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Via Federal Express

Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: File No. EB-06-IH-3698: WTIC-TV, Hartford, CT

To the Commission:

Tribune Television Company, licensee of WTIC-TV, Hartford, Connecticut ("WTIC"), hereby responds to the Commission Enforcement Bureau letter dated April 26, 2007 (the "LOI"), concerning whether WTIC "may have violated Section 317 of the Communications Act of 1934, as amended, 47 U.S.C. sec. 317, and Section 73.1212 of the Commission Rules, by airing certain video news releases ('VNRs') without proper sponsorship identification."

The apparent basis for this investigation, according to the LOI, is a study by the Center for Media and Democracy ("CMD" and the "CMD Study") that suggests "certain television broadcast stations, including Station WTIC-TV, allegedly aired one or more of 33 VNRs without proper identification." Specifically, the LOI asserts that "[a]ccording to the CMD Study, [WTIC] allegedly aired a VNR-based segment containing material on behalf of the following person: Vivometrics, on July 31, 2006."

WTIC first will explain the background of the broadcast in question, followed by responses to the LOI's specific questions. We will then describe the several material inaccuracies in the CMD Study description of the WTIC broadcast, and discuss briefly the applicable law.

I. The WTIC Broadcast

On July 31, 2006, the WTIC News Department received an e-mail from the Medialink media relations department. Medialink is a public-relations firm that produces video and audio presentations for clients and distributes them to broadcast and broadband outlets. The e-mail notified the station that a VNR produced by Medialink for VivoMetrics would be available on CNN's "Pathfire" news service. (A copy of the Medialink e-mail is attached hereto as Exhibit A.)

Apparently after the station's receipt of the Medialink e-mail, an entry reading "firefighter life shirt" was entered on the July 31<sup>st</sup> version of the WTIC news "grid" for

discussion at the daily News Department meeting (WTIC has not been able to identify who placed the entry into the grid over ten months ago). The department's daily grid lists potential stories that may be suitable for that evening's one-hour "News at Ten" program. The grid for July 31<sup>st</sup> noted that the "life shirt" story was available on the CNN Pathfire service (to which WTIC subscribes), but it did not identify the package as a VNR. (A copy of the News Department grid for July 31, 2006 is attached hereto as Exhibit B.)

At the news meeting, a WTIC news writer/anchor took on the assignment of preparing a story for the July 31<sup>st</sup> evening news about the "life shirt." She reviewed the news package as it appeared on the Pathfire service. Although the package was the Medialink VNR produced for VivoMetrics, the writer/anchor was not aware that the video package was a VNR. In July 2006, the Pathfire service did not identify VNRs as part of the service (the service now does include a notice to subscribers when packages are VNRs). The Pathfire file with the "life shirt" package also included a script, but the station no longer has the Pathfire file with the video and script. (A transcription of the Medialink VNR, taken from the VNR as available on the CMD Study site, is attached hereto as Exhibit C.)

The writer/anchor used edited portions of the VNR video, and wrote a new voice-over script, to prepare a story for the WTIC evening news program (the "Lifeshirt Story"). The producer and executive producer of the news program reviewed the Lifeshirt Story script before air, but neither of them was aware the story used VNR material.

The Lifeshirt Story was broadcast in WTIC's News at Ten program at about 10:20 pm. (A copy of the "run down" for the July 31<sup>st</sup> news program is attached hereto as Exhibit D; the Lifeshirt Story is noted at pages B11-B12. A copy of the script for the Lifeshirt Story from the station's teleprompter file is attached hereto as Exhibit E). The story included no source identification for the material in the story.

In July 2006, the WTIC News Department policy was that VNR material could be used in news segments, but only with an appropriate notice to viewers (by on-screen graphic or in the script) that material in the news story was supplied by a third party (except that pure "b-roll" VNR material containing no appearance or identification of any company, person or service could be used without any notice to viewers). The use of VNR material in the Lifeshirt Story without any notice of the source of the material was in violation of the WTIC policy then in force. The policy violation occurred because none of the news department personnel who prepared or reviewed the Lifeshirt Story was aware that it included VNR material.

Neither WTIC, nor any of the station's employees, received any payment or consideration in any form to broadcast the Lifeshirt Story on July 31, 2006.

II. Questions

**Question 1: For each VNR programming segment identified above, state whether the Licensee's station listed above aired the VNR program material as alleged in the CMD Study. If so, provide the following information:**

Response to Question 1: WTIC broadcast a news segment in the station's evening news program on July 31, 2006 at about 10:20 pm (the "Lifeshirt Story") that included material taken from a VNR produced by Medialink for VivoMetrics.

**Question 1(a): the date(s) on which the Licensee received the VNR program material;**

Response to Question 1(a): WTIC received the VNR program material on the CNN "Pathfire" news service on July 31, 2006.

**Question 1(b): any materials the Licensee received that accompanied the VNR;**

Response to Question 1(b): WTIC received the VNR news package and a script of the package from the Pathfire service on July 31, 2006.

**Question 1(c): the person(s) from whom the Licensee received the VNR program material;**

Response to Question 1(c): From the CNN Pathfire news service.

**Question 1(d): state whether the Licensee broadcast the VNR program material as received, without changes or editing.**

Response to Question 1(d): No.

**Question 1(d)(i): If the response to 1(d) above is "no," describe specifically what content of the VNR program material was edited;**

Response to Question 1(d)(i): WTIC edited the video from the VNR and wrote a new script for the Lifeshirt Story.

**Question 1(e): the date(s) and time(s) that the Licensee aired any portion of the VNR program material;**

Response to Question 1(e): WTIC broadcast a news segment in the station's evening news program on July 31, 2006 at about 10:20 pm (the "Lifeshirt Story") that included material taken from a VNR produced by Medialink for VivoMetrics.

**Question 1(f): two recordings in VHS videotape format of the program(s) containing the VNR material clearly labeled with the file number referenced above, the station, and the VNR;**

Response to Question 1(f): Two VHS copies of the WTIC News at Ten broadcast on July 31, 2006 are supplied with this document.

**Question 1(g): a written transcript of the segment(s) containing the VNR program material;**

Response to Question 1(g): A copy of the script for the Lifeshirt Story from the station's teleprompter file is attached hereto as Exhibit F.

**Question 1(h): the steps, if any, the Licensee took to determine whether the VNR program material required sponsorship identification, and the information the Licensee learned through taking any such steps;**

Response to Question 1(h): Because no WTIC personnel involved in preparing or reviewing the Lifeshirt Story was aware that it included VNR material, none of them took steps to determine if any sponsorship identification of the story was required.

**Question 1(i): whether the Licensee was aware of or had any reason to believe that any person involved in the production of the VNR segment paid or received consideration for the inclusion of material in the segment; and**

Response to Question 1(i): Neither WTIC, nor any employee or agent of WTIC, was aware of or had any reason to believe that any person involved in the production of the Lifeshirt Story (which included material from the Medialink VNR) paid or received consideration for the inclusion of material from the VNR in the news story broadcast by WTIC.

**Question 1(j): whether the Licensee identified the VNR program material as sponsored, and if so, the manner in which that identification took place.**

Response to Question 1(j): WTIC did not broadcast any sponsorship identification relating to the VNR in the station's broadcast of the Lifeshirt Story.

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

Response to Question 2: To the best of our knowledge, no WTIC employee or representative, or any employee or representative of any other entity owned by Tribune

Company, received or was promised any consideration from any source in exchange for airing the VNR material at issue.

**Question 2(a): the person(s) from whom such consideration was received or was promised;**

Response to Question 2(a): N/A

**Question 2(b): the consideration involved;**

Response to Question 2(b): N/A

**Question 2(c): the dates on which the payment was promised and/or received;**

Response to Question 2(c): N/A

**Question 2(d): the circumstances surrounding each such payment or promise to pay; and**

Response to Question 2(d): N/A

**Question 2(e): any pertinent documents relating thereto.**

Response to Question 2(e): N/A

**Question 3: State the policies and procedures of the Licensee relating to:**

**Question 3(a): compliance with 47 U.S.C. sec. 317 of the Communications Act of 1934, as amended, and with the Commission's sponsorship identification rules;**

Response to Question 3(a): WTIC policy requires compliance with all Commission rules and policies, including the sponsorship identification rules. WTIC is served by in-house counsel experienced in the interpretation and application of the sponsorship identifications rules and who instruct station personnel on those rules in attorney-conducted seminars and in response to specific questions. Agreements used at WTIC for on-air talent and production personnel include an affidavit signed by employees attesting that they have not received payment for inclusion of material for broadcast and will inform the station in the future of any such payment. (A copy of the form affidavit used by WTIC with employment agreements is attached hereto as Exhibit F.)

**Question 3(b): provide a copy of any written policies or procedures that the Licensee uses or used during the relevant period to train its employees or representatives about compliance with sponsorship identification laws; and**

Response to Question 3(b): None.

**Question 3(c): the handling and use of VNR program material.**

Response to Question 3(c): In July 2006, the WTIC News Department policy was that VNR material could be used in news segments, but only with an appropriate notice to viewers (by on-screen graphic or in the script) that material in the news story was supplied by a third party (except that pure "b-roll" VNR material containing no appearance or identification of any company, person or service could be used without any notice to viewers).

**Question 4: To the extent not otherwise specifically requested, provide copies of all Documents that otherwise provide the basis for, support or otherwise relate to the responses to Inquiries 1 through 3 above.**

Response to Question 4: In response to the LOI, WTIC has supplied the following material with this document:

- (a) Two VHS copies of the WTIC News at Ten program broadcast at 10:00 pm on July 31, 2006.
- (b) Copy of the July 31, 2006 Medialink e-mail to WTIC giving notice of VivoMetrics VNR available on CNN Pathfire (Exhibit A).
- (c) Copy of the WTIC News Department's news "grid" for July 31, 2006 used to plan for News at Ten broadcast (Exhibit B).
- (d) Copy of transcription of Medialink VNR taken from the version available on the CMD Study website (<http://www.prwatch.org/fakenews/vnrs/vnr49>) (Exhibit C).
- (e) Copy of the WTIC "run down" for the News at Ten broadcast at 10:00 pm on July 31, 2006 (Exhibit D).
- (f) Copy of the WTIC script for the Lifeshirt Story broadcast on July 31, 2006 (Exhibit E).
- (g) Copy of the form affidavit all on-air talent and production staff at WTIC are required to sign when they enter into employment contracts with WTIC (Exhibit F).

III. The CMD Study is Inaccurate with Respect to the WTIC Broadcast

The CMD Study's description of the WTIC broadcast is inaccurate. The CMD Study supplies the following description:

On July 31, 2006, WTIC-61's "News at Ten" aired a 50-second story on the LifeShirt, a "super undershirt, of sorts" designed to monitor the vital signs of firefighters in action and capture physiological data such as heart rate, blood oxygen, respiration and temperature. The information collected can be used to establish safer rescue and training guidelines for first responders, and thus potentially save lives. The segment included positive testimony from Lt. Jim

Eastwood of the Fairfield, CT Fire Department, plus several shots of the LifeShirt itself.

But what's good for firefighters is bad journalism for WTIC-61. The FOX affiliate in Hartford, Connecticut built its entire story from a video news release (VNR) created by the broadcast PR firm Medialink Worldwide. The segment was funded by VivoMetrics Government Services, the privately-owned company that manufactures and distributes the LifeShirt worldwide. While the product had previously been limited to the pharmaceutical industry and academic researchers, VivoMetrics has expanded the use of their product to include firefighters, hazmat workers and military personnel.

In adapting the VNR, WTIC-61 edited the original video for length and replaced the narrative audio of the Medialink publicist with the voice of their own anchor. The station failed to cite VivoMetrics as the funding source of the story.

Responding to the Center for Media and Democracy's inquiries, WTIC-61 news director Bob Rockstroh said that the station generally avoided VNRs unless they contained crucial footage that editors couldn't get anywhere else. Even then, WTIC-61 policy dictates that all VNR materials are properly labeled with full sponsorship identification. "In this case," said Rockstroh, "we screwed up."<sup>1</sup>

Contrary to the CMD Study's claim, WTIC did not simply "replace the narrative audio of the Medialink publicist with the voice of [the station's] anchor." In fact, aside from the use in the WTIC broadcast of selected interview material from the VNR, not a single phrase or sentence from the VNR was used in the WTIC story script. The CMD Study is completely wrong in its description of the WTIC broadcast script.

In addition, the CMD Study alleges that WTIC "failed to cite VivoMetrics as the funding source for the story." The allegation is deceptive, apparently seeking to suggest that VivoMetrics paid WTIC to broadcast the story. As set forth above, WTIC received no consideration for the broadcast of the news story, and the CMD had no basis upon which to suggest otherwise in the Study.

#### IV. WTIC Did not Violate the Sponsorship Identification Rules

Three sections of the Commission's sponsorship identification rules arguably apply to this inquiry. Two of those sections were promulgated under Section 317 of the Communications Act, and one was enacted under Section 507 of the Communications Act.

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<sup>1</sup> <http://www.prwatch.org/fakenews2/vnr49> (footnotes omitted).

A. Section 317 of the Communications Act

Section 317 of the Communications Act provides, in relevant part:

(a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

42 U.S.C. § 317(a).

The Commission enacted two sponsorship identification rules under the authority of Section 317(a). The first rule requires sponsor identification when the station has received consideration from a third party in exchange for the broadcast:

When a broadcast station transmits any matter for which money, service or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast shall announce: (1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By



whom or on whose behalf such consideration was supplied; provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

47 C.F.R. § 73.1212(a).

The Commission's second sponsorship identification rule was enacted under the permissive authority granted in Section 317(a)(2), and relates only to "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue":

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 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(d).

B. Section 507 of the Communications Act

Section 507 of the Communications Act requires broadcast licensees to make an appropriate sponsorship identification in several circumstances where, in the course of program production, consideration is furnished by a third party for the inclusion of material in the program for broadcast, or for the broadcast of a program. The Commission has described the thrust of Section 507:

[S]ection 507(a) requires that each station who has accepted or agreed to accept consideration for the airing of

program matter, or any person who has paid or has agreed to so pay any such employee, must disclose that fact to the station prior to the airing of the matter. Similarly, section 507(b) imposes such a duty of disclosure upon any person involved in the production or preparation of broadcast matter who receives or agrees to receive, or provides or promises to provide, such consideration. The disclosure must be made to each payee's employer, the person for whom the material is being produced, or the licensee. Section 507(c) requires this disclosure by anyone who supplies broadcast matter to the person to whom he or she provides the matter. In this way, the information must ultimately be provided up the chain of production and distribution, before the time of broadcast, to the licensee so that it can timely air the required disclosure.

*Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases*, 20 FCC Rcd. 8593 (2005) (the "Public Notice"), at 2-3. Under Section 317(b), a station that has received information under Section 507 must broadcast a sponsorship identification even if the station received no consideration itself.

Pursuant to that provision, the Commission rules require licensees to make the proper sponsorship identification if they receive a report required under Section 507:

In any case where a report has been made to a broadcast station as required by section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

47 C.F.R., § 73.1212(c).

C. The Broadcast at Issue Did Not Require the Inclusion of a Sponsorship Identification Announcement

The Commission historically has interpreted the Congressional intent under Section 317 to be that "not all material broadcast necessitates sponsorship identification." *Complaint of Barry G. Silverman Against Station KOOL-TV*, 63 F.C.C.2d 507, ¶ 15 (1977). Considering the plain language of Section 317, the Commission recognizes that "Congress intended to limit this requirement to certain well-defined program types." *Id.* Applying that narrow interpretation, the Commission implemented rules that provide the limited circumstances under which sponsorship identification is required. *See generally*: 47 C.F.R. 73.1212; 47 U.S.C. 317.

Here, the segment at issue – broadcast within a bona fide newscast – falls outside the scope of material requiring sponsorship identification. Neither WTIC nor its employees or agents received consideration or assumed any obligation to broadcast the material at issue. WTIC did not receive a report indicating that someone in the chain of production or distribution of the VNR paid or received money for inclusion of material for broadcast by WTIC. In any event, requiring a station investigation into whether any such transactions occurred clearly would be beyond the station's "reasonable diligence" obligation. Lastly, Section 73.1212(d) of the Commission's rules, regarding the broadcast of matters of a political or controversial nature, has no application to the segment at issue.

1. WTIC's Use of a VNR in its News Program Did Not Require a Sponsorship Identification Under Rule 73.1212(a) Because WTIC Received No Payment, Service or Other Valuable Consideration for the Broadcast

The critical element in the analysis under Rule 73.1212(a), as the Commission has plainly stated, is a broadcaster's receipt of payment or consideration in exchange for the broadcast of matter. In the Public Notice, the Commission noted that the Communications Act generally requires "that, when payment has been received or promised to a broadcast licensee . . . for the airing of program material, at the time of the airing, the station . . . must disclose that fact and identity of who paid or promised to provide the consideration." Public Notice at 2. As the Commission has explained:

The purpose of Section 317 of the Act and section 73.1212 of the rules is to require that the audience be clearly informed that it is hearing or viewing matter which has been paid for when such is the case, and that the person paying for the broadcast of the matter be clearly identified. Accordingly, a sponsorship identification announcement must state in language understandable to a majority of the audience that the station has received consideration for the matter broadcast and from whom, the consideration was received.

*Application of Sponsorship Identification Rules*, 41 R.R.2d 761, 762 (1977). See also *Advertising Council Request*, 17 F.C.C.2d 22616, 22620-21 (2002).<sup>2</sup> In the absence of

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<sup>2</sup> That rule was not always so limited. In 1960, the Commission ruled records given to a station for air play by a record promoter "are intended by the supplier to be, or have the practical effect of being an incitement to play those particular records or any other records on the air, and the broadcast of such records requires an appropriate announcement pursuant to Section 317." *Sponsorship Identification of Broadcast Material*, 40 F.C.C. 69 (1960). The Commission considered the Congressional intent underlying Section 317 "was clearly to prevent deception on the part of the public growing out of concealment of the fact that the broadcast of particular program material was induced by consideration received by the licensee." *Id.* But Congress reversed the Commission's ruling by amending Section 317 to add a "proviso" stating no sponsorship identification is required where a "broadcaster was given free, or at

consideration, however, no sponsorship identification is required. *See Complaint of Barry G. Silverman Against Station KOOL-TV*, 63 F.C.C.2d 507, ¶ 15 (1977) (finding 73.1212(a) "clearly inapplicable" where there was no evidence that the licensee "was paid, directly or indirectly, any consideration for the presentation of the . . . spot announcement").

Moreover, even when a licensee receives program material for free, the sponsorship identification rules do not apply. The Commission acknowledged that principle in its Public Notice, stating that "Section 317(a)(1) of the Act provides generally that no sponsorship identification is necessary with regard to material that is furnished to the licensee 'without charge or at a nominal charge.'" Public Notice at 3. The Commission's rules similarly acknowledge that the furnishing of "any service or property" to a station "either without or at a nominal charge" does not constitute consideration requiring a sponsorship identification. *See* 47 C.F.R. 73.1212(a). The Commission has addressed just such a circumstance in one of its illustrative interpretations of the sponsorship identification rules:

News 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. No announcement is required.

*Applicability of Sponsorship Identification Rules*, 40 FCC 141 (1963) (interpretation 11).

Here, there were no payments to WTIC for broadcast of the VNR, nor did WTIC agree to broadcast the VNR in exchange for receiving the video. There simply was no quid pro quo: the station had no obligation, contractual or otherwise, to broadcast the VNR. The VNR was supplied to WTIC as part of the station's subscription to CNN's Pathfire news service (although at the time station personnel involved were not aware the package was a VNR). Under Rule 73.1212(a), the furnishing of "any service or property" to a station "either without or at a nominal charge" does not constitute consideration requiring a sponsorship identification. Accordingly, WTIC did not violate

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nominal charge, programs, products or services to be used on air." *Complaint of Nat'l Ass'n for Better Broadcasting*, 4 FCC Red. 4988, 4989 (1989). The Commission has described the Congressional intent:

The House Report explained that the purpose of the proviso was to avoid some of the hardships resulting from the Commission's new interpretation of Section 317 by establishing "a general rule that an announcement shall not be required under Section 317 with respect to any service or property 'furnished for broadcast without charge or at nominal charge,'" unless the circumstances were within the exception spelled out in the proviso. In short, the purpose of adding the proviso was to limit the scope of cases requiring a sponsorship identification under Section 317.

(Footnote and citation omitted). *See Lovelady v. FCC*, 767 F.2d 1443, 1449 (D.C. Cir. 1985)

Section 317 or Rule 73.1212(a) by broadcasting the VNR in the news program without any sponsorship identification.

2. WTIC's Use of a VNR in its News Program Did Not Require a Sponsorship Identification Under Rule 73.1212(c) Because the Station Did Not Receive a Report Under Section 507 of Third-Party Consideration that Would Trigger Any Disclosure Obligation and WPIX Exercised "Reasonable Diligence" Under the Circumstances

Under the Communications Act, station employees and other persons involved in the production, preparation or distribution of matters intended for broadcast are required to disclose to the licensee whether they have received, or have knowledge that anyone has received, consideration for the inclusion of any matter as part of a broadcast. See 47 U.S.C. § 507(a)-(c). If the licensee receives such a report, it is required to make a sponsorship identification announcement. See 47 U.S.C. § 317(b); 47 C.F.R. § 73.1212(c). Absent such a report, a licensee is expected to exercise "reasonable diligence" to determine whether sponsorship identification issues exist. See 47 U.S.C. § 317(c); 47 C.F.R. 73.1212(b).

Here WTIC did not receive any report that would trigger the requirements of Act or the Commission's rules to make a sponsorship identification announcement.

As an initial matter, because WTIC was not required to make a sponsorship identification in the first instance, the station could not have violated sections 317(c) of the Act or Rule 73.1212(b). The Commission has held that there is "no basis to fault a licensee for lacking reasonable diligence in a situation in which there has been no failure to make a required announcement." *Applications of Metroplex Communications, Inc.*, 5 FCC Red. 3610, ¶ 5 (1990). The "reasonable diligence" requirement of Section 317(c) and Rule 73.1212(b) "was intended to fix the licensee's level of responsibility for a failure to make required announcements and not to establish an independent basis for culpability." *Id.* Thus, a finding that the news broadcast at issue did not require sponsorship identification negates any question of liability for any supposed failure to exercise reasonable diligence to discover sponsorship identification issues.

Under the Act and the Commission's rules, a licensee is required only to exercise "reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required" by section 317 and Rule 73.1212. See 47 U.S.C. § 317(c); 47 C.F.R. § 73.1212(b). Thus, the Commission has concluded that it cannot "expect the licensee to be the guarantor of disclosure" under Section 507 of the Act. See *Broadcast Announcement of Financial Interests of Broadcast Stations and Networks and their Principals and Employees in Services and Commodities Receiving Broadcast Promotions*, 76 F.C.C.2d 221, ¶ 6

(1980). Further, "the reasonable diligence expected of a station with respect to programs it has not produced . . . does not require that the station investigate the circumstances surrounding the production of such programs." *Id.*

This should be especially true in the context of news broadcasts, where there may be several sources of information and footage, that may include statements by representatives of various entities and groups, included in the script or video for any given news segment. As the Commission has noted, it would be unreasonable to require licensees to "investigate the circumstances surrounding the production" of every element of a news story not produced by the broadcasting station.

In this case WTIC had no reason to undertake investigation because the persons involved with the production and review of the Lifeshirt Story were not aware that it contained VNR material. Under the circumstances, it cannot reasonably be held that WTIC failed to meet any applicable due diligence obligation.

3. WTIC's Use of VNR Material in its News Program Did Not Require a Sponsorship Identification Under Rule 73.1212(d) Because the VNR Material Did Not Address a Controversial Issue of Public Importance.

Commission Rule 73.1212(d) requires a sponsorship identification in limited circumstances based on a third party's delivery of material to a station "as an inducement for broadcasting such matter," but that requirement does not apply here. That rule applies only if the material broadcast is "political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance." 47 C.F.R. § 73.1212(d). Plainly the VNR material broadcast by WTIC was not "political" matter.

Nor did the VNR material involve discuss "a controversial issue of public importance." To apply Rule 73.1212(d), the Commission determines the controversiality of broadcast material under an analysis used to apply the old Fairness Doctrine. Under that standard, "it must be shown that the issue presented "is the subject of vigorous debate with substantial elements of the community in opposition to one another.'" *Barry Silverman*, 63 F.C.C.2d 507, 513 (1977) (quoting Broadcast Bureau below; holding issue whether commercial television adequately serves public interest is not controversial issue of public importance).

The issues discussed in the Lifeshirt Story were not controversial issues of public importance. It plainly cannot be said that methods of firefighter safety were the subject of vigorous public debate with substantial elements of the community in opposition to one another. The fact that WTIC broadcast a story about that topic and related new technology does not render the topic a "controversial issue of public importance." "Merely because a story is newsworthy does not mean that it contains a controversial issue of public importance. Our daily newspapers and television broadcasts alike are filled with news items which good journalistic judgment would classify as newsworthy, but which the same editors would not characterize as containing important controversial

public issues.” *Healey v. FCC*, 460 F.2d 917, 922 (D.C.Cir. 1972)(applying Fairness Doctrine). Accordingly, Rule 73.1212(d) does not apply to the WTIC broadcast.

V. Application of the Sponsorship Identification Rules to News Broadcasts is Inappropriate and May Infringe Broadcasters’ First Amendment Rights

On the occasion of the release of the CMD study, Commissioner Adelstein issued a press release including the following comments:

This is not a First Amendment issue. Newsrooms are not allowed under the law to run commercials disguised as news without an honest and adequate disclosure. Clearly, the embarrassment of informing viewers they are merely transmitting corporate propaganda in lieu of real news is leading many to actually eliminate disclosure supplied by the VNR producer. The issue is not free speech – it is identifying who is actually speaking.

*Commissioner Adelstein Commends the Center for Media Democracy and Free Press for its Continued Study Regarding Video News Releases* (Nov. 14, 2006).

WTIC respectfully, but firmly, disagrees with Commissioner Adelstein’s characterization of the issue concerning the use of VNRs in news reports. The blithe claims that newsrooms “run commercials disguised as news” and transmit “corporate propaganda in lieu of real news” are simply false, at least as they relate to WTIC (and, we expect, to all the supposed “fake news” examples cited by the CMD study). As shown above, WTIC received no payment or other valuable consideration to include the VNR material in the news story at issue.

In addition, WTIC exercised complete editorial control over the content of the news story. The Commission has held repeatedly that where one party has editorial control over material produced for broadcast, it is appropriate to identify that party in sponsorship identification, even where another party has supplied production assistance, and even complete funding, for the production. See *National Welfare Rights Organization*, 41 F.C.C.2d 187, par. 25 (1973); *Request for Declaratory Ruling of Paul Loveday and Californians for Smoking and Non Smoking Sections*, 87 F.C.C.2d 492 (1981), *aff’d sub nom. Loveday v. FCC*, 707 F.2d 1443, 1449 (D.C. Cir. 1983); *Letter, Trumper Communications of Portland, Ltd. et al.*, 11 FCC Rcd. 20415, 20418 (MMB 1996).

WTIC also disagrees with Commissioner Adelstein’s claim that this inquiry “is not a First Amendment issue.” He states that the issue “is identifying who is actually speaking,” apparently suggesting that stations must – or failing that, the Commission should – analyze television news stories to determine whether they contain sufficient third-party material, or perhaps material of a certain tenor or source, to require identification of the material’s producer (even in the absence of any payments or consideration in the production chain). WTIC submits that regulation based on such an

analysis would improperly intrude into the editorial judgments of broadcasters in violation of the First Amendment. As the Supreme Court has cautioned, the "choice of material to go into" the news, and "the decisions made as to limitations as to the size and content" of what is reported "constitute the exercise of editorial control and judgment. It has yet to be determined how governmental regulation of this crucial process can be exercised consistent with the First Amendment guarantees of a free press." *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974). "[I]n this democracy, no government agency can authenticate the news, or should try to do so." *Hunger in America*, 20 F.C.C.2d 143, 151 (1969)(concerning Commission policy on rigging news).

Under the sponsor identification rule, only when a station has received consideration for broadcasting third-party material, or becomes aware that such consideration has been paid upstream in the production chain for the broadcast, is disclosure required. In our view, as applied to broadcast news, the FCC's sponsorship identification rule strikes the appropriate balance between government regulation on the one hand, and stations' editorial discretion on the other. In the vast majority of news stories, no such consideration exists and no disclosure is, or should be, required.

The fact that WTIC's newsroom policy requires disclosure where third-party material is used substantially in a news story – even in the absence of any payment – is not inconsistent with that view. Television news operations typically honor many guidelines of good journalism that could not properly be enforced by government regulation without infringing the First Amendment. In an analogous context – abandoning the fairness doctrine – the Commission held that government oversight of "such sensitive and subjective matters as the 'controversiality' and 'public importance' of a particular issue, whether a particular viewpoint is 'major,' and the 'balance' of a particular presentation" in television broadcasts "results in excessive and unnecessary government intervention into the editorial processes of broadcast journalists" in violation of the First Amendment. *Syracuse Peace Council*, 2 FCC Red 5043, 5052 (1987), *recon. denied*, 3 FCC Red 2035 (1988), *aff'd*, 867 F.2d 654 (D.C. Cir. 1989). Attempting to apply the sponsorship identification rule to news broadcasts beyond the current, accepted application of the rule would create a similar infringement.

#### VI. Conclusion

In sum, the circumstances of the broadcast by WTIC of a news story including VNR material fit precisely into the Commission's explanation in the Public Notice:

In situations in which a broadcast licensee has not directly received or been promised consideration, has not received any Section 507 report that material has been paid for from its employees or others that must make such reports pursuant to that section of the Act, and, acting with the requisite diligence, has no information concerning the making of such promise or payment, Section 31.7(a)(1) of the Act provides generally that no sponsorship identification is



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necessary with regard to material that is furnished to the licensee "without charge or at a nominal charge."

Accordingly, WTIC submits there is no basis for further Commission action in this matter. Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,

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