Jr.  
October 10, 2006  
Page 2

If any questions should arise during the course of your consideration of this matter, please communicate with this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'SH' followed by several loops.

Stephen Hartzell  
*Counsel to WKRN, G.P.*

Enclosures

cc: Eric J. Bash, FCC (via email)  
Kenneth M. Scheibel, Jr., FCC (via email)

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

In the Matter of

WKRN, G.P.

Licensee of Station WKRN-TV,  
Nashville, Tennessee

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File No. EB-06-IH-2733

**RESPONSE OF WKRN, G.P.  
TO THE AUGUST 11, 2006, LETTER OF WILLIAM H. DAVENPORT**

WKRN, G.P. ("WKRN")<sup>1</sup>, licensee of Station WKRN-TV, Nashville, Tennessee (the "Station"), by its attorneys, submits this response to the letter dated August 11, 2006, from William H. Davenport (the "Letter") in connection with the above-captioned matter. Station WKRN-TV is the affiliate of the ABC Television Network station located in the Nashville Designated Market Area.

**I. Response to Commission Inquiries**

The following numbered paragraphs respond to the four numbered paragraphs listed under the heading "Inquiries: Documents and Information to Be Provided" in the Letter.

1. WKRN aired excerpts from a video programming package that is identified in the Letter and in the Center for Media and Democracy's ("CMD") report<sup>2</sup> ("CMD Report") as a "VNR"

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<sup>1</sup> The Letter was directed to "Young Broadcasting, [sic] Inc." The licensee of WKRN-TV, however, is WKRN, G.P., and Young Broadcasting Inc. is the corporate parent of WKRN, G.P. Accordingly, the instant Response is by WKRN, G.P.

<sup>2</sup> Diane Farsetta and Daniel Price, *Fake TV News: Widespread and Undisclosed*, CENTERFOR (continued...)

that originated with “Jackson Hewitt” (the “Program Material”).

a. WKRN received the Program Material on or about March 1, 2006.

b. WKRN is not aware of having received any materials accompanying the Program Material. As observed in the Declaration of Steven Sabato, which is attached to this Response, the Fox News feed log may have included a description of the substance of the Program Material, but this description would have been provided electronically and such descriptions are not routinely retained by WKRN—and, consistent with WKRN’s routine practice, were not retained in this instance.

c. WKRN received the Program Material as part of a daily news feed from Fox News. At the time, WKRN participated in a reciprocal video agreement with Fox News whereby Fox News provided a daily news feed service to WKRN in exchange for video material on request. WKRN no longer receives the Fox News feed<sup>3</sup> but does receive a daily news feed from CNN and the ABC Network.

d. A portion of the Program Material was aired as part of a consumer-friendly tax story (the “Tax Story”) at approximately 4:45 p.m. on March 1, 2006, during WKRN’s 4:30 p.m. newscast.

e. Two recordings in VHS videotape format of the Tax Story are included with this Response. Two recordings on CD of the complete Program Material as obtained from the CMD

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<sup>2</sup>(...continued)

MEDIA AND DEMOCRACY (Apr. 6, 2006), *available at* <[www.prwatch.org/pdfs/NFNPDFExt6.pdf](http://www.prwatch.org/pdfs/NFNPDFExt6.pdf)> (“CMD Report”).

<sup>3</sup> The relationship between the Station and Fox News ended because a Fox television affiliate entered the market and Fox News ended the distribution of the Fox News feed to other stations in the market.

website are also included with this Response. As noted in the Letter, an electronic file of the Tax Story and an electronic file of the original version of the complete Program Material are available on the CMD website at <http://www.prwatch.org/fakenews/vnr34>.

f. A transcript of the Tax Story and a transcript of the Program Material are included with this Response. In each case, both a sealed transcript and an unsealed transcript are included.

g. WKRN's VNR policy at all relevant times prohibited the use of VNRs. When the Tax Story producer searched for and found the Program Material in the Fox News feed, it was not identified as "sponsored" material or as a "VNR." The Fox News feed generally did not identify program material as sponsored, except when material was accessed via a link or electronic "tab" labeled "VNR" on the Fox News feed. The WKRN producer did not access the Program Material via the VNR link.

h. No WKRN personnel involved in the production of the Tax Story was paid or received consideration for the inclusion of excerpts from the Program Material in the Tax Story.

i. WKRN did not identify any portion of the Program Material used in the Tax Story as "sponsored" because WKRN did not know that the Program Material was "sponsored." To WKRN's knowledge, none of the Program Material was sponsored. The Program Material was nothing more than journalistic source material.

2. To its knowledge, neither WKRN nor any of its employees or representatives received or were promised any consideration from any source in exchange for airing the Program Material in whole or in part. WKRN provided consideration to Fox News to receive the daily news feed of which the Program Material was a part.

4. This Response is supported by the Declaration of Steven Sabato, Director of News and Local Programming for the Station, which is attached hereto. Also included, as noted above, are two VHS tapes containing the Tax Story, two CDs containing the complete Program Material as obtained from the CMD website, and transcripts of the Tax Story and the complete Program Material. Included with Mr. Sabato's Declaration is a Memorandum distributed by Mr. Sabato to the Station's news staff relating to use of video news releases.

To WKRN's knowledge, there are no other documents or other materials discussing or otherwise relating to the material in the broadcast.

## **II. Argument**

### **A. The Program Material Did Not Require Sponsorship Identification**

The Communications Act of 1934, as amended, and the Commission's rules require that program material carry a "Sponsorship Identification" in certain, limited instances. The Commission's rules largely mirror the requirements of the Communications Act. Section 73.1212 states, in relevant part:

- (a) 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 . . . .
- \* \* \*
- (d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement

shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

47 C.F.R. § 73.1212. In sum, a Sponsorship Identification must be affixed to program material in two instances: (1) whenever a station receives consideration for airing program material and (2) whenever program material is provided without consideration and is a political matter or a matter involving the discussion of a "controversial issue of public importance." Because neither the Program Material nor WKRN's Tax Story meets these triggers, neither Section 317 of the Communications Act, 47 U.S.C. § 317, nor Section 73.1212 of the Commission's Rules, 47 C.F.R. § 73.1212, required the Tax Story to contain Sponsorship Identification.

**1. WKRN Received No Consideration for Airing the Program Material, and, in Fact, WKRN Provided Consideration in Order to Obtain the Program Material**

As described in response to Inquiry 2 above and in the Declaration of Steven Sabato, WKRN did not receive any consideration for airing the Program Material. In fact, WKRN received the Program Material as part of its reciprocal video agreement with Fox News, whereby Fox News provided a daily news feed to WKRN's use *in exchange for* WKRN's provision of video to Fox upon request. Thus, WKRN received the Program Material as part of an arrangement whereby WKRN provided consideration to Fox News for the Program Material.<sup>4</sup>

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<sup>4</sup> Currently pending before the Commission is the question whether "broadcast licensees and cable operators receive VNRs as part of an overall news service, which may be provided under contract or on a subscription basis [and], [i]f so, [whether] this [should] affect the applicability of (continued...)"

As a result, this case is not governed by Section 73.1212(a), and no Sponsorship Identification was required under Section 73.1212(a).

**2. Neither the Program Material nor WKRN's Tax Story Involved the Discussion of a Controversial Issue of Public Importance**

Section 73.1212(d) requires a Sponsorship Identification for "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished either directly or indirectly, to a station as an inducement for broadcasting such matter." 47 C.F.R. § 73.1212(d); *see also* 47 U.S.C. § 317. Even assuming *arguendo*—and WKRN does not concede the point—that the Program Material was furnished "indirectly" to WKRN by Jackson Hewitt "as an inducement for broadcasting such matter," the material was clearly not political, nor did it involve the discussion of a "controversial issue of public importance."<sup>5</sup> It is, of course, the province of the Station in the first instance to determine whether program material involves the discussion of a controversial issue. *See Barry G. Silverman Against Station KOOL-TV*, 63 F.C.C. 2d 507 (1977), ¶ 17 ("[T]he initial determination as to whether a controversial issue of public importance was discussed is made by the licensee and the Commission will review the licensee's judgment only to determine whether it was reasonable."). WKRN reasonably determined that its Tax

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<sup>4</sup>(...continued)

our sponsorship identification rules?" *See Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, FCC 05-84 (Apr. 13, 2005), p. 5.

<sup>5</sup> Thus, because the Program Material did not involve the discussion of a political matter or a controversial matter of public importance, whether or not the Program Material was furnished indirectly to WKRN as an inducement to air it is irrelevant.

Story did not involve the discussion of a controversial issue.

The Program Material and WKRN's Tax Story related to the then-approaching personal income tax filing deadline. As is customary in the weeks leading to April 15, WKRN aired news segments treating income tax. The Tax Story was a timely piece reminding viewers of the availability of certain straightforward, well-established tax deductions and the importance of recordkeeping for tax purposes. The Tax Story did not take a position on any tax, did not reference any proposed tax legislation, did not address tax reform,<sup>6</sup> and did not propose increasing or decreasing any tax or tax deduction<sup>7</sup>—the Tax Story was patently *uncontroversial*. In at least one Fairness Doctrine case, the Commission observed that it was not apparent that even a “discussion on avoiding the payment of income taxes” was “controversial.”<sup>8</sup> If a discussion of tax *avoidance* strategy is not a controversial matter, then it can hardly be said that a brief discussion of permissible tax deductions and attendant recordkeeping involves the discussion of a controversial matter.

Further, Sponsorship Identification cases in which the Commission has found programming to involve the “discussion of a controversial issue of public importance” involved programming addressing such topics as United States-Soviet Union military relations<sup>9</sup> and a jail bond issue that

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<sup>6</sup> See *Complaint by Vick Gould, Bellevue, Washington Concerning Fairness Doctrine Re Station KING-TV, Seattle, Washington*, 37 F.C.C. 2d 430 (1972) (recognizing that tax reform proposals were controversial issue of public importance).

<sup>7</sup> See *Democratic State Central Committee of California Concerning Fairness Doctrine Regarding California Broadcasters Association and Station KNBC-TV*, 19 F.C.C. 2d 833 (1968) (finding discussion of proposed taxes and a proposed tax increase to be controversial issues of public importance).

<sup>8</sup> *Rust Communications Group, Inc.*, 57 F.C.C. 2d 873 (1976), ¶ 14.

<sup>9</sup> *Gaylord Broadcasting Co.*, 67 F.C.C. 2d 25 (1977) (imposing no sanctions on licensee (continued...))

was up for public vote.<sup>10</sup> Clearly, the discussion of simple tax filing and tax-related recordkeeping suggestions such as that included in the Tax Story does not involve a “controversial issue of public importance” on par with prior Commission precedent. As a result, WKRN was not required to use a Sponsorship Identification to identify that a portion of its Tax Story used journalistic source material obtained from the Fox News feed.

### **3. WKRN Exercised Its Own Editorial Judgment in Developing and Airing the Tax Story**

In March 2006, the WKRN news department determined that a brief report on charitable tax deductions for personal tax returns would be timely and of interest to the community. A news producer searched the Fox News feed for relevant material for the story and found the Program Material, which, as noted above, was not identified as a “VNR” or as sponsored material.

Significantly, the complete Program Material runs one minute, forty-nine seconds, of which two video clips of Mike Lister run 14 and 25 seconds respectively for a total of 39 seconds. In contrast, WKRN’s Tax Story runs only 44 seconds, of which only 14 seconds is a video clip of Mr. Lister, who is identified only as an “accountant.” Clearly, WKRN, in editing out sixty percent of the Program Material, exercised its own editorial discretion in generating the Tax Story. Moreover, as is evident from the transcripts of the two segments, the script for the Tax Story, which was written by the WKRN news department, was different from the script for the Program Material. Patently, the WKRN Tax Story was not a “canned” news story but was the product of WKRN’s news

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<sup>9</sup>(...continued)

where failure to include Sponsorship Identification in programming discussing controversial issue of public importance was “isolated incident”).

<sup>10</sup> *Fed Up Taxpayers Committee*, 49 R.R.2d (P&F) 501 (1981) (imposing no sanctions and taking no further action where Section 73.1212(d) was violated).

department.

As evidenced by the transcripts and recordings included with this Response, in creating *its own Tax Story*, WKRN edited heavily the Program Material delivered via the Fox News feed. Indeed, all references to Jackson Hewitt were eliminated from the excerpts of the Program Material that were used in the final version of the Tax Story. The CMD Report itself specifically observes that WKRN “trimmed over a minute of content from the original VNR . . . and remov[ed] every mention of Jackson Hewitt. In addition to the loss of promotion, there was a full demotion for Mike Lister. Instead of being identified as the president of his own company, WKRN-2 merely billed him as an ‘accountant.’” *CMD Report*, p. 100. Additionally, the CMD Report praises the Station for “stripp[ing] the ulterior sales angle out of the corporate news release.” *Id.* p.101.

The “strip[ping] of the ulterior sales angle” is highly relevant to the instant inquiry.<sup>11</sup> It is elemental that the purpose of the Sponsorship Identification rule is to provide viewers with information so that they “know by whom they are being persuaded.” *See Applicability of Sponsorship Identification Rules*, Public Notice, 40 F.C.C. 141 (1963); *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, FCC 05-84 (Apr. 13, 2005), p. 1; accord *Thomas W. Dean, Esq. Litigation Director, NORML Foundation*, 16 FCC Rcd 1421 (2000).

In using the brief and heavily edited video clip from the Program Material in the Tax Story, any element of persuasion that might have existed in the Program Material was removed or entirely

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<sup>11</sup> WKRN does not concede that there was any “ulterior sales angle” in the Program Material. WKRN was not aware of any “ulterior sales angle” in the Program Material and has no basis for evaluating whether CMD’s allegation concerning an “ulterior sales angle” is based in fact or is mere conjecture.

neutralized. In fact, the CMD Report describes the *complete version* of the Program Material only as a “*subtle* promotion,”<sup>12</sup> and because the Station had removed all elements from the Program Material that could even arguably be described as promotional, the final version of the Tax Story was completely devoid of promotional or persuasive elements. As such, the policy and spirit behind the Sponsorship Identification rule were not implicated by the Tax Story.<sup>13</sup>

#### **4. The CMD Report Grossly Mischaracterizes WKRN’s Tax Story**

Significantly, the CMD Report is rife with inaccuracies with respect to WKRN’s Tax Story. The CMD Report describes the Tax Story as “a short news feature on the best ways to deduct charitable donations on your income tax report.” *CMD Report*, p. 100. The CMD Report goes on to describe the Tax Story as “featur[ing] numerous tax deduction tips and a lengthy soundbite from an accountant.” *Id.* The CMD Report also alleges that “every piece of [WKRN’s] brief report came from Medialink and Jackson Hewitt.” *Id.* p.101. Finally, in an excerpt from the CMD Report located on the CMD’s webpage that contains video files of the complete Program Material and the Tax Story,<sup>14</sup> CMD describes the Program Material as “Voiced by publicist” and the Tax Story as “Re-voiced by station anchor.” *See Nashville Station Cheats on Tax Report, available at*

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<sup>12</sup> *CMD Report*, p.100 (emphasis added).

<sup>13</sup> Moreover, in the context of the furnishing of free service or property to a station “for its use on or in connection with a program where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for identification of such service or property beyond its mere use on the program,” the Commission has stated that no Sponsorship Identification is required where “[n]ews releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program.” *Applicability of Sponsorship Identification Rules*, § C.11. Implicit in this application of the Sponsorship Identification rule is a recognition that material that is free of persuasive elements, such as the Tax Story in instant case, is not subject to the Sponsorship Identification requirement.

<sup>14</sup> At no time has permission been provided to CMD to use this copyrighted material.

<[www.prwatch.org/fakenews/vnr34](http://www.prwatch.org/fakenews/vnr34)> (attached as Exhibit 1).

Notwithstanding CMD's assertions to the contrary, in reality, WKRN's Tax Story did not report on the "best ways" to make charitable deductions. CMD's spin on the Tax Story may be an attempt to paint the Tax Story as involving the discussion of a controversial issue, where there is no controversy. The Tax Story merely provided a brief overview of steps filers may wish to take to include charitable donations on personal tax returns. Whether the Tax Story contains "numerous tax deduction tips" is certainly open to debate since neither WKRN nor its anchors are accountants. Also open to debate is whether the accountant's soundbite is "lengthy"—it runs only 14 seconds.<sup>15</sup> CMD's characterizations are self-serving.

The most egregious mischaracterizations of the Tax Story, however, are CMD's assertions that "every piece" of WKRN's Tax Story came from Medialink and Jackson Hewitt and that the Program Material that was originally "Voiced by publicist" was "Re-voiced by station anchor." Even a cursory comparison of the transcripts of the Tax Story and the Program Material reveals that WKRN used its own script and its own editorial discretion in creating the Tax Story and merely used a video clip of Mr. Lister much in the same way that the Station would use its own file video in generating any news story. Jackson Hewitt exercised no editorial control whatsoever over the Tax Story. In fact, the *only* identical portions of the scripted material from the two segments are the video clips of Mr. Lister, and WKRN substantially edited that portion of the Program Material to remove all mention of Jackson Hewitt.<sup>16</sup> Manifestly, WKRN did not "re-voice" the Program

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<sup>15</sup> In exercising its editorial discretion in creating its Tax Story, WKRN used only one-third of Mr. Lister's statements from the Program Material.

<sup>16</sup> The Tax Story did use other generic video footage from the Program Material, but the footage clearly had no substantive impact on the Tax Story.

Material; WKRN's news team drafted its own Tax Story script whose similarity to the Program Material stems only from the fact that both covered the same general topic. It is blatantly false that WKRN merely "re-voiced" the Program Material.

In the end, CMD appears to take issue with WKRN's choice of video footage and ignores—or, at a minimum, neglected to investigate—the fact that the video footage was obtained by the Station as part of an arrangement whereby the Station provided consideration to obtain it. The CMD is apparently dissatisfied that the footage originated with Jackson Hewitt. The CMD's attack on WKRN's journalism, however, goes beyond opinion and hyperbole and presents as factual a case that has no basis in fact. CMD's failure to ascertain the facts prior to publication of its report render its own journalistic credentials suspect (and, as demonstrated above, CMD is wrong on the law, too). Of course, the Commission "cannot direct broadcast licensees in the selection or presentation of specific programming, nor does the Commission provide news guidelines." *Fed Up Taxpayers Committee*, 49 R.R. 2d (P&F), at 503. Moreover, the Commission has rejected a proposal to require television stations to visibly identify "the location of production and production date" in all programming.<sup>17</sup> With respect to WKRN and the Tax Story, the Commission should not heed CMD's factual distortions and fabrications, which CMD has disguised as a "report" to generate attention and advance its own agenda.<sup>18</sup>

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<sup>17</sup> See *Labeling of Television Programs with Regard to Location of Production and Date of Production or Initial Broadcast*, Memorandum Opinion and Order, 51 R.R. 2d (P&F) 1167 (1982).

<sup>18</sup> Applicable here is Professor Wigmore's observation that:

It has always been understood—the inference, indeed, is one of the simplest in human experience—that a party's falsehood or other fraud in the preparation and presentation of his cause, . . . is receivable against him as an indication of his consciousness that his case is a

(continued...)

**B. Even If a Sponsorship Identification Were Required, It Would Be Consistent with Commission Precedent to Take No Action in This Case**

Should the Commission determine that WKRN's airing of the Tax Story, which included video footage that originated from Jackson Hewitt source material, violated the Sponsorship Identification rule, WKRN respectfully submits that it would be consistent with Commission precedent to take no further action in this case and impose no sanction for this isolated incident.

For example, in *Gaylord Broadcasting Co.*, 67 F.C.C. 2d 25 (1977), the Commission found that the station's failure to include a Sponsorship Identification announcement in the broadcast of a program discussing the controversial issue of American-Soviet relations violated Section 73.1212(d). However, the Commission determined that "[i]nasmuch as this appears to be an isolated incident no Commission action or sanctions are deemed appropriate at this time." *Id.* Similarly, any violation here (and there was none) of the Sponsorship Identification rule by WKRN would be an "isolated incident" that does not warrant sanction or further action.

Additionally, in *Fed Up Taxpayers Committee*, 49 R.R.2d (P&F) 501 (1981), the Commission imposed no sanctions and took no further action where the station failed to broadcast an adequate Sponsorship Identification announcement. There, the Broadcast Bureau observed that "we do not believe it would be an efficient use of the Commission's resources to pursue this matter further. We expect the licensee, however, to be particularly sensitive to, and comply with, the statutory and regulatory provisions regarding sponsorship identification statements in the future."

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<sup>18</sup>(...continued)

weak or confounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit.

*Id.* Should the Commission find a violation relating to WKRN's Tax Story (and, for the reasons discussed above, there was no violation), WKRN respectfully submits that a similar approach would be warranted in the instant case.

### **Conclusion**

A review of Program Material and the Tax Story aired over WKRN on March 1, 2006, reveals that no Sponsorship Identification was required. Accordingly, WKRN respectfully requests that the Commission take no further action in this matter.


Respectfully submitted,

WKRN, G.P.



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Mark J. Prak



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Stephen Hartzell

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Its Attorneys

October 9, 2006

## **Declaration of Steven Sabato**

### **Declaration of Steven Sabato**

I, Steven Sabato, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.
2. I am Director of News and Local Programming for Station WKRN-TV, Nashville, Tennessee (the "Station"). I have held these positions since June 2005.
3. WKRN-TV is the ABC affiliate for the Nashville Designated Market Area.
4. On or about April 6, 2006, I learned that the Center for Media and Democracy ("CMD") published a report that alleged that the Station aired certain program material that originated from certain outside sources (the "Program Material") during a March 1, 2006, tax story (the "Tax Story") created and produced by WKRN.
5. The program material at issue was delivered to the Station as a part of the daily news feed from Fox News. At the time, the Station participated with Fox News in a reciprocal video agreement, whereby the Station had access to material delivered from Fox News in exchange for the Station providing video material to Fox News upon request. To my knowledge, it is standard industry practice for television stations to obtain news video from daily news feeds from entities such as Fox, CNN, and a station's network. The Station no longer receives the Fox News feed but does receive a news feed from the ABC Network and CNN. When a Fox television affiliate entered the market, Fox News ceased to provide the Fox News feed to other stations in the market.
6. To my knowledge, neither WKRN nor any of its employees or representatives received or were promised any consideration from any source in exchange for airing the Program Material in whole or in part. As described above, WKRN provided consideration to Fox News to receive the daily news feed of which the Program Material was a part. To my knowledge, Fox News did not receive consideration from any source in connection with the Program Material.
7. The Station's policy prohibiting the use of video news release ("VNR") material was historically communicated to Station personnel by word of mouth. Although the word-of-mouth policy was generally clear, effective, and sufficient, I circulated the attached memorandum to all news staff to remove any doubts as to the policy. I took this action upon learning from the CMD report of the use of a portion of the Program Material in the Tax Story. The memorandum describes the Station's general prohibition on the use of VNR material.
8. WKRN's VNR policy at all relevant times prohibited the use of VNR material. When the Tax Story producer searched for and found the Program Material in the Fox News feed, it was not identified as "sponsored" material nor was it identified as a "VNR." The Fox News feed generally did not identify program material as sponsored, except when material was accessed via a link or electronic tab labeled "VNRs."

9. I am not aware of WKRN's having received any materials accompanying the Program Material. The Fox News feed log may have included a description of the subject of the Program Material, but this description would have been provided electronically and such descriptions are not routinely retained by WKRN. In this instance, WKRN did not retain any description that may have accompanied the Program Material.

10. Limited excerpts from the Program Material were aired as part of the Tax Story at approximately 4:45 p.m. on March 1, 2006, during WKRN's 4:30 p.m. newscast. The WKRN news team heavily edited the Program Material, using only those portions that were relevant to the Tax Story. The WKRN news team made an independent, good faith editorial judgment to air a story discussing charitable tax deductions in personal income tax filings, and in my judgment, the piece did not discuss any controversial issue. The news producer who produced the Tax Story exercised his judgment that certain video clips from the Program Material were useful in the production of the Tax Story, and in that regard the Program Material served as journalistic source material. Nonetheless, Jackson Hewitt exercised no editorial control whatsoever over the Tax Story.

11. I have reviewed the Response of WKRN, G.P. to the August 11, 2006, Letter of William H. Davenport and hereby verify the truth and accuracy of the factual information contained therein. All of the documents and information requested by the letter of inquiry that are in the licensee's possession, custody, control, or knowledge have been produced to the Commission.

**[signature appears on the following page]**

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

October 6, 2006  
Date

Steven Sabato  
Steven Sabato  
Director of News and Local Programming  
WKRN-TV

TO; NEWS STAFF  
FR; STEVE SABATO  
RE; VIDEO NEWS RELEASE (VNR)

INADVERTENTLY, A SOUND BITE FROM A VNR AIRED DURING ONE OF OUR NEWSCASTS.

ALLOW ME TO REPEAT OUR POLICY REGARDING VIDEO NEWS RELEASES.

DO NOT USE THEM. PERIOD.

IT IS NOT ALWAYS EASY TO IDENTIFY THIS VIDEO. BELOW ARE THE THREE MOST LIKELY SOURCES IN OUR NEWSROOM.

1. IN THEIR MOST OBVIOUS FORM THEY ARRIVE ON VIDEO TAPE IN THE MAIL. THESE ARE EASY TO SPOT. THROW IT AWAY IF ONE HAPPENS TO LAND ON YOUR DESK.

2. A LESS OBVIOUS WAY FOR THEM TO ENTER THE NEWSROOM IS VIA PATHFIRE ON THE CNN FEED. IF YOU ARE LOOKING AT THE CNN HOME PAGE YOU WILL SEE TITLES FOR VARIOUS FEEDS ACROSS THE TOP OF THE SCREEN INCLUDING ONE TITLED "VNR".

NEVER GO THERE.

EVEN IF YOU DO A UNIVERSAL TOPIC SEARCH AND A VNR STORY IS FOUND THE SLUG WILL ALWAYS INCLUDE A " VNR " PREFIX IF IT IS ON THE CNN FEED.

3. THE MOST STEALTH PATH OF ENTRY IS VIA PATHFIRE ON THE FOX FEED. IF YOU ARE LOOKING AT THE FOX HOME PAGE YOU WILL SEE TITLES FOR VARIOUS FEEDS ACROSS THE TOP OF THE SCREEN INCLUDING ONE TITLED "VNR".

THAT'S EASY. NEVER GO THERE.

BUT IF YOU DO A UNIVERSAL TOPIC SEARCH OF FOX AND A VNR STORY IS FOUND; BEWARE, THE SLUG DOES NOT INCLUDE ANY "VNR" IDENTIFICATION.

THIS IS SERIOUS STUFF, PLEASE TAKE HEED.

## Exhibit 1



**Center for  
Media and  
Democracy**

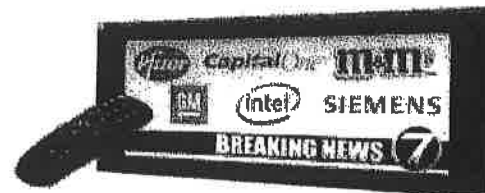
**THE BEST  
WAR EVER**  
Lies, Damned Lies, and the Mess in Iraq



Publishers of PR Watch

## Nashville Station Cheats on Tax Report

**Local ABC news story is secretly filed by a national  
tax preparation franchise**



**Client(s):** Jackson Hewitt

**Released:** March 2006

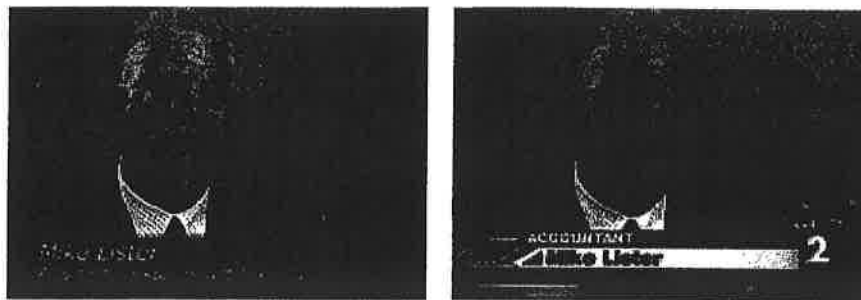
**Aired By:** 1 station

**Disclosed By:** No stations

On March 1, 2006, WKRN-2 in Nashville, Tennessee ran a short news feature on the best ways to deduct charitable donations on your income tax report. The segment, which was introduced and read by afternoon anchors Bob Mueller and Anne Holt, featured numerous tax deduction tips and a lengthy soundbite from an accountant.

What viewers didn't know is that the entire story was built from a video news release (VNR) from Jackson Hewitt, the second-largest tax preparation franchise in the United States. The imitation news story was created by Medialink Worldwide and reported in voiceover by publicist Kate Brookes. As a subtle promotion, the VNR featured over 30 seconds of soundbites from Jackson Hewitt CEO Mike Lister, and ended with a call for viewers to seek out a "qualified tax preparer."

Unfortunately for Jackson Hewitt, WKRN-2 trimmed over a minute of content from the original VNR, replacing Brookes' narrative audio with the voice of Anne Holt and removing every mention of Jackson Hewitt. In addition to the loss of promotion, there was a full demotion for Mike Lister. Instead of being identified as the president of his own company, WKRN-2 merely billed him as an "accountant."



Soundbite speaker Mike Lister, as he appears in the original VNR (left) and the WKRN-2 news feature (right).

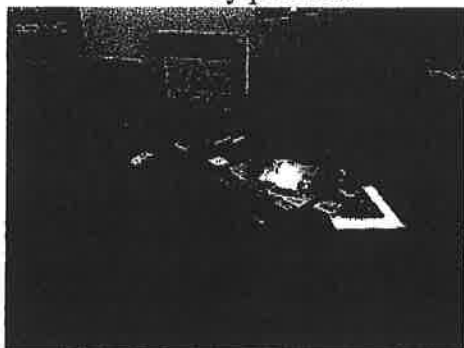
While it's nice to see that WKRN-2 stripped the ulterior sales angle out of the corporate news release, they still failed to inform viewers that every piece of their brief report came from Medialink and Jackson Hewitt.

*To view the original VNR, as well as the WKRN-2 news story, click on the Quicktime links below.*

[Next: Victoria's other secret](#)  
[Back to VNR Findings](#)

**Original Jackson Hewitt VNR**

Created by Medialink  
Voiced by publicist



**Duration:** 1 min, 49 sec  
**File Size:** 2.4 MB  
[Click to view](#)

**WKRN-2 4:30PM newscast**

March 1, 2006  
Re-voiced by station anchor



**Duration:** 0 min, 44 sec  
**File Size:** 1.0 MB  
[Click to view](#)

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