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

November 7, 2006

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sinclair Broadcasting Group, Inc.
1228 East Wilshire Boulevard
Oklahoma city, Oklahoma 73111

Re: Station WTTO(TV), Homewood, AL[1]
File No. EB-06-IH-3486

Dear Licensee:

The Enforcement Bureau is investigating whether various parties, including certain licensees of radio and television stations, may have violated provisions of the Communications Act of 1934, as amended, and the Commission's rules. Specifically, we are investigating whether such licensees aired material that was paid for by a third party without making required disclosures.[2] We therefore direct Sinclair Broadcasting Group, Inc. ("Sinclair") to provide the information and documents, as defined herein and specified below, within forty-five (45) calendar days from the date of this letter.[3]

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[1] This inquiry also includes: Stations WBFF(TV), Baltimore, MD; WRDC(TV), Durham, NC; WLOS(TV), Asheville, NC; WMMP(TV), Charleston, SC; WXLV-TV, Winston-Salem, NC; WMYV(TV), Greensboro, NC; WLFL(TV), Raleigh, NC; WTWC-TV, Tallahassee, FL; WEAR-TV, Pensacola, FL; WRLH-TV, Richmond, VA WABM(TV), Birmingham, AL; WZTV(TV), Nashville, TN; WUXP-TV, Nashville, TN; WDKY-TV, Danville, KY; WKEF(TV), Dayton, OH; WSYX(TV), Columbus, OH; WSMH(TV), Flint, MI; WICS(TV), Springfield, IL; WVTV(TV), Milwaukee, WI; WICD(TV), Champaign, IL; WCGV-TV, Milwaukee, WI; WMSN-TV, Madison, WI; KBSI(TV), Cape Girardeau, MO; KDNL-TV, St. Louis, MO; KSMO-TV, Kansas City, MO; KGAN(TV), Cedar Rapids, IA; KDSM-TV, Des Moines, IA; WVCW(TV), Minneapolis, MN; KOKH-TV, Oklahoma City, OK; KOCB(TV), Oklahoma City, OK; KABB(TV), San Antonio, TX; KMYS(TV), Kerrville, TX; KETK-TV, Jacksonville, TX; KVMY(TV), Las Vegas, NV; KOVR(TV), Stockton, CA; WGME-TV, Portland, ME; WGGB-TV, Springfield, MA; WUTV(TV), Buffalo, NY; WUHV(TV), Rochester, NY; WSYT(TV), Syracuse, NY; WNYO-TV, Buffalo, NY; WPMY(TV), Pittsburgh, PA; and WPGH-TV, Pittsburgh, PA.

[2] *See* 47 U.S.C. §§ 317 and 508, and 47 C.F.R. §§ 73.1212 and 76.1615.

[3] *See* 47 U.S.C. §§ 154(i)-(j) and 403.

Instructions

Request for Confidential Treatment. If Sinclair 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).

Claims of Privilege. If Sinclair 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.

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, unless the document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry 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 below, 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). Sinclair 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 Sinclair 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 Sinclair 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, Sinclair is directed to retain the originals of those documents for twelve (12) months from the date of this letter unless (a) Sinclair 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, Sinclair 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. Sinclair 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, Sinclair must supplement its responses (a) if Sinclair 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 Sinclair after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (a) Sinclair is directed or informed by the Enforcement Bureau in writing that Sinclair'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.

Unless otherwise indicated, the period of time covered by these inquiries is December 1, 2003, to September 30, 2004.

Definitions

For purposes of this letter, the following definitions apply:

"Sinclair" shall mean Sinclair Holding Company, Inc. and any predecessor-in-interest, affiliate, parent company, any 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.

"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 during the course of a radio or television broadcast.

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

"Program Material" shall mean the program material listed below:

(1) the following episodes of the program "The Right Side with Armstrong Williams":

Show No. 212 "National Security," taped December 11, 2003;
Show No. 207 "What is Faith?," taped December 11, 2003;
Show No. 211 "Judicial Nominations," taped December 11, 2003;
Show No. 210 "Young Americans in Government," taped December 11, 2003;
Show No. 209 "Year End Review," taped December 11, 2003;
Show No. 244 "O'Donnell/Aguirre," taped May 29, 2004;
Show No. 216 "On Point with Rod Paige," taped January 8, 2004;
Show entitled "Armstrong Debut, containing "Interview with John Gibbons," taped January 5, 2004; and,

(2) America's Black Forum, "2004 Election Countdown," taped September 12, 2004.

"Consideration" shall mean money, services and/or any other thing of value.

"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, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, notes of a meeting or telephone call, 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 tapes, 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, current business address, phone number, current organization and position therewith. "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,"

knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,[4] 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.[5] Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.[6]

Sinclair shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, Room 4-A366, with a copy to Elizabeth H. Valinoti, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-A366, 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 Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-A435, Washington, D.C. 20554, with a copy to Elizabeth H. Valinoti, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. Sinclair shall also, to the extent practicable, transmit a copy of the response via email to Kenneth.Scheibel@fcc.gov and to Elizabeth.Valinoti@fcc.gov. Sinclair may direct any questions regarding this investigation to Kenneth M. Scheibel, Jr., at 202-418-1420.

Sincerely,

B. Bartolome

Benigno E. Bartolome, Jr.
Deputy Chief, Investigations & Hearings Division
Enforcement Bureau

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[4] *See* 47 C.F.R. § 1.16.

[5] *See* 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.

[6] *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, 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).

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RECEIPT

Kathryn R. Schmeltzer
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kathryn.schmeltzer@pillsburylaw.com

December 22, 2006

Benigno E. Bartolome, Jr.
Deputy Chief, Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Suite 4-C330
Washington, DC 20554

Re: Station WTTO(TV), Homewood, AL
File No. EB-06-IH-3486

Dear Mr. Bartolome:

Sinclair Broadcast Group, Inc. ("Sinclair"), the ultimate parent company of the licensees of the stations included in footnote 1, below (collectively, the "Stations"),[1] by its counsel, hereby responds to the Enforcement Bureau's letter dated November 7, 2006 ("Letter"). The Letter states that the Bureau is investigating whether various licensees aired material that was allegedly paid for by a third party without making the required

[1] WTTO(TV), Homewood, AL, WBFF(TV), Baltimore, MD; WRDC(TV), Durham, NC; WLOS(TV, Asheville, NC; WMMP(TV), Charleston, SC; WXLV-TV, Winston-Salem, NC; WMYV(TV, Greensboro, NC; WLFL(TV), Raleigh, NC; WTWC-TV, Tallahassee, FL; WEAR-TV, Pensacola, FL; WRLH-TV, Richmond, VA; WABM(TV), Birmingham, AL; WZTV(TV), Nashville, TN; WUXP-TV, Nashville, TN; WDKY-TV, Danville, KY; WKEF(TV), Dayton, OH; WSYX(TV), Columbus, OH; WSMH(TV), Flint, MI; WICS(TV), Springfield, IL; WVTV(TV), Milwaukee, WI; WICD(TV), Champaign, IL; WCGV(TV, Milwaukee, WI; WMSN-TV, Madison, WI; KBSI(TV), Cape Girardeau, MO; KDNL-TV, St. Louis, MO; KGAN(TV), Cedar Rapids, IA; KDSM-TV, Des Moines, IA; WUCW(TV), Minneapolis, MN; KOKH-TV, Oklahoma City, OK; KOCB(TV), Oklahoma City, OK; KABB(TV), San Antonio, TX; KMYS(TV), Kerrville, TX; KVMY(TV), Las Vegas, NV; WGME-TV, Portland, ME; WGGB-TV, Springfield, MA; WUTV(TV), Buffalo, NY; WUHF(TV), Rochester, NY; WSYT(TV), Syracuse, NY; WNYO-TV, Buffalo, NY; WPMY(TV), Pittsburgh, PA and WPGH-TV, Pittsburgh, PA. It should be noted that Sinclair sold station KSMO-TV to Meredith Corporation (*See* FCC File No. BALCT - 20050107ACA, granted on September 27, 2005), station KETK-TV to Comcorp of Tyler License Corp. (*See* FCC File No. BALCT - 20040702AER, granted November 12, 2004) and KOVR(TV) to UPN Stations Group Inc. (*See* FCC File No. BALCT - 20041202AGE, granted April 18, 2005). The Bureau's Letter inaccurately refers to Sinclair station WUCW(TV), Minneapolis, MN as WVCW(TV) and WUHF(TV) Rochester, NY as WUHV(TV).

disclosures required by Commission rules. The Letter cites 47 U.S.C. § 317, 47 C.F.R. § 73.1212 and § 76.1615.

At the outset, Sinclair denies that the Stations have in any way violated the sponsorship identification provisions of the Communications Act or the Commission's Rules. As the Bureau is undoubtedly aware, the Commission's sponsorship identification rules are only triggered when payment is received or promised to a broadcast licensee for the airing of material.[2] Indeed, the Commission determined long ago that the purpose of its sponsorship identification rules is to ensure that viewers are informed when "hearing or viewing matter which has been *paid for*...."[3] The Commission has also concluded that the "sole test" regarding "whether a sponsorship identification announcement was required was whether there had been broadcast exposure in return for ... payment."[4] More recently, the Commission confirmed that the fundamental question to be asked in this context is "whether or not a station receives valuable consideration for broadcasting" the material.[5]

Sinclair's employees have historically been made aware of the company's requirement that employees understand the obligations and prohibitions pursuant to the Communications Act and the FCC's rules regarding payola and sponsorship identification. In this case, *none* of the Stations' received or were offered *any* payment or consideration for the airing of the programming at issue here. In light of these facts, there is no basis for enforcement action here.

In any case, Sinclair's responses to the Bureau's specific inquiries are provided below. The Bureau requested information regarding whether the following "Program Material" aired on the stations on the following dates:

> (1) the following episodes of the program "The Right Side with Armstrong Williams":
>
> Show No. 212 "National Security," taped December 11, 2003;
> Show No. 207 "What is Faith?," taped December 11, 2003;
> Show No. 211 "Judicial Nominations," taped December 11, 2003;

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[2] *See* 47 C.F.R. § 73.1212.

[3] Public Notice, *Application of Sponsorship Identification Rules to Political Broadcasts, Teaser Announcements, Governmental Entities and Other Organizations*, 66 FCC 2d 302 (1977).

[4] *Amendment of Sections 3.119. 3.289, 3.654 and 3.789 of the Commission's Rules*, 34 FCC 829, 836 (1963).

[5] Order, *Advertising Council Request for Declaratory Ruling or Waiver Concerning Sponsorship Identification Rules*, 17 FCC Rcd 22616, 22621 (2002). The Commission added that "[G]enerally, when no payment or other valuable consideration is paid or promised for the broadcast or cablecast, no 'sponsorship identification' is necessary, since by definition there is no sponsor." *Id.*

Show No. 210 "Young Americans in Government," taped December 11, 2003;
Show No. 209 "Year End Review," taped December 11, 2003;
Show No. 244 "O'Donnell/Aguirre," taped May 29, 2004;
Show No. 216 "On Pint with Rod Paige," taped January 8, 2004;
Show entitled "Armstrong Debut, containing "Interview with John Gibbons," taped January 5, 2004; and;

(2) America's Black Forum, "2004 Election Countdown," taped September 12, 2004.

***Response* (1):** None of the Stations aired any of the listed episodes of "The Right Side with Armstrong Williams." Thus, that program is not an issue in this proceeding.

***Response* (2):** With respect to America's Black Forum, "2004 Election Countdown," only the following Stations aired the program, at the times indicated:

WABM(TV), Birmingham, AL, aired 9/11/2004 at 5:30 a.m.
KSMO-TV, Kansas City, MO, aired 9/12/2004 at 4:30 a.m.[6]
WVTV(TV), Milwaukee, WI, aired 9/12/2004 at 6:00 a.m.
WUXP-TV, Nashville, TN, aired 09/112004 at 6:30 a.m.
KOCB(TV), Oklahoma City, OK, aired 09/11/2004 at 5:30 a.m.
WEAR-TV, Pensacola, FL, aired 09/11/2004 at 4:30 a.m.
WPMY(TV), Pittsburgh, PA, aired on 09/12/2004 5:30 a.m.
KABB(TV), San Antonio, TX, aired on 09/11/2004 at 4 a.m.
WTWC-TV, Tallahassee, FL, aired on 09/12/2004 at 12:00 p.m.

The Letter also asks a series of questions with respect to the "Program Material" aired. Sinclair's responses to those questions are provided below:

1. *For each Program Material segment, as defined and identified above, state whether the Sinclair station listed above aired such material*:

***Response*:** As noted above, none of the Stations aired any of the identified episodes of the program "The Right Side with Armstrong Williams." In addition, the Stations which aired America's Black Forum, "2004 Election Countdown," were WABM(TV), KSMO-TV,[7] WVTV(TV),

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[6] As noted above, Sinclair has sold station KSMO-TV since the airing of the program. *See supra*, n.1.

[7] *Id.*

WUXP-TV, KOCB(TV), WEAR-TV, WPMY(TV), KABB(TV), and WTWC-TV.

a. *identify the steps, if any, Sinclair took to determine whether the segment required sponsorship identification*;

Response: To Sinclair's knowledge, America's Black Forum, "2004 Election Countdown," is a syndicated public interest program. Sinclair has no involvement in producing the program. Indeed, the stations believed they were providing a public service to their communities by selecting and airing this show.

In any event, as noted, no consideration was offered to, or received by, the Stations or the Stations' staff for airing the chosen program. Moreover, Sinclair and its employees had no actual knowledge or had any reason to believe that any person involved in the production of the program paid or received consideration for the program and Sinclair's staff made their own independent, uncompensated decision to include the material. Whether those involved in the production aspects of the program were paid was not a matter considered by Sinclair at the time it made its independent decision to air the material.[8] Again, significantly, no Station personnel received any compensation whatsoever for inclusion of the material in the segment, which is the relevant issue here.

Finally, as stated previously, Sinclair's employees have historically been made aware of the company's requirement that employees understand the obligations and prohibitions pursuant to the Communications Act and the FCC's rules regarding payola and sponsorship identification. Sinclair has no reason to believe that its employees did not follow the Commission's rules or Sinclair's policy here, with respect to the selection and airing of America's Black Forum, "2004 Election Countdown."

b. *state whether Sinclair was aware of or had reason to believe that any person involved in the production of the segment paid or received consideration for the inclusion of material in the segment*;

Response: See Response to Question (1)(a).

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[8] The broadcast of "America's Black Forum," by the Stations occurred under exactly the same model as does the broadcast of a large amount of syndicated programming, such as reruns of shows like "Seinfeld" and "Friends," and first run syndicated programs like "Oprah," "Wheel of Fortune" and "Judge Judy." There is no more reason to investigate a television station's broadcast of episodes of "America's Black Forum" than there is to investigate broadcasts of any other syndicated program.

c. state whether Sinclair identified the segment as sponsored, and if so, the manner in which that identification took place.

***Response*:** As noted, to Sinclair's knowledge, America's Black Forum, "2004 Election Countdown," is a syndicated public interest program. Sinclair is not in any way involved in producing the program. Sinclair and its employees simply did not know, and had no reason to know, that the program required any identification, and thus its Stations did not provide identification when airing the program.

For the reasons stated herein, Sinclair respectfully submits that there is no basis for enforcement action regarding this matter. Should there be any questions, please contact either of the undersigned.

Sincerely yours,

Kathryn R. Schmeltzer
Paul A. Cicelski

533070-0000000

DECLARATION

I Bill Butler, Vice President of Programming for Sinclair Broadcast Group, Inc., have read the forcgoing December 22, 2006 Letter Response and the facts stated therein are true and accurate to thc best of my knowledge and belief under penalty of perjury.

Bill Butler

Date: 12/20/06

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

In the Matter of	)	
	)	
SONSHINE FAMILY TELEVISION, INC.	)	File No. EB-06-IH-3489
	)	NAL/Acct. No. 200832080001
Licensee of Station WBPH-TV	)	Facility ID No. 60850
Bethlehem, Pennsylvania	)	FRN: 0006620066
	)	
	)	
SINCLAIR BROADCAST GROUP, INC.	)	File No. EB-06-IH-3486
	)	NAL/Acct. No. 200832080003
Licensee of Stations WABM(TV), Birmingham,	)	Facility ID Nos. 16820, 74174, 9971, 50170,
Alabama, WVTV(TV), Milwaukee, Wisconsin,	)	71363, 73907, 56528, 66908, and 33336
WUXP-TV, Nashville, Tennessee, KOCB(TV),	)	FRN: 0004331096
WEAR-TV, Pensacola, Florida, WPMY(TV),	)	
Pittsburgh, Pennsylvania, KABB(TV), San	)	
Antonio, Texas, WTWC-TV, Tallahassee,	)	
Florida, and former licensee of KSMO-TV,	)	
Kansas City, Missouri		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 27, 2007 **Released: October 18, 2007**

By the Commission: Commissioners Adelstein and Copps issuing a joint statement.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Sonshine Family Television, Inc. ("Sonshine"), licensee of Station WBPH-TV, Bethlehem, Pennsylvania, apparently liable for a forfeiture in the amount of forty thousand dollars ($40,000) for willfully and repeatedly violating Section 317(a)(1) of the Communications Act of 1934, as amended[1] ("Act"), and Section 73.1212(a) of the Commission's rules.[2] These provisions generally require a licensee to make sponsorship identification announcements whenever its station broadcasts matter in return for money, service, or other valuable consideration. We find that Sonshine, in exchange for consideration, broadcast five episodes of the program "The Right Side with Armstrong Williams" ("RSAW") on a total of ten occasions during the period January 4, 2004, through July 5, 2004, without airing the required sponsorship identification announcements.

[1] 47 U.S.C. § 317(a)(1).

[2] 47 C.F.R. § 73.1212(a).

2. We also find Sinclair Broadcast Group, Inc. ("Sinclair"), ultimate parent of the licensees of Stations WABM(TV), Birmingham, Alabama, KSMO-TV, Kansas City, Missouri, WVTV(TV), Milwaukee, Wisconsin, WUXP-TV, Nashville, Tennessee, KOCB(TV), WEAR-TV, Pensacola, Florida, WPMY(TV), Pittsburgh, Pennsylvania, KABB(TV), San Antonio, Texas, and WTWC-TV, Tallahassee, Florida,[3] apparently liable for a forfeiture in the amount of thirty-six thousand dollars ($36,000) for willfully and repeatedly violating Section 73.1212(d) of the Commission's rules.[4] That section provides that whenever a licensee is furnished with "any film, record, transcription, talent, script or other material or service . . ." for use in connection with the broadcast of political matter or the discussion of a controversial issue of public importance, the licensee must make sponsorship announcements identifying the party or parties furnishing the materials or services. We find that the above-captioned Sinclair stations broadcast an episode of the program "America's Black Forum," ("ABF") entitled "2004 Election Countdown," on September 11 or 12, 2004, without airing the sponsorship identification announcements required by this section.

II. BACKGROUND

A. Sponsorship Identification Law

3. Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules establish the general obligation of a broadcast station to air sponsorship identification announcements whenever any "money, service or other valuable consideration" is paid or promised to the station for the broadcast of program material. Specifically, Section 317(a)(1) provides:

> All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or 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.[5]

4. Section 73.1212(a) of the Commission's rules implements Section 317(a)(1) of the Act. Section 73.1212(a) of the Commission's rules states:

> 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:

[3] Sinclair is the ultimate parent of the respective television station licensees Birmingham (WABM-TV) Licensee, Inc; WVTV Licensee, Inc; WUXP Licensee, LLC; KOCB Licensee, LLC; WEAR Licensee, LLC; WCWB Licensee, LLC; KABB Licensee, LLC; and WTWC Licensee, LLC. KSMO-TV was licensed to a Sinclair-controlled entity at the time of the relevant broadcasts.

[4] 47 C.F.R. § 73.1212(d).

[5] 47 U.S.C. § 317(a)(1).

> (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 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 reasonably related to the use of such service or property on the broadcast.[6]

The proviso components of Section 73.1212(a)(2) and of Section 317(a)(1) of the Act exempt stations from making sponsorship announcements in certain circumstances, but these provisos do not apply when the consideration paid or promised to a station is in the form of "money." The Commission has noted that the sponsorship identification rules are "grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them" and has warned that it would take enforcement action against broadcast stations and cable operators that did not comply with its rules.[7]

5. The sponsorship identification rules impose upon broadcast licensees a greater obligation of disclosure in connection with political material and program matter treating controversial issues. The Commission has noted that, particularly in the case of such programming, audience members are "entitled to know when the program ends and the advertisement begins." [8] Thus, while the provisos to Section 317(a)(1) of the Act and Section 73.1212(a) of our rules provide generally that no sponsorship identification announcement is necessary if broadcast-related materials or services are supplied to a station free of charge or at a nominal charge,[9] Section 317(a)(2) authorizes the Commission to require sponsorship announcements for any materials or services that are furnished for use in political or controversial issue programming without regard to whether they were provided at no charge or at a nominal charge.[10] The Commission has exercised this authority in adopting Section 73.1212(d), which

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[6] 47 C.F.R. § 73.1212. The Commission's rules also contain additional requirements designed to implement and provide greater specificity for the other requirements in Section 317. Section 76.1615 establishes many of these requirements for cable operators under certain circumstances.

[7] *See, e.g., Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593-94 (2005) ("*2005 Public Notice*").

[8] *See* Richard Kielbowicz and Linda Lawson, "Unmasking Hidden Commercials in Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963," 56 Fed. Comm. L. J. 329 at 344 n.80 (2004), *citing* FCC, Public Service Responsibility of Broadcast Licensees, 47 (1946); *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593 (2005) ("*2005 Public Notice*").

[9] *See* paras. 3-4, *supra.*

[10] Section 317(a)(2), 47 U.S.C. § 317(a)(2), provides that:

> 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

(continued....)

provides:

> In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast. [11]

6. The Commission applies the same standard for determining whether a broadcast matter involves "a controversial issue of public importance" as it applied under the fairness doctrine.[12] "[G]iven the limitless number of potential controversial issues and the varying circumstances in which they might arise," the Commission approaches this determination on a case-by-case basis.[13] Consistent with the First Amendment, the Commission relies heavily on licensees' editorial judgment, and the scope of its review is limited to determining whether a licensee has acted reasonably and in good faith in determining whether material is or is not subject to the special disclosure rule for matter involving controversial issues of public importance.[14] The inducement component of the rule is satisfied whenever material is provided to a broadcaster at no or nominal charge.[15]

B. Free Press Complaint and Investigations

7. In early January 2005, Free Press and several thousand other complainants wrote requesting that the Commission investigate alleged payola violations involving Armstrong Williams ("Williams"). The complaints, citing national news reports, contended that Williams was paid by the

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> 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.

[11] 47 C.F.R. § 73.1212(d). The Commission's rules also contain additional requirements designed to implement and provide greater specificity for the other requirements in Section 317. Section 76.1615 establishes many of these requirements for cable operators under certain circumstances.

[12] *Amendment of Commission's Sponsorship Identification Rules*, 52 FCC 2d 701, 710 (1975).

[13] *The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act*, 48 FCC 2d 1, 11-12 (1974)("*1974 Fairness Report*").

[14] *Id.* at 11.

[15] *Westinghouse B'casting Co.*, 40 FCC 28, 29 (1958) ("it is obvious that the material furnished by the [program's producer], at considerable cost to it and no cost to the stations, was made available by that association with the expectation or hope that it would be presented by the stations to which it was supplied, ...--i.e., as an *inducement* to the stations to present this particular material. Conversely, the station was induced to present portions of the particular material by the fact that it was made available gratis."); *Gaylord B'casting Co.*, 67 FCC 2d 25 (1977). *See also Announcement of Sponsored Programs*, 28 Fed. Reg. 4707, 4715 (May 10, 1963) (rejecting contention that proposed case illustration 35(c) "was misleading in that it permits the conclusion that whenever material involving controversial issues of public importance is supplied to a station free of charge, the use of any portion of such material in a news program would require an announcement as to its source").

Department of Education ("DoEd") to promote the No Child Left Behind Act ("NCLB") in broadcast programming that he produced or in which he appeared without disclosing that fact to viewers or to the stations involved. Many of the complaints identified numerous broadcast stations reported to have aired such NCLB-related programming, which included the show "The Right Side with Armstrong Williams."

8. On February 14, 2005, the Enforcement Bureau ("Bureau") issued letters of inquiry to Armstrong Williams' media company, Graham Williams Group ("GWG"), and to public-relations firm Ketchum, Inc. ("Ketchum").[16] Ketchum was the prime contractor with DoEd in connection with that department's campaign to promote NCLB and GWG was a subcontractor of Ketchum's in that endeavor. The *LOIs* directed the respondents to answer a number of questions and produce a variety of documents relevant to matters raised in the complaints. In their responses, GWG and Ketchum provided documentary and other evidence that included more than one-hundred hours of recorded programs containing NCLB advertisements or discussion and commentary concerning NCLB during episodes of RSAW, hosted by Williams, and during the program "America's Black Forum" ("ABF"), on which Williams appeared as a guest.[17]

9. After reviewing this evidence, the Bureau identified those episodes in which discussions of NCLB topics took place during the programs, but no sponsorship disclosures appeared to have been made. The Bureau thereafter issued further letters of inquiry to licensees named in the complaints or identified by Williams to determine, among other things, whether their stations aired such NCLB-related programming, as alleged, and if so, whether the stations disclosed the identity of the sponsor of such programming during their broadcasts. Sonshine and Sinclair were among the owners to which the Bureau directed a further *LOI*.[18]

10. In its response, Sonshine denies that Station WBPH-TV aired ABF but acknowledges that the station aired five different episodes of RSAW entitled "What is Faith," "Year End Review," "Young Americans in Government,"[19] "National Security," and "On Point with Rod Paige," on a total of ten occasions during the period January 4, 2004, through July 5, 2004.[20] During these episodes Williams

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[16] *See* Letters from William Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Sinclair and Ketchum, dated February 14, 2005 ("*February 14th LOIs*").

[17] *See* Letter from GWG to Kenneth M. Scheibel, Jr., Attorney, Investigations & Hearings Division, Enforcement Bureau, dated April 6, 2005 ("*GWG Response*"), and Letter from Ketchum to William D. Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated April 13, 2005 ("*Ketchum Response*").

[18] *See* Letters from Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Sonshine, dated November 7, 2006, and January 31, 2007 ("*November 7th LOI*" and "*January 31st LOI*"); Letter from Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Sinclair, dated November 7, 2006 ("*November 7th LOI*"). By actions dated January 31, June 29, and July 23, 2007, the Bureau terminated its investigations of other stations, including certain of those owned by Sinclair, based on the licensees' denials, and the absence of any independent evidence disputing their denials, that they had aired any of the program material at issue on such stations.

[19] This episode was referred to in our LOI to Sonshine as entitled "Young Americans in Government," but that title actually describes only the second segment of the episode. The first segment was denominated "Profile of a Candidate." The title appearing at the beginning of the whole episode - "Profile of Candidate/Americans" - appears to be a composite of both segments' titles.

[20] Specifically, Sonshine acknowledges that it aired the following episodes of RSAW over Station WBPH-TV: "What is Faith" aired on January 6, March 4, March 8, and April 30, 2004; "Year End Review" aired on January 4, (continued....)

discussed the NCLB program. Based on its inability to "produce actual records concerning these particular programs," Sonshine opines that "in all likelihood" its station aired them without including any sponsorship identification, because it believed no identification was necessary.[21] Sonshine acknowledges, however, that its agreement with Williams "call[ed] for payment of a nominal fee of $100 to [it] for each broadcast," which Sonshine implies is not cognizable due to the allegedly modest amount involved.[22] Sonshine further claims that it was neither informed by GWG nor made aware that anyone else received or was promised consideration for the inclusion of any message intended for broadcast.[23] Thus, Sonshine argues that it had no basis on which to conclude that a sponsorship announcement was required for the programming. Finally, Sonshine contends that the broadcast presentations as a whole make clear that GWG was the material's sponsor in each case, and that its failure to include specific disclosures announcing that the program was "paid for" and/or "sponsored" by GWG was harmless.[24]

11. In its response, Sinclair denies that any of its stations aired RSAW but acknowledges that nine of its stations aired an episode of ABF entitled "2004 Election Countdown," taped September 8, 2004, during which Williams discussed the NCLB program.[25] Sinclair admitted that these stations aired this episode of ABF without including any sponsorship identification.[26] Sinclair argues, however, that no such identification was required. In this regard, Sinclair states that it neither received nor was promised any consideration for the material's broadcast. Rather, it states that its staff's decision to air such material reflected its own "independent and uncompensated decision."[27] Moreover, Sinclair asserts that it had no actual knowledge or any reason to believe that anyone had received or been promised consideration for inclusion of material in the program that it aired.[28] Sinclair concludes that "it simply did not know, and had no reason to know, that the program required any identification . . . ."[29]

(Continued from previous page) ———————————
2004; "Young Americans in Government" aired on January 5, 2004; "National Security" aired on April 23, 2004; and "On Point with Rod Paige" aired on March 19, April 12 and July 5, 2004. *See* Letters from Sonshine to Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated December 22, 2006, March 2, 2007 and March 23, 2007 ("*Sonshine December 22nd Response,*" "*Sonshine's March 2nd Response,*" and "*Sonshine's March 23rd Response,*" respectively).

[21] *See March 23rd Response* at 2.

[22] *See id.*

[23] *See id.* at 4-5.

[24] *See March 23rd Response* at 2-3.

[25] *See* Letter from Sinclair to Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated December 22, 2006 ("*Sinclair Response*").

[26] Specifically, Sinclair acknowledges that its stations aired the episode over its stations on the following respective dates: on September 11, 2004, on WABM(TV), WUXP-TV, WEAR-TV, KABB(TV), and KOCB(TV); and on September 12, 2004, on KSMO-TV, WVTV(TV), WPMY(TV) and WTWC-TV. *See id.* at 3-4.

[27] *Id.* at 4.

[28] *See id.*

[29] *Id.* at 5. Sinclair explains that it likened this donated program material to other "syndicated programming, such as reruns of shows like 'Seinfeld' and 'Friends,'" which are instances, it impliedly suggests, that do not trigger the rule's identification requirements. *Id.* at 4 n.8.

III. DISCUSSION

12. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.[30] To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.[31] The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[32] We conclude under this standard that Sonshine is apparently liable for a forfeiture for its willful and repeated violation of Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules and that Sinclair is apparently liable for a forfeiture for its willful and repeated violation of Section 73.1212(d) of the Commission's rules.

13. ***Sonshine.*** Both Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules expressly provide that broadcast stations must identify the sponsor of material whenever they accept "money, service or other valuable consideration" to air the material. Sonshine concedes that it received money in exchange for the broadcast of the five RSAW episodes identified above, but implies that the nominal amount of the payment – $100 per broadcast – excuses it from making a sponsorship announcement. To the extent Sonshine takes this position, it is unavailing. The duty to provide a sponsorship announcement where money is exchanged for airtime is part of the primary obligation stated in Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules. The provisos to these sections, which afford a limited exception to the announcement duty, operate by excluding certain classes of "service or other valuable consideration" from triggering the obligation. Specifically, they provide that the terms "service or other valuable consideration" as used in these sections "shall not include any service or property furnished without charge or at a nominal charge...." Notably, the term "money," which is named as a form of consideration that would oblige a station to air a sponsorship announcement, is not mentioned in the provisos. Moreover, unlike the provisos, the primary obligation stated in Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules recognizes no exception for "nominal" monetary payments. On the contrary, the statute requires sponsorship identification where a broadcaster is paid "*any money*, service or other valuable consideration."[33] We conclude that the receipt

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[30] 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶9.

[31] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[32] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

[33] 47 U.S.C. § 317(a)(1) (emphasis added).

of money in exchange for the broadcast of material requires a sponsorship announcement regardless of whether the amount could be considered nominal or not.[34]

14. Moreover, we do not agree that the overall presentations of the RSAW episodes obviated the need for Sonshine to provide identification announcements in the form specified under the rules.[35] 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 that consideration was received.[36]

15. According to Section 73.1212(a)(1), the station shall announce "[t]hat such matter is sponsored, paid for or furnished, in whole or in part."[37] In addition under Section 73.1212(a)(2)(i): "For the purposes of this section, the term 'sponsored' shall be deemed to have the same meaning as 'paid for.'"[38] Thus, the Commission has found that the phrase "sponsored by" may be used in place of "paid for," but no other substitute words or phrases have been specifically allowed.[39] In addition, the term "presented by" is subject to differing interpretations which could lead to public confusion or misunderstanding. Thus, the term "presented by" does not clearly inform the audience that it is hearing

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[34] *See Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) ("where Congress includes particular language in one section of a statute but omits it in another … , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."), *quoting Russello v. United States*, 464 U.S. 16, 23 (1983).

[35] Sonshine argues that the overall presentations, which included introductory visual identification of the program title "Right Side with Armstrong Williams," similar aural identifications given at program breaks, and the closing display of production credits indicating that the program is owned by GWG, should be deemed to provide sufficient identification to viewers that GWG was the material's sponsor. *See Response* at 2-3.

[36] *See Application of Sponsorship Identification Rules to Political Broadcasts, Teaser Announcements, Governmental Entities and other Organizations*, Public Notice, 66 FCC 2d 302 (1977) ("*1977 Public Notice*").

[37] Substantially similar language, applicable to origination cablecasting, is set forth at 47 C.F.R. § 76.1615(a).

[38] Same language set forth at 47 C.F.R. § 76.1615(a), applicable to origination cablecasting.

[39] *See* 1977 Public Notice, 66 FCC 2d at 302. *See, e.g., Dallas Media Investors Corporation (Licensee of Station KDFI-TV)*, Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 3597 (Mass Med. Bur. 1993) (words "presentation," "copyright," and other words used to indicated the source of the sponsored material or ownership rights of the program's creator are not sufficient to satisfy the requirements of Section 317 of the Act and the Commission's sponsorship identification rules); *Channel 36 Licensee Corporation (Licensee of Station WATL(TV))*, Notice of Apparent Liability for Forfeiture, 7 FCC Rcd 6541 (Mass Med. Bur. 1992) (announcements stating that the program has been paid for "by the distributor" do not identify the sponsor, and are not sufficient to satisfy the requirements of Section 317 of the Act and the Commission's sponsorship identification rules and visual display of "Coral Ridge Report" with aural announcement "Coral Ridge Ministries presents the Coral Ridge Report with Doctor D. James Kennedy…" does not comply with sponsorship identification requirements); *Midwest Radio-Television, Inc. (Licensee of Stations WCCO(AM))*, Memorandum Opinion and Order, 49 FCC 2d 512 (1974) (Forfeiture assessed against licensee for violation of Section 317 of the Act and Commission's sponsorship identification rule. "This is Jack Douglas speaking for the Minnesota School Boards Association," is not sufficient as there was no indication that the announcement was sponsored or paid for by the association); and *Lamar A. Newcomb*, 1 FCC 2d 1395 (1965) (program sponsored by Reverend Dale Crowley identified by announcement of the words "Dale Crowley" not sufficient because there was no indication that the Reverend Crowley was sponsoring or paying for the program).

or viewing matter which has been paid for.[40] Moreover, the Commission has ruled that use of "promotional fees furnished by" is not sufficient.[41] Thus, due to the potential confusion and harm caused by alternative types of identification, the permissible forms of identification are narrowly drawn. In view of the foregoing, we find no merit to Sonshine's argument that the programs' overall presentations, which included identification of the program title, participants, and production company, made clear to viewers that those entities were also the material's sponsors. Consequently, we find that the broadcasts in question lacked appropriate sponsorship identification.

16. We conclude that Sonshine willfully and repeatedly violated Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules by airing the RSAW episodes "What is Faith," "Year End Review," "Young Americans in Government,"[42] "National Security," and "On Point with Rod Paige," over Station WBPH-TV without airing the proper sponsorship identification. The imposition of a monetary forfeiture to redress of these failures is appropriate.[43]

17. ***Sinclair.*** As noted above, Section 73.1212(d) of the Commission's rules makes clear that broadcast stations must identify the sponsor of any materials or services furnished for use in connection with "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance . . . ."[44] In this case, Williams and GWG provided Sinclair with a complete program for broadcast on its stations and that program, entitled "2004 Election Countdown," consisted, in substantial part, of partisan representatives and commentators analyzing and debating various issues central to the presidential campaign then underway, as well as clips of the candidates themselves making political statements at their respective parties' conventions. Based on these characteristics, we find that this program material was furnished for use in connection with "political broadcast matter" within the meaning of Section 73.1212(d) of the Commission's rules.[45] Accordingly, during each broadcast,

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[40] *Id.*

[41] *See National Broadcasting Company,* Letter By Direction of the Commission, 27 FCC 2d 75 (1970).

[42] *See* n.19, *supra.*

[43] Given our conclusion that Sonshine violated 47 U.S.C. § 317(a)(1) and 47 C.F.R. § 73.1212(a), we decline to address the issue of whether any of the programming that Sonshine aired included political matter or any matter involving a discussion of a controversial issue of public importance and, if so, whether Sonshine also violated Section 73.1212(d) of the Commission's rules.

[44] *See* para. 5, *supra.*

[45] Although the Commission has not specifically defined the term "political" for purposes of evaluating a licensee's duties under 47 C.F.R. § 73.1212(d), that fact should not deter licensees from making good faith determinations in this area. Given the nature of the ABF episode, including its title, we do not believe that a licensee could, in good faith, consider this material anything but political. In any event, the Commission has previously concluded that issues pertaining to "elections," which the ABF episode clearly addresses, are presumptively controversial and of public importance. *See Primer, Political Broadcasting*, 100 FCC 2d 1476, 1536-37 (1984) (staff report suggesting that term reaches material that deals "with political subjects"); *Gary M. Sukow*, 36 FCC 2d 668 (1972) (suggestion that term applies to any interview with a political officeholder, whether or not in connection with present election). The same sponsorship announcement requirements apply to broadcast matter involving the discussion of a controversial issue of public importance as to political broadcast matter. We note that Sinclair does not maintain that this material is non-political for purposes of our sponsorship identification regulations, nor does it maintain that it acted reasonably and in good faith in determining that this material is non-political. Indeed, the record does not reflect that Sinclair considered the issue.

Sinclair was obliged to air announcements indicating that the program was furnished by Williams, irrespective of whether it was provided to Sinclair without charge.[46] We conclude that Sinclair willfully and repeatedly violated Section 73.1212(d) of the Commission's rules by airing the ABF episode "2004 Election Countdown" over its stations on the respective dates noted above without airing proper sponsorship identification and that the imposition of a monetary forfeiture in redress of these failures is appropriate. In this regard, we observe that the Commission has placed particular importance on a licensee's obligation to identify to its viewers any and all sponsors of politically related messages.

18. ***Forfeitures.*** The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of $4,000 for sponsorship identification violations.[47] After considering the record and all of the factors contained in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the *Forfeiture Policy Statement*, we believe a forfeiture of $40,000 is appropriate for Sonshine's violations. This represents the base amount for each of the ten broadcasts by WBPH-TV of the referenced RSAW episodes.[48] After similar consideration, we believe a $36,000 forfeiture is appropriate for Sinclair's violations. This represents the base amount for the single broadcast of the ABF program over each of the nine above-captioned Sinclair stations on September 11 or 12, 2004.[49]

IV. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,[50] Sonshine is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Forty Thousand Dollars ($40,000) for willfully and repeatedly violating Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules.

20. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,[51] Sinclair is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Thirty-Six Thousand Dollars ($36,000) for willfully and repeatedly violating Section 73.1212(d) of the Commission's rules.

21. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules, within thirty days of the release of this Notice, Sonshine and Sinclair SHALL EACH PAY to the United States the full amount of the proposed forfeitures or SHALL EACH FILE a written statement seeking reduction or cancellation of the proposed forfeitures.

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[46] The subject program exceeded five minutes in length. Under the terms of Section 72.1212(d), sponsorship announcements were therefore required at both the beginning and end of the program.

[47] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17114 (1997), *recons. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

[48] *See* n.20, *supra*.

[49] *See* n.26, *supra*.

[50] 47 C.F.R. §§ 0.111, 0.311 and 1.80.

[51] *Id.*

22. Payment of the forfeitures must be made by mailing check or similar instrument, payable to the order of the Federal Communications Commission. The payment MUST INCLUDE the respective FCC Registration Number ("FRN") and the NAL/Account Number for the payor specified in the caption of this *NAL*. Payment by check or money order may be mailed to Federal Communications Commission P.O. Box 358340 Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Pittsburgh, and account number BNF: FCC/ACV--9116229.

23. Each response, if any, must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 4-C330, Washington, D.C. 20554 and MUST INCLUDE the respective NAL/Acct. No. for the responding party referenced above.

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

25. Requests for payment of the full amount of the *NAL* under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.[52]

26. IT IS FURTHER ORDERED THAT a copy of this Notice SHALL BE SENT, by Certified Mail/Return Receipt Requested, to Sonshine Family Television, Inc., 813 N. Fenwick Street, Allentown, Pennsylvania 18109, and to its counsel, J. Geoffrey Bentley, Esq., 2700 Copper Creek Road, Oak Hill, Virginia 20171, and to Sinclair Broadcast Group, Inc., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128, and to its counsel, Kathryn R. Schmeltzer, Esq., and Paul A. Cicelski, Esq., at the same address.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[52] *See* 47 C.F.R. § 1.1914.

JOINT STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN AND COMMISSIONER MICHAEL J. COPPS

In the Matter of Sonshine Family Television, Inc, and Sinclair Broadcast Group, Inc., Notice of Apparent Liability for Forfeiture

Growing abuses of the public trust in recent years are shaking Americans' confidence in the press. When pundits are paid to promote a corporate or government agenda while the public is never told, all commenters and journalists become suspect. The repeated revelations of advertisers paying their way onto news programming without disclosure undercut the credibility of all journalists. When budget cuts in newsrooms lead broadcasters to substitute advertisements disguised by slick public relations firms as news instead of paying for their own work, viewers and listener wonder what they can believe. When newsrooms are too strapped or sloppy to perform their due diligence and provide disclosure announcements, as required by law, it leads to a crisis of confidence.

So we now face a crisis in American journalism. That is why today's action by the Commission is so important. It sends a clear message that the public has a right to know who is trying to persuade them so they can make up their own minds about what is presented to them.

While some will try to turn this into a First Amendment issue, sponsorship identification in no way requires anyone to limit anything they communicate. On the contrary, it requires more speech, not less. The only reason it can be construed as limiting expression is because broadcasters and cable operators are too embarrassed to reveal who paid to produce or espouse material they are pretending is their own product. In fact, established ethical guidelines, which are routinely ignored, call for just such disclosure. The reticence to disclose, or to otherwise refrain from using material paid for by a sponsor, is not a restraint upon free expression.

Today, with the release of this *Notice of Apparent Liability for Forfeiture*, the Commission again puts broadcasters and cable operators on notice that the public deserves a clear statement on whether or not the programming they are watching is sponsored by a government or corporate interest.

This *Forfeiture Notice* reinforces the rule that the Commission's disclosure obligations do not only apply to broadcasters. Rather, the Commission is serious about applying the rules to everyone up and down the chain of production and distribution.[1] Today, the Commission places broadcasters, producers and distributors on notice. Each and every individual has a duty to report the real source of any programming on television or radio. Employers and employees must ensure the audience knows where the programming they are watching originated or who paid for it. The argument that the overall presentation of the material obviates the need to provide sponsorship identification announcements is unavailing. Under our clear rules, any consideration must be revealed to the audience.

Failure to disclose Armstrong Williams was paid by the Department of Education to promote an agenda on the air by itself violates Federal law.[2] On top of that, without making a positive or negative

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[1] *See* Letters from Enforcement Bureau, FCC, to Graham Williams Group and Ketchum, Inc., File No. EB-05-IH-0031 (July 23, 2007).

[2] Section 507 of the Communications Act of 1934, as amended, codified at 47 U.S.C. § 508. *See* Letter from Enforcement Bureau, FCC, to Graham Williams Group, Inc., File No. EB-05-IH-0031 (July 23, 2007)("[T]he record (continued....)

judgment of the content aired, we find that in the instant case a licensee could not, in good faith, consider the material to be "anything but political."[3] The Commission has already concluded that electoral issues are presumptively controversial and of public importance. In fact, we both struggle to find an issue more important to many parents than their child's education. We feel it is not too much of a stretch for programmers to understand what is a political issue and what is not. Broadcasters should strive to present independent and honest broadcasting, and should ethically desire to be forthcoming and open about where its programming is coming from.

The integrity of the press is of paramount importance to any democracy. As the Commission has clearly warned, audience members must be able to tell where the program they are watching ends and the paid advertisement begins. Today's *Forfeiture Notice* reaffirms the affirmative legal obligation of broadcasters to alert the public to any payola punditry and places the industry on notice that the Commission will act to ensure the public is protected from special interest groups who attempt to trick the public.

While this action is overdue, we are pleased the Commission takes this issue seriously. This *Forfeiture Notice* demonstrates how important it is for broadcast stations to clearly announce any sponsors furnishing material or services, particularly for use in connection with the broadcast of political material or discussion of a controversial issue of public importance. Accordingly, we speak in a unanimous voice.

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established that Williams and GWG [the Graham Williams Group] received more than nominal consideration from DoED [Department of Education] to include particular material in programming supplied to and intended for transmission by broadcast stations and that the material was, in fact, aired by various broadcast stations. In these circumstances, Williams and GWG were obligated under Section 507 to disclose to the licensees reviewing the programming that the NCLB-related broadcast material was sponsored by DoED. The record also established that such disclosure was not provided by either Williams or GWG. We conclude that WGB and Williams violated Section 507 of the Communications Act.").

[3] *Forfeiture Notice* at footnote 45.