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VIA AIR COURIER

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**Re: File No. EB-06-IH-2701
Station WGN-TV, Chicago, Illinois**

Gentlemen:

WGN Continental Broadcasting Company ("WGN"), licensee of television station WGN-TV, Chicago, Illinois, responds by this letter to the letter of inquiry dated August 11, 2006, from William H. Davenport, Chief of the Investigations & Hearings Division ("LOI"). The LOI was addressed to WGN's parent company, Tribune Broadcasting Company ("Tribune"), in connection with seven television stations it controls. (The LOI was mailed to WGN-TV's business address.) Because WGN is the licensee of the station that aired one of the broadcasts referred to in the LOI, this response is submitted on its behalf. Each of the seven stations is responding separately.

According to the LOI, the Enforcement Bureau is investigating whether Tribune may have violated section 317 of the Communications Act and section 73.1212 of the Commission's rules, by airing "certain video news releases ("VNRs") or satellite media tours ("SMTs") without proper sponsorship identification." The apparent basis for the investigation, according to the LOI, is a "study by the Center for Media and Democracy ("CMD")," claiming that certain

stations, including WGN-TV, "allegedly aired one or more of 36 VNRs and/or related SMTs without proper sponsorship identification." Specifically, the LOI refers to "a VNR/SMT-based segment containing material on behalf of Trend Micro," aired by WGN on November 9, 2005. The LOI enclosed a printout of pages from CMD's website, and directed Tribune to respond. We first will explain the broadcast in question and its use of third-party material, followed by responses to the LOI's specific questions. We then will discuss the applicable law.

The Broadcast

The broadcast identified by the LOI occurred at 8:27 a.m. during the WGN MORNING NEWS on November 9, 2005. Specifically, it occurred during the "Cyberguy" segment, which airs three times a week. The segment, hosted by staff reporter Kurt Knutsson of WGN's sister station, KTLA, Los Angeles, covers the latest developments in consumer technology, including new websites, hardware and software issues, viruses and other problems computer users may encounter on the internet. Knutsson appears live via satellite during the segment on WGN-TV, and his segment usually includes a videotape package produced by Knutsson and KTLA News. The segment has aired on WGN-TV for several years.

The November 9, 2005 "Cyberguy" segment concerned the cyber-fraud known as "phishing." "Phishing" is the practice of sending authentic-looking e-mails that appear to come from banks, credit card companies or other financial institutions, soliciting a person's personal or financial information under the guise of protecting the person's financial data. In fact they only appear to be authentic. When the unsuspecting person responds and provides the requested information, cyber-criminals routinely sell the bank account numbers, credit card numbers, Social Security numbers and other private data to third parties, enabling them to steal and trade on the victim's identity. Because "phishing" practitioners are so skillful in making their e-mail requests appear genuine, and because the results of innocently complying with a "phishing" request can be so devastating, many consumer and news publications have written about the practice to warn the public to be wary of requests for sensitive data.*

WGN believed that the "Cyberguy" segment on phishing dealt with an important issue of interest to its viewers. A transcript of the segment is attached. WGN was not aware that the videotape

* "Online Crime: A Booming Business," *San Francisco Chronicle*, April 11, 2005, E1; "Phishing: Beware the Internal Revenue Scam," Business Week Online, December 5, 2005; "Viruses, Spyware Cost Users \$7.8 Billion; Losses from Phishing Scams Up Fivefold Since the Previous Survey," *The Washington Post*, August 8, 2006 ("Losses from phishing scams, which are fake e-mails and Web pages that request sensitive data such as bank-account passwords, increased five-fold from the previous [Consumer Reports] survey, with people telling the magazine that such scams cost them \$630 million in 2004 and 2005. That's an average loss of \$850 per incident."); "Vandals go phishing at Georgetown Credit Union," *The Hoya*, September 18, 2006; "Internet attacks are more hidden, creative," *San Diego Union-Tribune*, October 5, 2006.

package broadcast as part of the segment contained excerpts from a video news release. Trend Micro's product, "PC-Cillin," was mentioned once in the report, as "one of the internet security software applications which now uses a new technology called heuristics." WGN's report did not show the product package, and did not recommend that viewers buy the product.

In his live comments on WGN after the videotaped report, Knutsson did not "plug" Trend Micro's product or even mention it. In fact, rather than tell viewers to buy an internet security product, he told viewers the better practice was simply never to click on a link in an e-mail that asks for personal or financial information. As a courtesy to viewers who wanted more information, WGN provided links on its station website to the three leading internet security products.

To summarize, the topic of WGN's November 9, 2005 "Cyberguy" report reflected the station's news judgment that computer crime and the practice of "phishing" deserved public attention. Journalists from WGN's sister station wrote, edited and announced the report, which contained Knutsson's own analysis and an excerpt from an interview with an FBI computer fraud expert. The segment did not endorse Trend Micro's product, and Knutsson in fact advocated a course of action that made purchasing any product of this type unnecessary.

The CMD "Study"

The "study" prepared by the Center for Media and Democracy (specifically, an article entitled "A Fake News Report About Fake E-Mail"*) says this about WGN's "Cyberguy" report:

On November 9, Knutsson introduced his own edited version of the VNR, a shorter remix with new scene transitions, background music, and a re-dubbed voiceover provided by Knutsson himself. Although he kept in every mention of PC-Cilin [sic], Knutsson failed to inform viewers that his entire story was provided by a broadcast PR firm and funded by the makers of the software being featured.

In addition to his KTLA-5 studio report, Knutsson [sic] appeared live via satellite on stations in at least four other cities, including WPIX-11 (New York, NY), WGN-9 (Chicago, IL), KWGN-2 (Denver, CO), and WXIN-59 (Indianapolis, IN). (footnotes omitted)

WGN's report was hardly a "remix" of Trend Micro's VNR. Of the 541 words in the "Cyberguy" segment on phishing as broadcast by WGN, only 96 of them (18%) were excerpted from the video news release. The rest, including comments by an FBI computer crime expert and Knutsson's own analysis and advice, were originated by WGN's sister station, KTLA. It is true

* <http://www.prwatch.org/node/4546>

that Knutsson's report contained "every mention" of Trend Micro's product contained in the VNR. CMD neglects to point out that there was only *one* such mention of the product in the VNR.* CMD's so-called study, bannered with its "Fake TV News" headline, is wholly unreliable at best. It appears to be a calculated effort to mislead the public and the Commission. Most tellingly, no representative of CMD ever contacted WGN about the "Cyberguy" report. It simply drew faulty conclusions, labeled them a "study" and posted them on its website.**

Questions

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

Answer: As explained above, WGN aired excerpts of the Trend Micro VNR as part of the KTLA-originated "Cyberguy" segment. WGN was not aware that the segment contained material from a VNR at the time of the broadcast. CMD's characterization of the segment is inaccurate.

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

Answer: WGN has no record of receiving the Trend Micro VNR. The "Cyberguy" segment was produced by WGN's sister station, KTLA. The "Cyberguy" videotape package typically is delivered one or two days before broadcast. Knutsson's comments before and after it are broadcast live.

- b. any materials Tribune received that accompanied the VNR or SMT;

Answer: WGN has no record of receiving the Trend Micro VNR or any accompanying materials.

- c. the person(s) from whom Tribune received the VNR or SMT program material;

* This analysis is based on the VNR as reproduced on CMD's website.

** CMD's "study" was sharply critical of the practice of another station that broadcast the Trend Micro VNR, KOKH, Oklahoma City. It claimed that "[t]o help disguise the promotional video as their own journalism, editors at KOKH-25 inserted station-branded text overlays" WGN-TV likewise put on-screen identifiers of the individuals appearing in the "Cyberguy" report in the same type font WGN uses for material it originates. This practice, standard in television news, is done for on-air consistency, and to make identifications readily understandable to the viewer. WGN treats video it receives from other third parties, including CNN, the AP, sister stations, freelance journalists and government agencies, in the same manner.

Answer: WGN has no record of receiving the Trend Micro VNR. The "Cyberguy" segment is delivered to WGN via satellite through Tribune-leased facilities.

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

Answer: WGN aired the "Cyberguy" segment containing the VNR material on November 9, 2005 at 8:27 a.m. in the WGN MORNING NEWS.

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

Answer: Enclosed.

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

Answer: Enclosed.

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

Answer: WGN and its employees received no consideration from Trend Micro or anyone acting on its behalf in connection with the broadcast of the "Cyberguy" segment containing the VNR material. WGN was not aware that the videotape package broadcast as part of the segment contained excerpts from a VNR. Under these circumstances, WGN was under no obligation to include a sponsorship identification, or to inquire whether the "Cyberguy" segment required sponsorship identification.

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

Answer: No.

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

Answer: No.

2. For each VNR or SMT programming segment identified above, state whether Tribune, or

any of its employees or representatives, received or were promised any consideration, from any source, in exchange for airing the VNR or SMT program material.

Answer: No.

3. State the policies and procedures of Tribune relating to:

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

Answer: It is WGN's policy to comply with the Communications Act and Commission rules and policies, including the sponsorship identification rules. This subject is covered at periodic legal seminars for the WGN-TV newsroom staff. Talent agreements at WGN include a signed affidavit summarizing WGN's policy and affirming that on-air talent have not accepted and will not accept payment from third parties for the inclusion of broadcast material.

- b. the handling and use of VNR and SMT program material.

Answer: WGN News receives hundreds of paper, electronic and videotape news releases every week from individuals, businesses and government agencies seeking to publicize new products, new initiatives, and personnel changes. The news department is free to use or discard them as it sees fit. Most are discarded. WGN does not air press releases, including video news releases, unedited. The station may use photos accompanying press releases and video material from VNRs as "B-roll" or file footage, and may use quotes from a press release or excerpts from a VNR where the material is not readily available to the station and is particularly useful to a news report. As a matter of journalistic practice, WGN identifies the source of third-party photos or video footage it uses with a courtesy or similar credit, and attributes quotes taken from press releases to the source of the quote.

Applicable law

The LOI begins by saying the Enforcement Bureau is investigating whether Tribune may have violated section 317 of the Communications Act or section 73.1212 or 76.1615* of the Commission's rules by airing VNRs without proper sponsorship identification. *Id.*, 1. Based on the facts recited above, the Commission cannot conclude that WGN violated either provision.

Section 317(a)(1) requires that an announcement be made when "any money, service or other

* Section 76.1615 applies to origination cablecasting by cable television system operators, and is inapplicable to broadcast stations.

valuable consideration is directly or indirectly paid, promised to or charged or accepted by, the station so broadcasting, from any person" A proviso to this section explains, however, that the term "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."

WGN received no money from anyone in connection with the broadcast of excerpts of the Trend Micro VNR in its morning news program. Indeed, as noted above, WGN was unaware, at the time of the broadcast, that the "Cyberguy" segment contained excerpts from a VNR. Although we submit that the news release itself does not constitute "service or other valuable consideration," its use in the newscast, without charge to WGN (or KTLA), fell squarely within the proviso to §317. It was "reasonably related to" the news coverage of "phishing" fraud. There was no agreement between WGN and anyone acting on behalf of Trend Micro to identify the company's product, let alone identify it so prominently that it would be "beyond an identification which is reasonably related to the use of such service or property on the broadcast."

Thus, under the plain language of §317, no sponsorship identification announcement related to the VNR was required in WGN's newscast.

The sponsorship identification rule, §73.1212(a), implements the provisions of §317(a)(1), referenced above, and requires an announcement under the same circumstances. For broadcasts involving "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," a sponsorship identification announcement is required by §73.1212(d) even if the material is furnished at no charge and meets the "reasonably related" test. However, there can be no credible claim that WGN's news report was either "political broadcast matter" or involved "the discussion of a controversial issue of public importance," a term that triggered application of the Commission's former Fairness Doctrine. There is nothing remotely political or controversial about the subject of "phishing." No candidate or elected official appeared in the segment, and no controversy over the legitimacy of phishing was debated. The practice is fraudulent and a criminal offense.

Thus, no sponsorship identification announcement is required by §73.1212 of the Commission's rules.*

* Section 73.1212(c) requires an "appropriate announcement" 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" This refers to a situation in which

These rules are straightforward in application. If a station accepts payment to influence the content of a broadcast, it is generally obligated to disclose that fact and identify who made the payment. See Public Notice, "Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases," 20 FCC Rcd 8593 (2005); *Application of Sponsorship Identification Rules*, 41 R.R.2d 761, 762 (1977). However, in the absence of consideration, no sponsorship identification announcement is required. See *Complaint of Barry G. Silverman Against Station KOOL-TV*, 63 F.C.C.2d 507 at ¶15 (1977) (§73.1212(a) held "clearly inapplicable" where there was no evidence the licensee "was paid, directly or indirectly, any consideration for the presentation of the ... spot announcement").

Indeed, more than 40 years ago, the Commission interpreted §73.1212 in the context of news releases:

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 [sponsorship identification] announcement is required.

Applicability of Sponsorship Identification Rules, 40 F.C.C. 141 (1963) (interpretation 11); *Applicability of Sponsorship Identification Rules*, 40 Fed. Reg. 41936, 41938 (1975).*

a person reports to the station, as required by the statute, that he or she has accepted or agreed to accept consideration from a third party in connection with the broadcast. No such report was made to WGN, which did not produce the report, and no WGN employee received consideration from a third party (including Trend Micro or anyone acting on its behalf) in connection with the segment. Thus, since no sponsorship identification announcement is required, this subsection of §73.1212 is inapplicable to WGN. The licensee is directed to use "reasonable diligence" to learn of situations in which disclosure is required, see §317(c), §73.1212(b). However, 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." *Metroplex Communications, Inc.*, 5 FCC Rcd 5610, ¶5 (1990). The "reasonable diligence" requirement "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.* 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." *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).

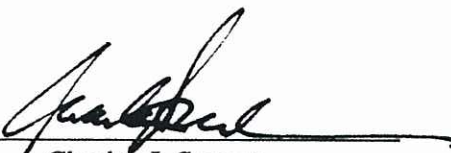
* This example was listed under a heading that accurately summarizes the facts presented here: "Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for identification of such service or property beyond its mere use on the program." *Id.*

In sum, there is no basis for suggesting that a three-minute segment in WGN's newscast, selected and broadcast in the exercise of the licensee's constitutionally protected news judgment, should be treated like a paid commercial announcement. Neither WGN nor any of its employees received money or other consideration from a third party in exchange for the broadcast of selected excerpts from a video news release of which WGN was completely unaware. The broadcast was neither political nor controversial, and the use of the VNR material was reasonably related to the selected topic of the newscast and enhanced its presentation.

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

Respectfully submitted,

WGN CONTINENTAL BROADCASTING
COMPANY

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Dated: October 9, 2006

WGN MORNING NEWS
WGN-TV, Chicago
November 9, 2005
“Cyberguy” segment

Larry: Welcome back. In cybernews, new technology to keep you from getting your identity stolen online.

Robin: Kurt the Cyberguy joins us from LA. Hey, Kurt.

(Live via satellite.)

Kurt: *[Kurt the Cyberguy]* Hey Robin, Larry, good morning to you. Just off the Internet right here, just printed it out. It is the latest phishing scam that's going on. And this one is from PayPal, at least it looks like it is. It hits your e-mail box, and it says, “hey, did you register someone to receive money from your PayPal account? Click here if it's not true.” Of course you want to click right there, but instead of going to PayPal, it goes somewhere else. It's just one in a litany of phishing scams that are out there — that's swiping people's money, like this chick.

(Tape package begins.)

Jessica: *[Jessica Sweedler, Phishing Victim]* I was pretty surprised, actually, because the e-mail looked so, so authentic. And I get things like that all the time.

Kurt: Jessica Sweedler fell victim to a bogus e-mail that looked a lot like a message from her bank. Instead, it was an e-mail from a scammer, phishing for her identity.

Niehoff: *[Mikael Niehoff, Tech Crime Detective]* Phishing is a crime because the act of phishing is an act to obtain identity or identity theft. It results in identity theft. It is a theft by false pretenses.

Kurt: With phishing attempts still greatly on the rise, companies are releasing new software to keep you and your financial information safe.

Perry: By using 16 independent tests, on each email and on each website that they apply to, we're able to judge whether that e-mail or that website is ... has good credibility or bad credibility.

Kurt: This guy David Perry is talking about the latest version of PC Cillin, one of the internet security software applications which now uses a new technology called heuristics. And while software may help protect you, ultimately it all comes down to common sense.

Harrill: Always be suspicious of email, from anybody, any company who's asking for information they already have. And just because the link appears to be back to a legitimate company, it can actually be anything once you click on it. So you can't trust the hyperlink or the hotlink within an e-mail.

Kurt: Oh, and if you want to know who won't be clicking on any strange links any time soon, just ask Jessica Sweedler.

Jessica: I really felt suckered into it. I felt very taken advantage of.
(End of tape package.)

Kurt: Man, it is so easy to get suckered into these things. wgntv.com, our website, here you're going to find a litany yourself of ways to protect yourself. Now we link to that software too, which isn't 100%. But at least it does a relatively good job of scanning your inbound e-mail, and seeing if it's one of these phishing scams that's out there. But it's happening so fast, the better policy is to do what Larry does, which is just don't click from an e-mail if it's connected up with your wallet in any way whatsoever.

Larry: Right.

Kurt: Guys —

Robin: (Joking.) Larry was a little distracted because he was looking at the hot chick, Kurt.

Kurt: (Joking.) That's his problem. And that's linked to, you know, that's just another phishing scam, or is it his porn scam? I'm not sure.

Anchors: (Laughter, whistle.)

Kurt: He can't, Larry can't take his eyes off of them.

Robin: Thanks, Kurt.

Larry: Thanks, Kurt.

Kurt: Bye, guys.

AFFIDAVIT

1. I understand it is the policy of WGN Continental Broadcasting Company to prohibit all on-air talent from accepting any money, service or other valuable consideration from anyone (other than the company) for the broadcast of any material over WGN-TV.
2. I understand it is WGN's policy to prohibit all on-air talent from (a) engaging in any outside business or other economic activity that would create a conflict of interest in the selection of broadcast matter; (b) accepting any favors, loans, payment, extraordinary entertainment or other consideration from persons seeking the airing of any broadcast matter; and (c) promoting or causing to be promoted in broadcast material any activity or matter in which they have a direct or indirect financial interest.
3. **Please circle the appropriate response to the next three items.** If the answer to any item is in the affirmative, please explain the details on a separate attachment.
 - a. I [DO] [DO NOT] have any direct or indirect financial interests that involve a possible conflict of interest in the selection of broadcast material.
 - b. I [WILL] [WILL NOT] promote or cause to be promoted over the air any activity or matter in which I have a direct or indirect financial interest.
 - c. I [WILL] [WILL NOT] accept, directly or indirectly, any favors, loans, payment, extraordinary entertainment or other consideration from any person seeking the airing of any broadcast matter.
4. I agree to comply with the policies set forth in items 1 and 2 above, and will notify the News Director immediately in writing of any future matters referred to in item 3 above.

(signature)

Date signed