

**To: All Broadcast Clients**

**November 7, 2007**

## **FCC ISSUES SIGNIFICANT FINES FOR FAILURE TO COMPLY WITH SPONSORSHIP IDENTIFICATION RULES**

Recently, the FCC issued Notices of Apparent Liability for Forfeiture (“NALs”) to Sonshine Family Television, Inc. (“Sonshine”) and Sinclair Broadcast Group, Inc. (“Sinclair”) for violations of the FCC’s sponsorship identification rules. The sponsorship identification rules require that a broadcast station air a sponsorship identification announcement if it broadcasts matter in exchange for money, services, or other valuable consideration. The rule also requires that a sponsorship identification be broadcast any time a station is provided with material for use in political or controversial issue programming regardless of whether the material was provided at no charge or at a nominal charge. Program material of five minutes or less requires one sponsorship identification, either at the beginning or end of the program, while program material that is longer than five minutes requires a sponsorship identification at the beginning and end of the program.

The FCC received complaints that Armstrong Williams was paid by the Department of Education (“DoED”) to promote the “No Child Left Behind Act,” and that Williams failed to disclose to viewers or the broadcast stations involved the fact that he was paid. The FCC’s Enforcement Bureau issued letters of inquiry to several parties, including certain broadcast licensees that broadcast program episodes in which Williams discussed “No Child Left Behind.” Ultimately, the FCC terminated all of the

investigations except those involving Sonshine and Sinclair.

Sonshine admitted that one of its stations aired the program episodes during which Williams discussed the “No Child Left Behind Act” on ten occasions between January 4, 2004 and July 5, 2004, that it likely did not include any sponsorship identifications and that it was paid \$100 per episode. Sonshine argued that no sponsorship identification was required because the consideration it received was “nominal.” The FCC disagreed because, as noted above, sponsorship identification is required if *any* money is exchanged for airtime, no matter how “nominal.”

Sonshine also argued that no sponsorship announcement was required because its overall presentation of the programs, which included identification of the program title, participants and production, made clear that the program was sponsored by Williams’ firm. The FCC disagreed, stating that the only phrases that may be used to identify sponsored programming are “sponsored by” and “paid for.” The FCC noted that phrases such as “presented by” or “promotional fees furnished by” are insufficient to comply with the sponsorship identification rule.

Sinclair admitted that nine of its stations aired program episodes furnished by Williams that were more than 5 minutes in



length that included dialogue about central campaign issues, clips of the presidential candidates making political statements, and Williams' discussion of "No Child Left Behind," but argued that no sponsorship identification was required because it did not receive any consideration in exchange for the broadcasts.

The FCC held that the programs furnished by Williams consisted of "partisan representatives and commentators analyzing and debating various issues central to the presidential election," and therefore constituted political broadcast matter under the sponsorship identification rules. Therefore, Sinclair was obligated to air sponsorship identification announcements at the beginning and end of each broadcast that identified Williams as the sponsor, even though the program was provided to Sinclair at no charge.

The FCC fined Sunshine \$40,000, and fined Sinclair \$36,000.

In a related decision, the FCC issued a citation to William's media firm for violating Section 507(c) of the Communications Act

of 1934, as amended, for failing to disclose to the broadcast stations to which it provided programming material that it had received more than nominal consideration from the DoED to include particular material within that programming.

These recent enforcement actions underscore the importance of complying with the FCC's sponsorship identification rules. As FCC Commissioners Adelstein and Copps stated in a joint statement concerning the NALS, "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."

Should you have any questions concerning these decisions or the sponsorship identification rules in general, please contact any attorney in our office.

*Leventhal Senter & Lerman PLLC*

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.