



FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Suite 4-C330  
Washington, D.C. 20554

November 24, 2010

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND BY FACSIMILE (202) 457-4511**

Anne Lucey, Esquire  
Senior Vice President  
CBS Corporation  
601 Pennsylvania Avenue, NW  
Suite 540  
Washington, D.C. 20004

Re: Station KCBS-TV, Los Angeles, California  
File No. EB-10-IH-4105

Dear Licensee:

The Enforcement Bureau is investigating potential violations of Sections 317 and 507 of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. §§ 317 and 508, and Section 73.1212 of the Commission's rules, 47 C.F.R. § 73.1212, by CBS Broadcasting Inc. (the "Licensee"), licensee of Station KCBS-TV, Los Angeles, California (the "Station"). In particular, we are investigating whether the Station reported on certain entities in its news programming in exchange for payments or other valuable Consideration, as that term is defined herein,<sup>1</sup> without providing the required sponsorship identification announcements.<sup>2</sup> In this regard, we have received a complaint<sup>3</sup> that cites a press account questioning whether the Station aired "paid advertising" for City of Hope Medical Center, Morongo Casino, and Sports Club LA (collectively, "the Alleged Sponsors") as part of its news programming without disclosing the program material as such.<sup>4</sup>

The Instructions for responding to this letter and the Definitions for certain terms used in this letter are contained in the attachment hereto. We direct the Licensee, pursuant to Sections

<sup>1</sup> See Attachment (providing instructions and defining terms), *infra*.

<sup>2</sup> See 47 U.S.C. §§ 317, 508; 47 C.F.R. § 73.1212.

<sup>3</sup> See Letter from Corie Wright, Free Press, to Chairman Genachowski, dated September 27, 2010 ("Complaint") (copy enclosed). The Complaint cites the following Los Angeles Times news columns: James Rainey, *On the Media: KCBS ads masquerade as news*, Los Angeles Times, April 21, 2010 ("April 21, 2010, L.A. Times Column"); James Rainey, *On the Media: The news is, that pitch was paid for*, Los Angeles Times, September 15, 2010; James Rainey, *On the Media: Fake news flourishes under the feds' noses*, Los Angeles Times, September 17, 2010 ("September 17 L.A. Times Column") (collectively, "the L.A. Times Columns"). The April 21, 2010, LA Times Column appears to be called *On the Media: TV stations add 'value'... for whom?* The September 17 L.A. Times Column appears to be dated September 18, 2010.

<sup>4</sup> See April 21, 2010, L.A. Times Column, *supra* note 3.

4(i), 4(j), 308(b), and 403 of the Communications Act,<sup>5</sup> to provide the information and Documents specified below within thirty (30) calendar days from the date of this letter.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2010, to the present.

**Documents and Information to be Provided**

1. For each Segment of program material Broadcast by the Station relating to each of the Alleged Sponsors, provide the following information:
  - a. the date(s) and time(s) that the Station Broadcast the Segment, or any portion thereof;
  - b. two recordings – one in VHS and another in DVD format – of the Segment;
  - c. a written transcript of the Segment;
  - d. Identify all Licensee personnel who made or directly implemented the decision to produce and Broadcast the Segment, including the decision maker(s), reporters, and producers, but excluding clerical or technical personnel;
  - e. Identify all Licensee personnel responsible for the sale of commercial time during the Station's news programming;
  - f. all Documents relating to the Segment, including correspondence, written agreements, marketing materials, invoices, or receipts;
  - g. a detailed description of each oral communication relating to the Segment between the Licensee and the Alleged Sponsor and/or within the Licensee, including conversations and oral agreements, including date and time, the parties, and the content;
  - h. for each oral agreement Identified in response to Inquiry 1(g), in addition to the date, time, parties, and content, a detailed description of the terms and conditions of such oral agreement, including any Consideration;
  - i. the steps, if any, that the Licensee took to determine whether the Segment required sponsorship identification and the information learned through taking any such steps; and
  - j. whether the Station Broadcast a sponsorship identification announcement relating to the Segment.
2. If the answer to Inquiry 1(j) above is yes, provide the following information for each such Broadcast:

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<sup>5</sup> See 47 U.S.C. §§ 154(i), 154(j), 308(b), 403.

- a. the date(s) and time(s) that the Station Broadcast the sponsorship identification announcement;
  - b. two recordings – one in VHS and another in DVD format – of the sponsorship identification announcement; and
  - c. a written transcript of the sponsorship identification announcement.
3. If the answer to Inquiry 1(j) is no, explain why the Station did not Broadcast any sponsorship identification announcement relating to the Segment.
  4. 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.
  5. Provide copies of all Documents that provide the basis for or otherwise support the Licensee's responses to Inquiries 1-4 above.
  6. Provide any other information that you think would be helpful for our consideration and resolution of this matter.

#### **Filing Requirements**

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,<sup>6</sup> and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.<sup>7</sup> Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.<sup>8</sup>

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<sup>6</sup> See 47 C.F.R. § 1.16.

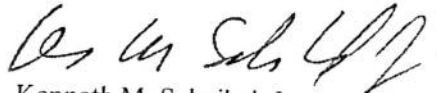
<sup>7</sup> See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

<sup>8</sup> See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

CBS Corporation  
November 24, 2010  
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The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554, to the attention of Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to [Melissa.Marshall@fcc.gov](mailto:Melissa.Marshall@fcc.gov) and to [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

Sincerely,



Kenneth M. Scheibel, Jr.  
Assistant Chief  
Investigations and Hearings Division  
Enforcement Bureau

Attachment  
Enclosure

## ATTACHMENT

### Instructions

*Request for Confidential Treatment.* If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents, and casual requests, including simply stamping pages "confidential," are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

*Claims of Privilege.* If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

*Format of Responses.* The response must be organized in the same manner as the questions asked, *i.e.*, the response to Inquiry 1 should be labeled as responsive to Inquiry 1.

*Method of Producing Documents.* Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

*Identification of Documents.* For each Document or statement submitted in response to the inquiries stated in the cover letter, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

*Documents No Longer Available.* If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

*Retention of Original Documents.* With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau

or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

*Continuing Nature of Inquiries.* The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

#### **Definitions**

For purposes of this letter, the following definitions apply:

"Alleged Sponsors" shall mean each of the City of Hope Medical Center, the Monrongo Casino, and Sports Club LA, and their predecessors-in-interest, affiliates, parent companies, wholly or partially owned subsidiaries, other affiliated companies or businesses, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Broadcast," when used as noun, shall mean any visual images and audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of a television signal intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Consideration" shall mean anything of value, including, but not limited to, cash, checks, salary, fees, commissions, honoraria, per diem allowance, bonus, services, and/or any other thing

of value, from any source, or given by third parties to the Licensee, or its employees, contractors, agents, or designees.

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“Identify,” when used with reference to a person or persons, shall mean to state his/her full legal name, job title (if any), current business address, and business phone number. If business address and/or telephone number are not available, state the person’s home address and/or telephone number.

“Identify,” when used with reference to a Document, shall mean to state the date, author, addressee, type of Document (*e.g.*, the types of Document, as described above), a brief description of the subject matter, its present or last known location and its custodian.

“Identify,” when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

“Licensee” shall mean CBS Broadcasting Inc., and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

“Relating to” shall mean in the whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

“Segment,” shall mean any material featuring or sponsored by City of Hope Medical Center, Morongo Casino, and/or Sports Club LA as described in the attached LA Times Columns, or anything similar.

“Station” shall mean KCBS-TV, Los Angeles, California.

MASSACHUSETTS  
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florence, ma 01062  
tel 413.585.1533  
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washington, dc 20001  
tel 202.265.1490  
fax 202.265.1489



Via Electronic Filing

The Honorable Julius Genachowski  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

September 27, 2010

**RE: *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, MB Docket 08-90**

Dear Chairman Genachowski:

We write to alert you to a disturbing practice that is becoming increasingly prevalent in the media: the use of undisclosed commercials in television newscasts and programming.

The Commission's sponsorship identification rules are supposed to combat covert product placement, payola and propaganda by requiring broadcasters and cablecasters to disclose when they are paid (or otherwise receive consideration) to air particular content.<sup>1</sup> These rules are premised on the principle that viewers deserve to know when someone is paying to persuade them. However, in spite of these rules, the use of covert commercials – many without the required disclosure – is on the rise.

The *Los Angeles Times* has recently identified several instances where local television stations aired programming in exchange for consideration without clearly disclosing that fact to the viewing public. In one particularly disconcerting case, a local CBS affiliate aired a segment entitled "CBS Healthwatch" in which the station's news reporters interviewed local hospital officials about cancer treatments.<sup>2</sup> In fact, this "news segment" was part of a series of paid medical advertisements sponsored by the hospital in question. More recently, the *Los Angeles Times* has drawn attention to local TV stations' undisclosed use of a spokesperson-for-hire who is paid to tout toys to parents watching the morning news.<sup>3</sup> These reports reveal that the practice of pay-for-play "news" is ratcheting up.

<sup>1</sup> Specifically, Section 317 of the Communications Act of 1934 requires broadcasters to make sponsorship identification announcements in any programming for which consideration has been received and to "exercise reasonable diligence" to acquire sponsorship information. See 47 U.S.C. § 317(a)(1). See also 47 C.F.R. § 73.121. Section 76.1615 of the Commission's rules applies the broadcast provisions of Section 317 of the Communications Act to "origination cablecasting."

<sup>2</sup> James Rainey, "On the Media: KCBS ads masquerade as news," *Los Angeles Times* (April 21, 2010), available at <http://articles.latimes.com/2010/apr/21/entertainment/la-et-onthemedi-20100421>.

<sup>3</sup> James Rainey, "On the Media: The news is, that pitch was paid for," *Los Angeles Times* (Sept. 15, 2010), available at <http://www.latimes.com/entertainment/news/la-et-onthemedi-20100915.0.370372.column>; James Rainey, "On the Media:



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In conclusion, we urge the Commission to promptly:

- Initiate an investigation into these new instances of covert commercials in news programs to determine whether these stations have violated the Commission's sponsorship identification rules;
- Conclude any remaining investigations into the undisclosed uses of VNRs cited in the complaints filed by Free Press and the Center for Media and Democracy in 2006 and 2007, and issue citations where the sponsorship identification rules have been violated;
- Re-open the Commission's extant proceeding on sponsorship identification and promulgate rules requiring stricter and more prominent disclosure so that viewers know when they are watching *bona fide* news, as opposed to paid propaganda.

Respectfully,

Corie Wright  
Free Press  
202-265-1490

Cc:  
Commissioner Michael Copps  
Commissioner Robert McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Atwell Baker  
William Lake, Chief, Media Bureau  
Michele Ellison, Chief, Enforcement Bureau

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Free Press has long been concerned about the use of covert corporate and government propaganda in the media. In 2006 and 2007 Free Press, along with the Center for Media and Democracy, sent three complaints to the Commission regarding the use of undisclosed video news releases (VNRs) by broadcasters and cablecasters.<sup>4</sup> The FCC later initiated an investigation and, in September 2007, fined Comcast Corporation for airing five separate VNRs on its CN8 channel without identifying the sponsors.<sup>5</sup> However, while more than a hundred instances of undisclosed VNRs use were cited by Free Press and Center for Media and Democracy, no further enforcement action has been taken by the Commission.

Even where local stations technically may be abiding by the FCC disclosure rules, the public still may not realize they are watching paid propaganda. Currently, most broadcasters relegate sponsorship identification disclosures to a minuscule, fast moving scroll at the end of the program credits. Most viewers would be unable to read the disclosures, assuming they even bother to watch the credits. The FCC currently has an open proceeding on this very issue.<sup>6</sup> In that proceeding Free Press, as well as a number of consumer and children's advocacy groups, proposed ways to make disclosure more effective by developing standards for the frequency, size and duration of such disclosures.<sup>7</sup> Unfortunately, the Commission has failed to take any action in this proceeding in two years. Meanwhile, the current rules remain insufficient to protect consumers from more advanced embedded advertising practices.

In the absence of Commission enforcement and improved rules, the use of covert advertising has only increased. This trend has adverse implications for the public's ability to trust or ascertain whether information it receives is accurate and unbiased. People rely on news and informational programming to inform decisions they make about everyday issues – as well as more consequential ones, such as the type of medical treatment to seek, or how to vote on an issue. They deserve to know when programming or news coverage has been influenced by commercial consideration. More importantly, they deserve to know when programming that resembles *bona fide* news coverage is in fact a commercial.

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Fake news flourishes under the feds' noses," *Los Angeles Times* (Sept. 17, 2010) available at <http://www.latimes.com/entertainment/news/la-et-onthemedial-20100918.0.566983.column>.

<sup>4</sup> See First Complaint of Free Press and Center for Media and Democracy (April 6, 2006), available at [http://www.freepress.net/files/fcc\\_complaint\\_4-06-06.pdf](http://www.freepress.net/files/fcc_complaint_4-06-06.pdf); Second Complaint of Free Press and Center for Media and Democracy (Nov. 14, 2006), available at [http://www.freepress.net/files/final\\_vnr\\_letter\\_nov06.pdf](http://www.freepress.net/files/final_vnr_letter_nov06.pdf); and Third Complaint of Free Press and Center for Media and Democracy (Oct. 11, 2007), available at [http://www.freepress.net/files/oct2007\\_fcccomplaint.pdf](http://www.freepress.net/files/oct2007_fcccomplaint.pdf).

<sup>5</sup> *In the Matter of Comcast Corp.*, Notice of Apparent liability for Forfeiture, 22 FCC Rcd 17030 (Sept. 21, 2007) and *In the Matter of Comcast Corp.*, Notice of Apparent liability for Forfeiture, 22 FCC Rcd 17474 (Sept. 26, 2007).

<sup>6</sup> *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket No. 08-90, 23 FCC Rcd 10682 (2008).

<sup>7</sup> See, e.g., Comments of Free Press, MB Dkt 08-90 (filed Nov. 21, 2008).

Westlaw

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NewsRoom

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2010 WLNR 8201809

Los Angeles Times  
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April 21, 2010

Section: Calendar

ON THE MEDIA  
TV stations add 'value' ... for whom?

JAMES RAINEY

Column

You would have to forgive viewers like the one who e-mailed me last month for being a bit confused about a news segment he saw on KCBS Channel 2.

The man referred me to a 90-second segment he saw after the "CBS Evening News," wondering if it was legitimate news. It featured KCBS health reporter Lisa Sigell interviewing the chief medical officer of City of Hope Medical Center about the promise of new cancer treatments.

In a similar piece in March, Sigell talked to another of the hospital's doctors about the threat of colorectal cancer and the importance of screening to avoid the disease.

Given that the "CBS Healthwatch" and CBS logos flashed on the screen, a viewer could be forgiven for thinking that they were watching a pair of news briefs. Both spots appeared at the end of the regular news.

But viewer beware: Not all that appears to be news is news as we once knew it.

The City of Hope website describes the KCBS segments as "part of CBS Healthwatch, targeted medical informational advertisements that have run on CBS affiliates for 12 years."

In other words, the line between editorial and advertising had been obscured again -- with the hospital getting a nice chance to showcase a couple of its top people in a format that looked like news but was actually paid advertising.

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This kind of thing promises to become more the norm. With technology that encourages television audiences to fast-forward through commercials, advertisers are determined to find new ways to get eyeballs on their products.

Thus the huge push to place products in movies, TV shows and, yes, even the news.

An official at KCBS, who asked not to be identified because he was not authorized to speak on the record, told me Tuesday that he was sure "people in the real world saw the segments for what they were."

"We employ policies that are commonplace at the L.A. Times and throughout the industry," station spokesman Mike Nelson said in a prepared statement, "to present advertising in such a way that is separate and distinct from our newsgathering efforts."

At The Times, advertisements and promotions are clearly labeled as such. But the KCBS pieces not only involved one of the station's professional journalists but were not clearly labeled as advertising.

But this may be more obvious to me because I know a little about how television advertising has evolved and have talked to sales reps inside stations who tell me about the extra inducements that are now offered.

When TV advertising managers go out to sell 30-second spots to potential clients, they sometimes offer a valuable added incentive: a news story. Buy an ad and suddenly you and your company can make the real news.

They call it "added value" advertising. The advertiser gets the "added value" of seeing its company flattered on programs that, at least nominally, are supposed to feature the most important events of the day. It's easy, it's synergistic, it's win-win ... at least for the television station and the advertiser.

But it's a crying shame for viewers, who even in this free-form media era might like to believe that what's labeled "news" really is just that and not a deception designed to get them to consider a product or service that otherwise might not cross their radar screens.

The KCBS official said the City of Hope spots were not that different than standard advertising. The hospital did not get special spots that mimicked a news segment because of other advertising it had purchased, he said.

I don't have any proof to the contrary. But who can know for sure? City of Hope has paid for standard advertising on the station, both on air and on the Web. And doctors from the hospital have turned up in some of Sigell's other health coverage.

One thing about added value is that the value stems from the very lack of transparency. If we knew we were looking at another ad instead of at a legit news story, we would surely hit the mute button or head for the fridge.

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james.rainey@latimes.com

---- INDEX REFERENCES ---

COMPANY: FORD MOTOR COMPANY BRASIL LDA; ASTON MARTIN LAGONDA LTD; FORD MOTOR COMPANY OF CANADA LTD; CLOSED JOINT STOCK COMPANY FORD MOTOR CO; AL MAS-RAF AL TIJAAREE AL SOOREE; FORD MOTOR COMPANY SA DE CV; FORD MOTOR CO LTD; FORD MOTOR CO; CENTENNIAL BRILLIANCE SCIENCE AND TECHNOLOGY CO LTD; SPORTS CLUB CO INC (THE); TRIBUNE CO; FORD MOTOR CO AS; CBS CORP; FORD MOTOR COMPANY (BELGIUM) NV

NEWS SUBJECT: (Sales & Marketing (1MA51); Business Management (1BU42))

INDUSTRY: (Advertising (1AD82); Traditional Media (1TR30); TV Programming (1TV26); Broadcast TV Programming (1BR42); Advertising & Public Relations (1AD83); Gaming Industry (1GA25); Entertainment (1EN08); TV Stations (1TV23); Broadcast TV (1BR25); Television Advertising (1TE28); Television Networks (1TE85); TV (1TV19))

Language: EN

OTHER INDEXING: (CBS; FORD MOTOR CO; JAMES; KCAL; KCBS; LAKERS; MEDICAL CENTER; MORONGO; SPORTS CLUB; TRIBUNE CO; TV) (Artest; Christina McLarty; Diener; Entertainment; Lisa Sigell; Manager Steve Mauldin; McLarty; Michael Friedman; Mike Nelson; Nancy Bauer Gonzales; Ron Artest; Sigell; Times)

EDITION: Home Edition

Word Count: 1302  
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END OF DOCUMENT

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I've seen a bunch of stories in recent months that make me wonder about "added value." KCBS does a story on the new "Sex and the City" slot machines at the Morongo casino. And the casino happens to be a significant advertiser at the station.

Entertainment reporter Christina McLarty delivered a frothy feature on working out at Sports Club LA. with the Lakers' Ron Artest. The itty-bitty reporter cooed and smiled, while the brawny Artest made like a he-man. McLarty told us that "Sports Club is not exactly an every-day gym. The club is a luxurious spot, a three-story gym-spa, even a gourmet cafe." The Lakers are regularly featured on KCBS' sister station, KCAL Channel 9.

The station official told me that producers did the casino piece because they saw a feature on the slot machines in the Riverside Press-Enterprise. The Artest segment connected naturally with Lakers coverage, he said.

The pieces were in no way a reward for other advertising already sold by the station or a morsel to induce greater ad spending in the future, said the official, who said station General Manager Steve Mauldin and News Director Scott Diener were not available for comment.

The City of Hope ads were produced under previous news director Nancy Bauer Gonzales. Diener would not allow news personnel in such "sponsored spots," the station official said.

Those answers make some sense. But so do my suspicions, which find so much of TV news filled with superficial flimflam. Many of the stories are so flimsy, it seems like somebody must have paid to get them on the air.

The questions go way beyond KCBS. I just took a closer look their way, after the viewer contacted me about the City of Hope pieces.

I wrote a couple of months back about a particularly glaring breach of the news/ad barrier, when KTLA Channel 5 (like the L.A. Times, owned by the Tribune Co.) devoted space on the nightly news to a series of ads from Ford Motor Co. that pretended to be news stories.

Entertainment and health reporters like Sigell provide the most obvious opening for news professionals to show they can sell-sell-sell.

If Sigell had any objection to crossing that line, you sure couldn't tell it on the air. That might rightly cause the viewer to wonder about other stories she has put on the air.

When she reported last month about the latest stem cell controversy, did the newswoman interview Dr. Michael Friedman, president and CEO of City of Hope, solely because he was the best expert available?

Or was the hospital rewarded for its ad buy? Something like friends with benefits?

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## The news is, that pitch was paid for

### When spokespersons for hire promote products on local TV news shows.

James Rainey

September 15, 2010

With summer ending, local television news stations recently rolled out their back-to-school features. In 10 big cities, that meant an appearance by a young mother and "toy expert" named Elizabeth Werner.

Werner whipped through pitches for seven toys in just a few minutes. Perky and positive-plus, Werner seemed to wow morning news people in towns like Detroit, Atlanta and Phoenix. They oohed and aahed as they smelled Play-Doh, poked at mechanical bugs and strummed an electronic guitar she brought to the studio.

Though parents might have welcomed the advice, and even bought some of the toys, they probably would have liked to know that Werner serves as a spokeswoman for hire, not an independent consumer advocate. She touted only products from companies that forked over \$11,000 (the initial asking price, anyway) to be part of her back-to-school television "tour."

But viewers in several of the cities would have had no way of knowing that Werner's pitches amounted to paid advertising, because their local news stations failed to meet their legal obligation to identify the segments as paid promotions.

Local television news has become a hotbed for pay-to-play promotions. I've previously chronicled how L.A. stations offered breathless stories about City of Hope Medical Center and Ford Motor Co. without telling viewers that the subjects of these "news" stories actually paid to get star treatment.

The trend promises to continue and grow. TV news producers must fill an expanding news hole, particularly in the mornings, where many news programs have been extended from three to four, five and even six hours. And advertisers, fearful of being blocked by viewers with video recorders and mute buttons, don't mind paying for promotional appearances that make them more visible and credible.



The practice goes way beyond Los Angeles and a product or two. Be warned if you are watching a self-proclaimed consumer advocate on local TV news pitching cars, electronics, travel and much more. There's a good chance that your friendly small-screen expert has taken cash to sell, sell, sell.

Simply to uphold their own standards for truth and transparency, you would hope that TV news outlets would tell viewers about such payments. Federal law requires disclosure, too, "when a broadcast station transmits any matter for which money, service or other valuable consideration is either directly or indirectly paid." That would include noting that advocates giving an opinion about a product have been paid to do so.

Station operators must "exercise reasonable diligence" in trying to discern whether promotional payments have been made, FCC regulations say. Stations that fail to disclose, with either a spoken or on-screen disclaimer, can be fined up to \$37,500 per violation. But you don't hear about a flood of penalties coming out of Washington, do you?

Werner is a lawyer who worked for a couple of toy companies before she went into the promotion business. She told me that the company that hires her to do the tours — New Jersey-based DWJ Television — scrupulously notifies TV stations that toy makers pay for the pitches. DWJ founder Dan Johnson, an ABC News veteran of decades gone by, said the same.

So I picked three stations and morning programs that Werner visited over the summer — Fox 2 in Detroit, Fox 5's "Good Day Atlanta" and the independent KTVK's "Good Morning Arizona" in Phoenix to see how they plugged the Werner segments. A spokesperson for the two Fox stations and the news director at the Phoenix outlet told me they had been told absolutely nothing about Werner being paid to tout products, which ranged from a Play-Doh press to a new Toy Story video game to the Paper Jamz electronic guitar.

Assuming they really didn't get any notice of Werner's pay arrangement (and the Phoenix station offered one e-mail that didn't disclose the sponsorship), that would put the stations in the clear, right?

Wrong. Anyone who has spent more than five minutes in a newsroom knows that when someone comes through the door offering their expertise, you start asking questions. With Werner, a reasonably diligent news producer, to paraphrase the FCC, would have started by demanding: So, toy gal, do you get a natural high about mechanical bugs and talking books or is someone paying you to make like Tom Hanks in "Big?"

It's a no-brainer for TV producers to ask where experts are coming from, said DWJ's Johnson. Believing that an expert would tour the country without pay to tout products is, he said, like believing in the tooth fairy.

Werner does a few tours a year, as do spokespeople who pitch other products like tech gear and fashion, with DWJ as middleman. And the firm is just one of several production companies and PR firms pumping the pay-to-play material out to local news stations around America.

Neither Werner nor her supervisors at the New Jersey firm would say how they split the money from the tours, which could have amounted to as much as \$66,000 for the back-to-school roundup. (Assuming





each of six principal sponsors paid the \$11,000 initial asking price.)

Werner insisted the money doesn't matter. She said she will not pitch toys she and her two children have not personally used and enjoyed.

"I am not going to include any toy that doesn't do what it says it's going to do, that isn't fun, that doesn't fit the theme of the tour," she said. "If I bring out crappy products, the consumers are not going to want to hear from me and the stations aren't going to bring me back."

She said she takes nothing for her appearances on two national programs — ABC's "The View" and NBC's "Today" — that have helped her build a reputation in the news business.

I heard much the same argument from the public relations representative for Chris Byrne. Dubbed "The Toy Guy," Byrne is another big name in the toy promotion business, as an industry analyst and content director for TimeToPlayMag.com, a website that reviews toys.

The spokeswoman and public relations agent for the website, Michele Litzky, said Byrne has given his unbiased assessment of toys for many years. He picks products for TimeToPlayMag.com and only afterward considers including the products on television appearances he makes, Litzky said.

Litzky said her firm arranges the television tours and receives payment from toy companies that will be publicized via the tours. She said she uses some of the money to reimburse Byrne for his hotels, meals and travel expenses.

When I suggested that traditional news organizations wouldn't allow the subjects of reviews to pick up such payments, lest the money have an undue influence on the reviewer, Litzky scoffed. Byrne believes in some toys so much he includes them in his promotional tours if they haven't paid a penny, even for expenses, she said. "I have worked hard to keep his programs very credible," she said. "He is a resource for parents and gift givers."

I told the PR woman I thought consumers would be better served if they had a fuller understanding of how the Toy Guy's expenses were paid on some of his toy-touting tours. She said it was enough that television viewers knew that Byrne worked at TimeToPlayMag.com.

That seems to be the prevailing wisdom inside the local television news business these days, as well. It's a sort of don't-ask-don't-tell policy for the retail sector. Nobody in local TV seems to be asking much about where these unsolicited pitches come from. And they sure aren't telling their audiences, at least with any regularity. Consumers are the last to know.

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## On the Media: Fake news flourishes under the feds' noses

**Hucksters continue to masquerade as journalists under FCC and FTC 'enforcement.'**

James Rainey

September 18, 2010

An old actor I know would watch a plodding drama and growl, "If you watch closely, it almost moves."

That's the feeling I'm getting, taking a look at the federal government's flimsy and fitful crackdown on news outlets and experts that fob off public relations drivel as news.

I raised the subject earlier this week in a column about Elizabeth Werner, the perky spokesmom who pitches toys during news broadcasts on local stations around the country. She is just one of a pack of paid touts presented to viewers as if they were independent experts.

But does anyone care? The public has gotten pitch-drunk from relentless salesmanship, on Twitter, Facebook, blogs and even their favorite sitcoms and reality shows. TV news producers have to fill airtime with staffs a fraction the size they were just a few years ago. Federal regulators speak loudly but carry a small stick — seldom invoking regulations that let them punish television outlets that don't disclose paid promotions.

Performers like Werner may be relatively new, but the song remains the same as it's been for years. A couple of public interest outfits demonstrated more than four years ago how dozens of TV stations flimflammed the public by presenting video news releases from advertisers as if they were unbiased expert testimonials.

Stories about the misuse of VNRs, as they're known, became a big deal back then. One revealed how columnist and TV personality Armstrong Williams took payments from the Bush Education Department to cheerlead the No Child Left Behind education reform. Then the Center for Media and Democracy (CMD) released a pair of 2006 studies showing that more than 100 local TV news stations had presented the insidious VNRs without telling viewers where they really came from.

The watchdog group cited General Motors, Intel, Pfizer, General Mills and Victoria's Secret among the companies able to get the house message out to the mainstream using VNRs. News producers often did little or nothing to alter the corporate pitches, quietly sliding them into their regular newscasts, Wisconsin-based CMD told the Federal Communications Commission.

advertisement



At least a couple of FCC commissioners, Michael Copps and Jonathan S. Adelstein, embraced the complaint and a follow-up a few months later as a call to action. The commission proposed a \$4,000 fine in 2007 against Comcast for airing a VNR on a regional cable channel, touting a sleep aid without a sponsorship notice to the public.

Adelstein cheered that original fine. He said he would "look forward to quick action on the many other pending video news release complaints."

Three years later, Adelstein's wait has not ended. The commissioner has moved on to a new job in the U.S. Department of Agriculture. And the complaints brought by CMD and Free Press, a partner public interest group, have not been resolved, at least as far as anyone knows.

But it's hard to tell exactly what the FCC has done on the matter. Eric Bash, associate bureau chief in the FCC's Enforcement Bureau, told me he assumed the fail-to-disclose complaints could be pending. But rules prohibit discussing ongoing investigations. And the rules might also preclude discussing complaints that had been tossed out.

The commission a couple of years ago discussed whether to step up demands for public disclosure of so-called "embedded advertising." It noted how commercial messages had been hidden inside entertainment (for instance, those TV plots driven by product lines) and news programs. But some producers — get this — protested that more rules would impede "artistic integrity," even free speech. An update of the rules stalled.

Likewise, the Federal Trade Commission has made considerable noise about the need for celebrities and other endorsers to disclose their commercial alliances. The agency last year announced new guidelines that required disclosure of "material connections" (cash and gifts, for example) that would not be readily apparent to consumers.

The commission said the rules applied to A-list celebrities and "mommy bloggers" alike. That latter category encompasses online writers who take washing machines and microwaves, then rhapsodize about the products on their Internet sites.

The new rules got a ton of press. Bloggers pledged full transparency about their paid alliances. But an agency executive conceded that the FTC doesn't have the staff to chase down violators and that "there's a relatively small risk of getting caught." The agency hopes the threat of public embarrassment will keep hucksters in check.

Judging from my reporting on toy woman Werner, I'm not so sure. Several PR professionals told me they see secretly paid promotions only growing. One executive told me that a multibillion-dollar technology firm he represents can't wait to push its products via so-called "satellite media tours" such as the ones that have enriched Werner.

On the tours, companies pay an "expert," who hypes a series of products — often electronics, toys, cars, or gardening products. The testimonials get beamed into news stations around America, where hometown anchors play along, almost never asking a critical question. Though federal regulations require the paid nature of the segments to be disclosed, news stations often don't bother.

This is what we have come to on the public airwaves. Television stations won licenses from the FCC with promises to uphold a trust to serve the public interest. Critical in that trust is helping the audience understand where content comes from.

But today many viewers are slipping away to the Internet and DVDs or fast-forwarding past traditional commercials with video recorders. News staffs have been slashed dramatically. That leaves TV newsmen scrambling to fill programs, too often with whatever stumbles over the doorstep.

The only antidote might be bringing more attention to broadcasters who produce fake news. The audience has had its fill of this sub rosa salesman, hasn't it? Or has the news just sunk to meet our increasingly low expectations?

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Re: Letter of Inquiry re: KCBS-TV, Los Angeles, California,  
File No. EB-10-IH-4105

Dear Ms. Marshall:

December 30, 2010

This letter is submitted on behalf of KCBS-TV, Los Angeles ("Station"), in response to the above Letter of Inquiry dated November 24, 2010 ("LOI"). The LOI states that the Enforcement Bureau (the "Bureau") is "investigating whether the Station reported on certain entities in its news programming in exchange for payments or other valuable [c]onsideration . . . without providing the required sponsorship identification announcements."<sup>1</sup>

The basis of the Bureau's inquiry is a complaint filed by the advocacy group Free Press ("Complainant") suggesting, in reliance on press reports, that this may have been the case with regard to broadcasts on KCBS concerning the City of Hope Medical Center ("City of Hope"), and on KCBS and/or its sister station KCAL-TV, concerning Morongo Casino and Sports Club LA.

As detailed below, the broadcasts concerning Morongo Casino and Sports Club LA were soft news features involving nothing other than the Stations' editorial judgment. Sports Club LA has never done any advertising or other business with either KCBS or KCAL. And while Morongo Casino is an advertising client of

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<sup>1</sup> As discussed below, two broadcasts referred to in the LOI aired either on both KCBS-TV and co-owned KCAL-TV Los Angeles or only on KCAL. Where the context requires KCBS and KCAL are collectively referred to as "Stations."

KCBS and has been occasionally featured in non-news promotions<sup>2</sup>, the Station never suggested to Morongo that its purchase of advertising would cause the Station to include it in its news broadcasts. Nor did the Stations' sales personnel ever have any discussions or correspondence with the news department about Morongo. Rather, the idea for the casino feature came from an online news item reported by the *Riverside Press-Enterprise* that news personnel thought would make an entertaining story.

The City of Hope features were paid-for messages which, regrettably, did not include sponsor identification sufficient to comply with the Commission's rules. It is, however, inaccurate and misleading to suggest that KCBS "reported on" the hospital "in exchange for payments or other valuable [c]onsideration."<sup>3</sup>

The ninety-second City of Hope spots were not – and did not appear to be – news reports. Rather, they were part of a Station cancer-awareness campaign, undertaken with the support of the American Society of Colon and Rectal Surgeons, which featured KCBS news talent eliciting basic and non-controversial cancer information from physicians affiliated with City of Hope Medical Center, one of only 40 facilities in the country to be designated a Comprehensive Cancer Center by the National Cancer Institute ("NCI"). The messages did not appear within the body of Station newscasts, but were rather buffered from those programs by unrelated promotions (except in one instance in which the City of Hope spot led directly into the news anchors' sign-off). Given their placement, and the prominent display of City of Hope logos and other elements not typically found in news programming (e.g., a continuous music track), we do not believe that a reasonable viewer would have perceived these features as news reports, but rather as a type of public service message.

Since the messages were in fact paid for by City of Hope – and since they were not self-evidently "advertising [for] commercial products or services" that required no further sponsor identification<sup>4</sup> – it is clear that an explicit acknowledgment of sponsorship should have been made. Indeed, all CBS Owned television stations have been repeatedly advised in memos from the CBS Law Department that sponsor identification needs to be made in just this kind of situation.

But if proper sponsor identification was lacking, these spots were not misleading in any material way. Although the Station was paid for airing them – as is entirely appropriate for a media business that makes free content available to the public through advertising support – the messages were nonetheless a public service that provided potentially life-saving information from a leading cancer treatment center.

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<sup>2</sup> Among other things, KCAL programming associated with L.A. Lakers' games has originated from the Morongo Casino, and casting calls for various programs broadcast by KCBS and KCAL have been held at the venue and promoted on the air.

<sup>3</sup> LOI at 1.

<sup>4</sup> See, 47 CFR § 73.1212 (f).

Under the circumstances, any Commission sanction beyond a caution would be unwarranted.

That is not to say that the use of news talent in paid programming – albeit accurate and useful programming intended to promote public knowledge about important health concerns – does not raise legitimate journalistic issues. Indeed, after seeing the first broadcast of the City of Hope spots, KCBS Vice President and News Director Scott Diener expressed concern that the spots “contained graphics, talent and format that try to make them look very much like our newscasts.” For that reason, he directed that further broadcasts of the messages be moved away from commercial breaks adjacent to local newscasts. Mr. Diener also made clear that in the future “[o]ur news talent should never be put in a position like this.”

Thus a senior Station executive took immediate action to *avoid* any possible impression that that the City of Hope segments were KCBS news reports. The Bureau should accordingly evaluate this matter for what it is – namely, an inadvertent failure to comply with the sponsor identification rules in the context of a most worthwhile, though commercially-sponsored, public service campaign. It should ignore Complainant’s misplaced and overheated allegations that KCBS-TV has engaged in “pay for play news.”<sup>5</sup>

We discuss these issues in more detail below, after which we respond to each of the questions and information requests posed by the LOI.

#### The Morongo Casino/Sports Club LA Reports

The idea for the Morongo Casino report did not come from KCBS sales personnel, but from an online item reported by the Riverside *Press-Enterprise* about a new slot machine at the casino with a theme based on the popular television and movie series “Sex and the City.” The report, which ran only once on KCBS and once (in slightly modified form) on sister station KCAL-TV, was approximately eighty words long.<sup>6</sup> Both sales personnel and members of the news department involved in the piece affirm that the Stations received no consideration of any kind for broadcast of the report and that its airing was not tied, explicitly or implicitly, to the purchase of commercial time on the Stations by Morongo Casino. Indeed, no communications between sales and news personnel concerning the casino took place.

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<sup>5</sup> See, Free Press Complaint at 1-2.

<sup>6</sup> KCBS and KCAL were not the only area television stations that thought this story would be of interest to viewers. A much longer report about the popularity of the new “Sex and the City” slot machines at the Morongo Casino ran on KNBC-TV Los Angeles. See, [http://www.nbclosangeles.com/entertainment/television/\\_Sex\\_and\\_the\\_City\\_Slot\\_Machines\\_Lure\\_Women\\_Los\\_Angeles.html](http://www.nbclosangeles.com/entertainment/television/_Sex_and_the_City_Slot_Machines_Lure_Women_Los_Angeles.html)

As for the story relating to Sports Club LA, which was broadcast only on KCAL-TV, the club has never been a commercial client of either of the Stations or had any other business relationship with them. The Stations received nothing of value for the broadcast, which was a story about the regular workout routine of L.A. Lakers' star Ron Artest at a local health club, and the reaction of less well-known club members to exercising alongside the famous athlete. The story was a natural feature for KCAL, which broadcasts L.A. Lakers games locally.<sup>7</sup>

In short, rather than being "added value" for commercial clients – as suggested in the press account cited by the Bureau – these stories were nothing other than the kind of soft, "back-of-the-book" feature to be found in almost any television newscast, newspaper or magazine.

### City of Hope

The City of Hope spots aired by KCBS-TV were part of an initiative undertaken several years ago by the CBS Television Stations Group ("CTS"), under the brand "CBS HealthWatch," to increase public awareness of colorectal cancer. According to the National Cancer Institute, colon cancer is the second-leading cause of cancer deaths in the United States;<sup>8</sup> at the same time, studies indicate that the incidence of the disease could be reduced by as much as ninety percent through regular screening of the population aged 50 years and over.<sup>9</sup>

These statistics emphasize the necessity of disseminating information about this disease and its prevention as widely as possible. The critical importance of public education is reflected by the participation in the CTS project of the American Society of Colon and Rectal Surgeons ("ASCRS"), which helped identify potential sponsors for a campaign involving approximately fifteen 90-second informational segments (broadcast over a period of about three weeks), as well as shorter messages featuring CBS News anchor Katie Couric, and informational features on Station web sites. We note that a campaign of this magnitude would have been unrealistic in the absence of commercial support.

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<sup>7</sup> The genesis of the story was as follows. While attending the Los Angeles Lakers' Media Day, KCAL entertainment reporter Christina McLarty heard Artest discussing his habit of going to a local gym to continue working out after his regular Lakers' practice. He offered to show his workout routine to Ms. McLarty, which she thought would make an interesting story, especially since the gym in question is open to the public. Accordingly, she coordinated with the press representatives for the Lakers, Mr. Artest and the gym (see Exhibit M) and reported the story.

<sup>8</sup> See, <http://www.cancer.gov/cancertopics/pdq/prevention/colorectal/Patient/page2#Keypoint2>

<sup>9</sup> See, Winawer SJ, Zauber AG, Ho MN, *et al.* (December 1993). "Prevention of colorectal cancer by colonoscopic polypectomy. The National Polyp Study Workgroup". *N. Engl. J. Med.* 329 (27): 1977–81. doi:10.1056/NEJM199312303292701. PMID 824707



The sponsor of the campaign in Los Angeles was City of Hope Medical Center, one of only 40 facilities nationally to be designated a Comprehensive Cancer Center by the National Cancer Institute.<sup>10</sup> City of Hope has also been named by *U.S. News and World Report* as one of “America’s Best Hospitals” in cancer and urology.<sup>11</sup>

The two 90-second segments that are referred to in the LOI featured KCBS health reporter Lisa Sigell talking with City of Hope physicians. In the first segment, Ms. Sigell elicited from Dr. Alexandra Levine the information that cancer is not invariably incurable – a fact important to stress, since it can help dispel the fear that may lead many people to avoid or delay seeing a doctor about troubling symptoms. In her closing line, Ms. Sigell reinforced this basic point – that people should seek out treatment – by reminding viewers that “cancer is not a death sentence” and “there is hope.” Other information in this spot included Dr. Levine’s statement that “[m]ost cancers are not directly caused by heredity at all” and her response to Ms. Sigell’s question about how one can reduce one’s risk of cancer:

Simple things to take care of yourself in a general sense, exercise, eat properly, don’t smoke. Those are powerful ways to prevent cancer of many different kinds.

The essential message of the second segment was that colon cancer is one of the most common, but preventable, types of cancer. The heart of Ms. Sigell’s exchange with Dr. Julio Garcia-Aguilar was as follows:

Sigell: At what age should somebody get screened for colon cancer?

Garcia-Aguilar: Individuals who have no previous history of conditions such as inflammatory bowel disease or family history of colon rectal cancer, the recommended age is 50. So it is a very simple test and it has been proven to save lives.

Sigell: What is the most important thing to do to prevent colon cancer?

Garcia-Aguilar: Well I think the most important thing to prevent colon cancer is to follow the guideline for screening. The mortality for colon rectal cancer has decreased in the last few years and that’s probably a reflection of the

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<sup>10</sup> See, [http://cancercenters.cancer.gov/cancer\\_centers/index.html](http://cancercenters.cancer.gov/cancer_centers/index.html)

<sup>11</sup> See, <http://health.usnews.com/best-hospitals/city-of-hope-s-helford-clinical-research-hospital-6930590>.

introduction of the screening programs years ago, so I think in colon cancer, to some degree, we are winning the battle. I think the most important message is that colon cancer is preventable and screening is probably the best tool that we have today to fight it.

Sigell: 90% of colon cancers are curable if caught early.  
Go to CBS2.com for more information.

Several points may be made in response to Complainant's suggestion that these messages may have unduly influenced viewers (allegedly misled into thinking they were news reports) in the "consequential [decision of] . . . the type of medical treatment to seek."<sup>12</sup> First, the information conveyed is completely basic and non-controversial. A person over fifty deciding to be screened for colon cancer as a result of having seen these messages would hardly have been ill-served. Indeed, that was the entirely commendable point of the messages. Nor was there any "sell copy" for City of Hope in these spots. And if the segments conveyed the general – and truthful – impression that City of Hope is a leading cancer treatment center, that same message would have been conveyed by a straight public service announcement made in time donated by the Station – a circumstance that we assume would not have provoked complaints from anybody.

Moreover, notwithstanding Ms. Sigell's appearance in these segments, we do not believe the average viewer would have mistaken them for news. As noted above, the messages did not appear within the body of newscasts. Except for the first airing of the City of Hope segment, in which the spot directly preceded a brief sign-off by the anchors of the Station's local news broadcast,<sup>13</sup> the City of Hope segments were both preceded and followed by unrelated program promotions. In light of this placement – as well as the continuous music track in the background of the messages, the prominent City of Hope logos that were displayed, and the fact that there was no apparent news hook to have triggered their broadcast – we think it

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<sup>12</sup> See, Free Press Complaint at 2.

<sup>13</sup> Attached as Exhibit B are three DVDs and VHS tapes. The first DVD and VHS tape contains the 90-second segment with Dr. Levine which was broadcast on March 1, 2010 at 6:26:44. This is the segment that was broadcast just prior to anchor signoff, which caused Scott Diener to request that it be moved. The second DVD and VHS tape contains the 90-second segment with Dr. Garcia-Aguilar which was broadcast on March 2, 2010 at 6:57:27. The remaining 13 broadcasts consisted of one of these two segments either prior to KCBS' broadcast of Entertainment Tonight or during the Dr. Phil program, as indicated in Exhibit A. Also included in Exhibit B are a DVD and VHS tape of an example of the 15-second promo telling viewers to tune in to the 90-second segment later that day, which stated that it (and at least by implication, the 90-second segment) were "brought to you by City of Hope."

quite unlikely that many viewers seeing the messages would have thought they were watching a news report.<sup>14</sup>

As noted above, while we do not believe the City of Hope announcements were misleading to viewers, the fact remains that they were not clearly identified as paid messages in the manner required by the Commission's rules. This was unquestionably an error on the Station's part.<sup>15</sup> It is mitigated, we submit, by the lengths to which CBS has gone to stress to its personnel the importance of including appropriate sponsor identification where the paid-for nature of content might otherwise not be clear to viewers.

A compilation of CBS policies and directives in this area is attached as Exhibit G<sup>16</sup>. These materials show that the CBS Law Department – in messages reinforced by the most senior station group management<sup>17</sup> -- reminded station personnel again and again of the requirements and importance of the sponsor identification rules, particularly in identifying paid content the broadcast of which might otherwise be thought to reflect only a station's editorial judgment. Stations were, for example, instructed that both the Communications Act and FCC rules provide that

whenever a station broadcasts any material for which it has received, or will receive, any money, service, or other valuable consideration, it must fully and fairly identify the entity that paid, or promised to pay, for the carriage of that material.

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<sup>14</sup> Although we do not believe that viewers would have been led to believe that the City of Hope segments were part of a Station newscast, we agree with the editorial judgment of News Director Scott Diener to move them away from local newscasts.

<sup>15</sup> There is absolutely no basis for concluding that anything other than human error was involved. As noted above, while a KCBS reporter participated in the City of Hope segments, the spots were not integrated into the Station's news broadcasts in a way that would have suggested to viewers that they were watching a news report (as might be the case, for example, where a paid "expert" is interviewed about holiday gift ideas in a feature integrated within (rather than carefully separated from) a station newscast). That being so, superimposing a "sponsored by" message at the beginning or end of the segment would not have been contrary to any commercial objective. Indeed, when the Station's News Director, after having seen the first City of Hope segment, asked that it be moved away from commercial breaks adjacent to newscasts, he encountered no resistance.

<sup>16</sup> Exhibit G contains representative documents, memos and emails beginning with an October 19, 1990 page from the CBS Television Stations Advertising Standards. The Exhibit is arranged in chronological order.

<sup>17</sup> See e.g. June 17, 2005 email from Lisa Barbieri on behalf of Fred Reynolds, President of Viacom Television Stations Group ("VTSG"). VTSG was the operating entity of the CBS owned television stations prior to CBS's separation from Viacom in late 2005.

As a practical matter, this means that whenever you carry “paid programming,” including, but not limited to, “paid religion,” the sponsoring entity must be clearly identified. The magic words are “Paid For By . . .” or “Sponsored By . . .” The phrases “made possible by” or “brought to you by” are NOT sufficient.<sup>18</sup>

CTS also stressed the applicability of these policies to news broadcasts by widely circulating press reports critical of the undisclosed inclusion of paid content in television newscasts, and statements of concern about the practice by FCC commissioners.<sup>19</sup> One memo dealt with a situation very close to the one being discussed here, saying that an “Ask the Experts” feature should identify a hospital paying for the content with a “sponsored by” announcement, since it otherwise would “not [be] clear that the advertiser paid for the spots.”<sup>20</sup> It is difficult to imagine what more CBS could have done to inform its station personnel of the requirements of the rules.

No compliance program will achieve perfect results, and KCBS erred in this instance by not including a “sponsored by City of Hope” disclaimer in these informational segments. (We note, however, that the essence of this message was conveyed, albeit in legally imperfect language, in twelve “tune-in” messages broadcast by the Station urging viewers to watch for the 90 second segments “brought to you by City of Hope.” An example of this tune in spot is included in Exhibit B.) CBS will continue its efforts to ensure that its owned stations meet the requirements of the Commission’s sponsor identification requirements exactly.<sup>21</sup>

Nonetheless, we respectfully submit that the Station’s failure to do so in this instance should not obscure what we believe to be the essential fact of the KCBS campaign – that is, the broadcast of a large number of truthful – indeed potentially life-saving – informational messages about a major public health concern. Any Commission sanction beyond a caution as to the necessity of strict compliance with the sponsor identification rules would, we think, be ironic.

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<sup>18</sup> Exhibit G, January 9, 2001 email from Martin P. Messinger, Senior Vice President and Deputy General Counsel, CBS Law Department (emphasis in the original).


<sup>19</sup> See e.g. Exhibit G, November 21, 2003 email from Martin P. Messinger, March 16, 2005 email from Martin P. Messinger, June 15, 2005 email from Martin P. Messinger, November 9, 2007 email from Martin P. Messinger and October 9, 2009 email from Martin P. Messinger.

<sup>20</sup> Exhibit G, July 15, 2002 memo from Andrew J. Siegel, Vice President and Assistant General Counsel, CBS Law Department.

<sup>21</sup> Specifically, KCBS and all other CTS stations now submit all CBS Healthwatch campaigns to the President of CBS Television Stations Sales and the CBS Law Department to ensure compliance with the sponsor identification requirements.

Answers to the specific questions posed by the LOI follow.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward F. Gedeon". The signature is written in a cursive style with a large initial "E".

cc: Kenneth M. Scheibel, Jr.  
Assistant Chief, Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 4-C330  
Washington, D.C. 20554

## RESPONSES TO SPECIFIC INQUIRIES

A. Corresponding to the LOI, as to City of Hope Medical Center:

1. a. The 90-second City of Hope segments ("Segments ") were broadcast fifteen times during the period March 1, 2010 through March 24, 2010. A copy of the invoices showing the dates and times broadcast is attached as Exhibit A.<sup>1</sup>
- b. Copies of the Segments are attached in DVD and VHS format as Exhibit B. Also attached is an example of the :15 "tune in" spot.
- c. Written transcripts of the Segments are attached as Exhibit C.
- d. The KCBS personnel ("KCBS Personnel") responsible for producing and broadcasting the Segments are listed on Exhibit D.
- e. A list of the KCBS' sales staff who sell commercial time during KCBS' news programming is attached as Exhibit E.
- f. A copy of all Documents related to the Segments, including correspondence, written agreements, marketing materials and receipts is attached as Exhibit F<sup>2</sup>. Invoices were previously attached as Exhibit A.
- g. Based on discussions with KCBS personnel still at the Station, there were no oral communications or oral agreements between KCBS and City of Hope personnel regarding the Segments. Personnel in all KCBS departments, including News, Sales, Engineering, Marketing and Management routinely

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<sup>1</sup> There were other City of Hope commercials of various lengths that are also listed in the invoices. These traditional commercials are not the subject of the Commission's inquiry.

<sup>2</sup> In accordance with standard CBS policy, the mailboxes for Nancy Bauer, Patrick McClenahan, Angela Melton-Fray, Stephanie Rodriguez and Andrea Stoltzman were deleted within fourteen days of their leaving CBS. Accordingly, any documents that were in their mailboxes are no longer available. It should also be noted that the dates indicated in the "Sent" line of emails are the correct ones, not the dates on the bottom of the page, which indicate only the dates they were printed out for purposes of this response. Similarly, the "From" and "To" lines show the sender and recipient of each email, while the name at the top of the page is that of the individual who printed them out.

discuss business matters among themselves in the course of the day. To the best of CBS's knowledge and belief, no conversations that may have occurred between KCBS personnel concerning the City of Hope Segments in question would shed additional light on the subjects addressed by the LOI beyond the matters discussed in this response.

- h. Not applicable, since there were no such oral agreements
  - i. The nature of the City of Hope segments was known to relevant KCBS personnel. The Station's failure to broadcast an express sponsor identification resulted from human error.
  - j. An express sponsor identification sufficient to comply with the Commission's rules was not broadcast.
- 2. Not applicable.
  - 3. Despite extensive efforts by CBS to inform personnel at its owned stations of the requirements of the sponsor identification rules, KCBS personnel failed to apply the guidance received correctly with respect to the City of Hope Segments in question due to human error. See the preceding narrative discussion.
  - 4. See Exhibit G and the preceding narrative discussion. Sponsorship identification guidelines are also discussed periodically on CTS Directors of Sales calls and CTS News Directors calls and they are reviewed during CBS Law Department Sales Legal Compliance seminars.
  - 5. Copies of all supporting documents are attached as referenced.
  - 6. See the preceding narrative discussion.

B. Corresponding to the LOI, as to Sex and the City Slot Machines Report:

- 1. a. The Morongo News Report was broadcast on KCBS-TV on February 12, 2010 at 5:34 PM. A version of the Morongo News Report (which did not vary materially from the KCBS report) was also broadcast on KCAL-TV, Los Angeles on February 12, 2010 at 8:56 PM.
- b. Copies of both the KCBS and KCAL Morongo News Report are attached in DVD and VHS format as Exhibit H.

- c. Written transcripts of both the KCBS and KCAL Morongo News Report are attached as Exhibit I.
  - d. The KCBS personnel responsible for producing and broadcasting the Morongo News Report were:
    - Paul Button-Assistant News Director
    - Paul Carron-News Producer
    - Kuwi Fernandez-Video Journalist
    - Robynn Love-News Producer
    - Roger Lundquist-Newswriter
    - Jessika Ming-Executive Producer
    - Ron Mackovich-Newswriter
    - Pete Wilgoren-Senior Executive Producer
  - e. A list of the KCBS' sales staff who sell commercial time during KCBS' news programming is attached as Exhibit E.
  - f. A copy of the document relating to the Morongo News Report is attached as Exhibit J.
  - g. There were routine discussions between KCBS News Management, its Inland Empire local reporter and photographer, and Jill Philbrook, Morongo Casino's Director of Marketing, who was interviewed for the broadcast, although not used.
  - h. There were no oral agreements.
  - i-j KCBS/KCAL received no consideration for broadcasting the Morongo News Reports. Accordingly, no sponsor identification was necessary.
2. Not applicable.
  3. As indicated, KCBS and KCAL received no consideration for broadcasting the Morongo News Reports. Accordingly, no sponsor identification was necessary.
  4. See Exhibit G and the preceding narrative discussion. Sponsorship identification guidelines are also discussed periodically on CTS Directors of Sales calls and CTS News Directors calls and they are reviewed during CBS Law Department Sales Legal Compliance seminars.



5. Copies of all supporting documents are attached as referenced.
6. See preceding narrative at page 3.

C. Corresponding to the LOI, as to Ron Artest's Workout at Sports Club LA ("Artest News Report"):


1.
  - a. The Artest News Report was broadcast on KCAL-TV on March 24, 2010 at 10:15PM.
  - b. A copy of the Artest News Report is attached in DVD and VHS format as Exhibit K.
  - c. A written transcript of the Artest News Report is attached as Exhibit L.
  - d. The following KCBS personnel were responsible for producing and broadcasting the Artest News Report:  
  
Geoff Heminway-News Producer  
Christina McLarty-Reporter  
Glenn Millican-News writer  
Jen Pierce-Executive Producer  
Jose Ruiz-Photographer
  - e. A list of the KCBS' sales staff who sell commercial time during KCBS' news programming is attached as Exhibit E.
  - f. Attached as Exhibit M is an email from John Black at the Los Angeles Lakers to Christina McLarty setting up the interview with Ron Artest.
  - i-j. Neither KCBS nor KCAL received any consideration for broadcasting the Artest News Reports. Accordingly, no sponsor identification was necessary.
2. Not applicable.
3. As indicated above, the Stations received no consideration for broadcasting the Artest News Report. Accordingly, no sponsor identification was necessary.

4. See Exhibit G and the preceding narrative discussion. Sponsorship identification guidelines are also discussed periodically on CTS Directors of Sales calls and CTS News Directors calls and they are reviewed during CBS Law Department Sales Legal Compliance seminars.
5. Copies of all supporting documents are attached as referenced.
6. See preceding narrative at page 3-4 and note 7.

**DECLARATION OF HOWARD F. JAECKEL**

Howard F Jaeckel, under penalty of perjury, deposes and states:

1. I am Senior Vice President, Associate General Counsel, and Assistant Secretary of CBS Broadcasting Inc. ("CBS"), and an officer of CBS.
2. I prepared the Response to Letter of Inquiry ("LOI Response") being submitted herewith, based on my review of the documents produced; conversations between Andrew J. Siegel, a CBS attorney under my supervision, with Steve Mauldin, President and General Manager, KCBS-TV/KCAL-TV; Scott Diener, Vice President and News Director, KCBS-TV/KCAL-TV; Justin Draper, Controller, KCBS-TV/KCAL-TV; Phil Gonzalez, Promotions Director, KCBS-TV/KCAL-TV; Christina McLarty, Reporter, KCBS-TV/KCAL-TV; Marilyn Rangel, Director of Sales, KCBS-TV/KCAL-TV; Blake Shrode, Account Executive, KCBS-TV/KCAL-TV; Lisa Sigell, Reporter, KCBS-TV/KCAL-TV; and Carole Dacey-Young, Director, Healthcare Strategy, CBS Television Stations; and a conference call to affirm the accuracy of the LOI Response between myself, Mr. Siegel and Steve Mauldin, Scott Diener, Justin Draper and Marilyn Rangel.
3. To the best of my knowledge, information and belief, all information contained in this LOI Response and the supporting exhibits is true and correct.
4. To the best of my knowledge, information and belief, all Documents requested by the Letter of Inquiry in CBS's possession are submitted herewith.

  
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HOWARD F JAECKEL

Dated: 12/30/10